

Cayman Islands



Cayman Islands beneficial ownership regime

Under the Cayman Islands beneficial ownership legislation and regulations¹ (the **Law**), certain Cayman Islands companies are required to maintain details of each qualifying beneficial owner (**BO**) in a beneficial ownership register (a **BO Register**).

Each company that falls within the Law's remit (an **In-Scope company**) is required to complete and maintain a BO Register at its Cayman Islands registered office with a licensed corporate services provider.

What is an In-Scope company?

All companies incorporated or registered by way of continuation in the Cayman Islands under the Companies Law, including ordinary companies, exempted companies, exempted segregated portfolio companies and limited liability companies (**LLCs**) under the Limited Liability Companies Law, are In-Scope companies and so must maintain a BO Register, unless an exemption applies.

Which In-Scope companies are out of scope?

The Law does not apply directly to a foreign company or foreign LLC that is registered in the Cayman Islands as a "foreign company" pursuant to Part IX of the Companies Law (to qualify as the sole general partner of a Cayman Islands exempted limited partnership, for example), nor does it apply directly to partnership vehicles (such as exempted limited partnerships).

There are also a number of exceptions where certain categories of companies will be exempted from the Law and will not need to maintain their own BO Register. Broadly, these exceptions will apply to In-Scope companies where they are:

- listed on an approved stock exchange (NYSE, NASDAQ, HKSE, LSE etc) or the Cayman Islands Stock Exchange

¹ The Companies Law (Revised), The Limited Liability Companies Law (Revised), The Beneficial Ownership (Companies) Regulations, 2017, The Beneficial Ownership (Companies) (Amendment) Regulations, 2018, together the **Law**. This Marbury update does not address LLC legislation to which the BO regime also applies.

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- registered or licensed under relevant regulatory legislation² in the Cayman Islands, such as a registered fund under the Mutual Funds Law, or a manager under the Securities Investment Business Law (**SIB Law**)
- managed, arranged, administered, operated or promoted by an “approved person” as a special purpose vehicle, private equity fund, collective investment scheme or investment fund, including where the vehicle, fund or scheme is a Cayman Islands exempted limited partnership.

An “approved person” is a person (or its subsidiary) that is:

(a) regulated, registered or licensed under a Cayman Islands regulatory law, other than a company which is registered as an excluded person under the SIB Law, or

(b) regulated in an equivalent jurisdiction³ (investment advisors, or managers regulated by the SFC or the FCA, or fund administrators based in the Cayman Islands), or

(c) listed on an approved stock exchange, or the Cayman Islands Stock Exchange.

The “approved person” exemption is not available to a company simply because the In-Scope company has appointed as a director an individual who is an employee of a legal entity that is licensed under Cayman Islands regulatory laws, or solely because it has appointed an approved person to provide the company’s registered office in the Cayman Islands

- regulated in an equivalent jurisdiction³
- a general partner of a special purpose vehicle, private equity fund, collective investment scheme or investment fund which is (a) registered or holds a licence under a Cayman Islands regulatory law (eg a general partner of a partnership that is registered as a mutual fund under the Mutual Funds Law), or (b) managed, arranged, administered, operated or promoted by an approved person
- a "subsidiary", being an In-Scope company where: (a) more than 75% of the interests or voting rights are, collectively, held by one or more exempt entities or other legal entities; (b) exempt entities or other legal entities have the right to appoint or remove a majority of directors or managers; or (c) it is itself a subsidiary of another exempt subsidiary
- otherwise exempted by the regulations issued under the Law.

These exemptions have been included in the Law to recognise the fact that companies which are regulated, or which are related to regulated entities, will already be subject to regulatory requirements to obtain information on their BOs. Given the nature of the majority of companies registered in the Cayman Islands, it is likely that many companies will be able to determine that they are exempt. However, this may not mean no action is required.

² As defined in the Monetary Authority Law (other than the Directors Registration and Licensing Law (Revised)), ie the Banks and Trust Companies Law, Building Societies Law, Companies Management Law, Co-operative Societies Law, Insurance Law, Money Services Law, Mutual Funds Law, Development Bank Law and Securities Investment Business Law.

³ Current equivalent jurisdictions are Argentina, Australia, Austria, Bahamas, Bahrain, Barbados, Belgium, Bermuda, Brazil, British Virgin Islands, Canada, Cyprus, Denmark, Finland, France, Germany, Gibraltar, Greece, Guernsey, Hong Kong, Iceland, India, Ireland, Isle of Man, Israel, Italy, Japan, Jersey, Liechtenstein, Luxembourg, Malta, Netherlands, New Zealand, Norway, People’s Republic of China, Portugal, Singapore, Spain, Sweden, Switzerland, United Arab Emirates, United Kingdom and United States of America.

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Certain Cayman Islands companies which are exempt may be classed as *relevant legal entities* in relation to an In-Scope company and so may have obligations to notify their interests. Exempt companies should therefore review if they fall within the definition of a *relevant legal entity*.

Partnerships established in the Cayman Islands, including exempted limited partnerships, as well as foreign companies registered as such under the Companies Law and Cayman Islands trusts and bodies which are not legal persons, are not in the scope of the Law and so are not required to maintain a BO Register.

Filing requirement for In-Scope companies to which exemptions apply

In-Scope companies exempted from the requirement to maintain BO Registers must file written confirmation of the specific exemption on which they are relying with their Cayman Islands corporate services provider. The confirmation must include instructions to file the written confirmation with the competent authority in the Cayman Islands. This will give the competent authority an overview of all companies, whether they are required to maintain a BO Register or are exempt.

Marbury will provide relevant clients with a template.

Where is the BO Register kept?

Non-resident In-Scope companies must engage a regulated corporate services provider to keep their BO Register at their registered office in the Cayman Islands. Marbury will arrange this service to In-Scope companies for which it provides a registered office.

BO Registers are not publicly available, although they can be searched in limited circumstances by the relevant competent authority in the Cayman Islands.

Who is a “beneficial owner” (BO)?

Generally, an individual (natural person) is a BO of an In-Scope company if, directly or indirectly, he or she meets one or more of the following conditions:

- holds more than 25% of the shares or membership interests
- holds more than 25% of the voting rights
- holds the right to appoint or remove a majority of the board of directors or managers.

If there is no individual who meets any of these conditions:

- the BO of the In-Scope company is the individual who has the absolute and unconditional legal right to exercise (or actually exercises) significant influence or control over the In-Scope company through the ownership structure (other than solely in the capacity of a director (or manager), professional manager or professional advisor)
- if the trustees of a trust (or the members of a partnership or other entity that is not a legal person) meet one of those conditions, then those persons will be BOs for the purposes of the Law if they have the absolute and unconditional legal right to exercise, or actually exercise, significant influence or control

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over the activities of the trust (or partnership or other entity), other than solely in the capacity of a director (or manager), professional advisor or professional manager.

These conditions are primarily purposive in nature and should be interpreted accordingly and in conjunction with the Law.

When is a person or an entity a “registrable person”?

Any BO and any *relevant legal entity* are registrable persons, whose details will need to be included in the BO Register.

A *relevant legal entity* is a legal entity that is registered in the Cayman Islands (including as a "foreign company") and would meet the definition of a beneficial owner in relation to that In-Scope company if they were an individual rather than a legal entity.

Required particulars for BO Register

The particulars of a BO that are required to be included in an In-Scope company’s BO Register are set out in the Law, and include details such as name, address, date of birth and a passport or other identifying document details (or relevant corporate identifying information for a *relevant legal entity*) or, where applicable, a note of the status of enquiries. The BO Register must also contain details of the date on which such individual became a registrable person with respect to an In-Scope company.

Required particulars must be complete, and the In-Scope company must have reasonable grounds to believe such particulars are confirmed, before being entered on the BO Register.

The BO Register must also include required particulars of any *relevant legal entity* that (a) directly holds an interest in an In-Scope company or meets one or more of the specified conditions directly in respect of that In-Scope company; and (b) through which any BO or *relevant legal entity* indirectly owns an interest in that In-Scope company.

Offences for breach and restrictions notices

It is an offence for an In-Scope company to knowingly and wilfully breach various provisions of the Law or to provide materially false information. Registrable persons who knowingly and wilfully fail to comply with a notice they have received, or who make false statements in their reply, also commit an offence. On conviction, substantial fines and/or imprisonment for two years may be imposed, including on any director, manager or other officer of an In-Scope company where it is proved that the offence was committed with their consent or wilful default.

Deadline

The deadline for filing the first register is 29 June 2018.

If you are a client of Marbury to whom this deadline is relevant you will receive an email from the corporate services team within the next week.

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What actions are required?

All Cayman Islands companies should take proactive steps to establish whether they are In-Scope companies. Those entities which are exempt should also document their determination as to status under the Law.

In-Scope companies, once confirmed, should commence taking various steps set out in the Law to identify, obtain and hold information about their BO and *relevant legal entities*.

In light of the obligations imposed under the Regime, we will be liaising with clients to assess the impact of the Law on their vehicles registered in the Cayman Islands and to provide advice on next steps. We can also advise In-Scope companies in relation to the creation and maintenance of a BO Register, preparation of appropriate notices and such other matters required in order for In-Scope companies or other persons and *relevant legal entities* to fulfil their legal obligations under Cayman Islands law.

For assistance with any of the above matters, please liaise with your usual Marbury representative or contact us via info@marburys.com.

Note:

- This updater does not deal with limited liability companies which are also In-Scope companies.

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