

APPLEBY

GUIDE

BENEFICIAL OWNERSHIP REPORTING REGIME



1. BENEFICIAL OWNERSHIP TRANSPARENCY ACT

1.1 On 31 July 2024, the Beneficial Ownership Transparency Act, 2023 (**BOT Act**), the Beneficial Ownership Transparency Regulations 2024 and related guidance came into force (together, the **BO Regime**). The BO Regime requires, subject to certain exemptions, that information on beneficial owners must be requested and verified by a licensed corporate service provider (**CSP**). The CSP must promptly file beneficial ownership information to the designated competent authority.

2. WHO DOES IT APPLY TO?

2.1 The BO Regime applies to a:

- (a) Cayman company (including an exempted company) incorporated under the Companies Act (as revised);
- (b) Limited liability company established under the Limited Liability Companies Act (as revised);
- (c) Limited liability partnership registered under the Limited Liability Partnership Act (as revised);
- (d) Limited partnership registered under the Partnership Act (as revised);
- (e) Foundation company established under the Foundation Companies Act (as revised);
- (f) Exempted limited partnership registered under the Exempted Limited Partnership Act (as revised) (each a **legal person**).

2.2 Trusts, non-profit entities registered as a section 80 company and foreign registered entities fall outside the scope of the definition of a legal person and therefore are not subject to the BO Regime.

2.3 Subject to certain exceptions, each legal person is required to maintain a register of beneficial ownership information (**Register**) with its CSP which is subsequently reported to a centralized data platform maintained by the appointed Cayman competent authority.

2.4 The BOT Act aligns with the definition of “beneficial owner” contained in the Anti-Money Laundering Regulations (**AML Regulations**) with one notable exception that the trigger threshold percentage is 25% for beneficial owners under the BOT Act but 10% for beneficial owners under the AML Regulations.

3. REGISTRABLE BENEFICIAL OWNERS

3.1 *Beneficial Owner*

For the purposes of the BOT Act, the term beneficial owner means an individual who:

- (a) ultimately owns or controls, whether through direct or indirect ownership or control, 25% or more of the shares, voting rights or partnership interests in the legal person;
- (b) otherwise exercises ultimate effective control over the management of the legal person; or

(c) is identified as exercising control of the legal person through other means.

With respect to (b), the term “ultimate effective control” means ownership or control exercised through a chain of ownership or by means of control other than direct control over the management of the legal person.

3.2 *Trustees*

Trustees of a trust (if applicable) will be the beneficial owners of the legal person if they have ultimate effective control over the activities of the trust. Please note that professional advisors (lawyers, accountants and financial advisors) and professional managers (liquidators, receivers, restructuring officers exercising statutory functions) will not be considered to be beneficial owners when acting in such capacity.

3.3 *Deemed Beneficial Owner*

The BOT Act regards the following persons as individuals (a) a corporation sole; (b) a government or government department of a country or territory or a part of a country or territory; (c) an international organisation whose members include two or more countries or territories (or their governments); and (d) a public authority (**Deemed Beneficial Owner**).

3.4 *Senior Managing Official (SMO)*

If no individual meets any of the above conditions, the SMO of the legal person will be identified as the relevant person for beneficial ownership purposes. A SMO includes a director or a chief executive officer of the legal person if constituted as a company. In the case of a partnership, this may be the board of the general partner if a company or an individual. Ultimately this will depend on how the partnership is constituted. If there is no registrable beneficial owner, there must always be a SMO. It is not possible to have no SMO.

3.5 *Reportable Legal Entities*

A legal person must also identify any reportable legal entity (**RLE**). For the purposes of the BOT Act, an RLE means any other Cayman Islands entity (other than a foreign company, foreign entity or a foreign limited partnership) that if it were an individual would be a beneficial owner of the legal person which:

- (a) directly holds twenty-five per cent or more of the shares, voting rights or partnership interests in the legal person; or
- (b) otherwise exercises ultimate effective control over the management of the legal person; or
- (c) is an entity through which any beneficial owner or reportable legal entity indirectly holds a "relevant interest"¹ in the legal person.

¹ For the purposes of the BOT Act, the term “relevant interest” means an interest that a person holds in a legal person consisting of (a) a partnership interest or shares or voting rights in the legal person; or (b) ultimate effective control over the management of the legal person.

Where an RLE has been identified as holding a relevant interest in a legal person, that legal person is not required to undertake any further analysis on the ownership or control of the RLE.

If a legal person is partly owned by an RLE and partly owned by a non-RLE, the legal person must report its RLE and must also look through the non-RLE entity for any individual beneficial owners holding a majority stake in the legal person.

3.6 *Majority Stake / Indirect holdings*

An individual may be a beneficial owner by virtue of holding an interest in a legal person indirectly. This will apply in any of the following circumstances:

- (a) A holds a majority (i.e., holding more than 50%) of the voting rights in B;
- (b) A exercises ultimate effective control over the management of B;
- (c) A is a member of B and controls alone a majority of the voting rights in B pursuant to a joint agreement with other shareholders or members, a majority (being more than 50%) of the voting rights;
- (d) A has the right to exercise, or actually exercises, dominant direct influence or control over B.

The majority stake principle is important in determining whether or not any indirect holder(s) need to be recorded on the Register. The reference to "holdings" in a legal person means holding a right to share in the capital or, as applicable, profits of that legal person.

4. PROFESSIONAL ADVISER AND/OR PROFESSIONAL MANAGER

- 4.1 A person operating ***solely*** in the capacity of a 'professional advisor' or 'professional manager' will not be considered a beneficial owner. A "professional advisor" includes: (a) lawyer; (b) accountant; or (c) financial advisor who provides advice or direction in a professional capacity, and a "professional manager" includes: (i) a liquidator; (ii) a receiver; or (iii) a restructuring officer who exercises a statutory function.

5. ENTITY TYPES

5.1 *Foreign Trustees*

Trustees established, incorporated or registered outside the Cayman Islands will need to be recorded by the name of the foreign trustee entity together with the name of an individual within the foreign trustee.

5.2 *Segregated Portfolio Companies*

A segregated portfolio company (**SPC**) with more than one segregated portfolio may each have its own registrable beneficial owners. If a registrable beneficial owner cannot be identified, the SMO should be recorded on the Register (i.e., one or more directors of the SPC).

5.3 *Limited Liability Companies*

If the managing member(s) is a Cayman Islands entity, the managing member as RLE will be recorded on the Register. If any member holds 25% or more of the limited liability company's interests, such member(s) information will be recorded on the Register. If there is no member with 25% or more of the limited liability company's interests, one member would need to be named as SMO.

6. WHAT EXEMPTIONS APPLY

6.1 Most of the exemptions previously existing under the old beneficial ownership reporting regime have fallen away. Under the BO Regime certain legal persons can rely upon an "alternative route to compliance" benefit by providing their CSP with written confirmation of their category and certain details specific to that category. These legal persons are:

- (a) a legal person listed on the Cayman Islands Stock Exchange or an approved stock exchange;
- (b) a subsidiary of a listed entity;
- (c) a legal person licensed by the Cayman Islands Monetary Authority (**CIMA**); and
- (d) a fund registered with CIMA as a mutual fund or as a private fund.

6.2 The written confirmation must set out the paragraph under which the exemption is claimed and other prescribed details as more particularly described in the relevant legislation.

7. CONTACT PERSON ARRANGEMENT

7.1 As mentioned above, CIMA registered funds can rely upon an "alternative route to compliance" benefit by appointing their licenced CSP (or another appropriately licenced service provider including a fund administrator licensed by the CIMA) as a Contact Person. Through this route, the CIMA registered fund is not required to file a register on an ongoing basis but the Contact Person will be required to provide the competent authority (on request) with the requested "beneficial ownership information" within twenty-four hours of a request being made or such longer period as the competent authority may reasonably stipulate in its request.

7.2 Appleby Global Services (Cayman) Limited (**AGS**) can act as the Contact Person for the CIMA registered fund where it acts as CSP. In circumstances where AGS is appointed as the Contact Person, the CIMA registered fund will remain liable under the BOT Act for any failure to comply with a request for information within the timeframe prescribed by the competent authority in its notice in order that AGS may duly respond.

7.3 If the legal person elects to appoint AGS as Contact Person, a separate written agreement will be entered into between AGS and the fund's designated contact. The designated contact must provide AGS with the name, telephone number and email address of the fund's designated contact to whom any requests for beneficial ownership information received by AGS in its capacity as Contact Person from the competent authority will be forwarded to the competent authority to address this request.

7.4 If the CIMA registered fund does not wish to appoint a Contact Person and no other alternative route to compliance applies, the fund's designated contact is required to report beneficial ownership information on an ongoing basis to AGS which will then be forwarded to the relevant competent authority.

8. INFORMATION TO BE FILED ON REGISTRABLE BENEFICIAL OWNERS

8.1 The following information on each **individual** beneficial owner must be recorded on the Register:

- (a) name;
- (b) residential address;
- (c) address for service of notices under the BOT Act;
- (d) date of birth;
- (e) nationality(s);
- (f) ID verification (copy of valid passport, driver's licence or other government ID) that includes (i) identification number; (ii) country of issue; and (iii) issue/expiry date;
- (g) nature in which the individual owns or exercises control of the legal person; and
- (h) date the individual became/ceased to be a beneficial owner.

8.2 The following information on each **Deemed Beneficial Owner** must be reported on the Register:

- (a) name;
- (b) legal form;
- (c) principal office address;
- (d) nature of ownership or its exercise of control of the legal person
- (e) date on which it became or ceased to be a registrable beneficial owner in relation to the legal person in question; and
- (f) the name, telephone number and email address of an individual contact person within the Deemed Beneficial Owner.

8.3 The following information on each **RLE** must be reported on the Register:

- (a) corporate or firm name;
- (b) registered or principal office;

- (c) entity type and its governing law;
- (d) nature of the reportable legal entity's ownership or its exercise of control of the legal person;
- (e) the register in which it is entered and its registration number; and
- (f) the date on which it became or ceased to be a registrable beneficial owner in relation to the legal person in question.

8.4 The following information on each **Foreign Trustee** (i.e., trust established, incorporated or registered outside of the Cayman Islands) must be reported on the Register:

- (a) name;
- (b) address;
- (c) legal form;
- (d) the nature of ownership or its exercise of control of the legal person;
- (e) the date on which it became or ceased to be a registrable beneficial owner in relation to the legal person in question; and
- (f) the name, telephone number and email address of an individual contact person within the Foreign Trustee.

9. NO IDENTIFIABLE REGISTRABLE BENEFICIAL OWNERS

9.1 Where there is no identifiable registrable beneficial owner(s), the SMO (as described above) is recorded on the Register. The information recorded on the Register of a SMO is the same as the information recorded on the Register for an individual beneficial owner (as described above).

10. PERSONAL DATA & RETENTION PERIOD

10.1 The information provided on the beneficial ownership form (**BO Form**) will be used for the purpose of reporting beneficial ownership information within the Cayman Islands as required by the BOT Act. Prior to submitting the BO Form, please ensure that the information is correct and up to date and you have obtained all required consents of the beneficial owner(s) to provide their personal data to us.

10.2 We will process all personal data provided to us in accordance with our **Privacy Policy**.

10.3 Data (including personal data) relating to a person that is no longer a beneficial owner must be removed from the Register. However, the CSP must retain the record for a period of five years following the date the individual or reportable legal entity ceased to be a beneficial owner.

11. ACCESSING THE REGISTER

11.1 Law enforcement/regulatory bodies

The information recorded on the Register may be accessed (without restriction) by the Royal Cayman Islands Police Service, Financial Reporting Authority, CIMA, Anti-Corruption Commission or other competent authority involved in investigating money laundering or terrorist financing.

11.2 Designated persons

Aside from the above regulatory and law enforcement agencies, there is a provision in the BOT Act for restricted access to the information on the Register to be made available to certain members of the public who can demonstrate a legitimate interest.

The Ministry of Financial Services and Commerce, being the competent authority for the implementation of the BO Regime is in the process of drafting regulations to allow for “legitimate interest” access to members of the public where evidence can be provided that the legal person is linked to money laundering or terrorist financing. Such access would be subject to further regulations, being the Beneficial Ownership Transparency (Access Restriction) Regulations, 2024 (currently under consultation) which will allow for individuals to apply for protection from public disclosure where they believe that their association with the legal person, if disclosed, will place them, or an individual living with them, at serious risk of kidnapping, extortion, violence, intimidation or other similar danger or serious harm.

12. PENALTIES FOR NON-COMPLIANCE

12.1 The penalties for non-compliance with the obligations which pre-existed under the original beneficial ownership framework have increased and new sanctions apply in respect of obligations introduced under the BOT Act.

12.2 In circumstances where an in-scope legal person makes a false or misleading statement, the CSP must issue a notice requiring the outstanding particulars or a justification and correction in respect of a false or misleading statement. If not rectified within one month of receipt of the notice, the CSP must issue a restrictions notice with respect to the shares or other relevant interest. The effect of a restrictions notice is that any transfer or agreement to transfer the relevant interest will be void. The interests are stripped of their rights and except in liquidation no payment may be made in respect of the interests. There is a right to apply to the Grand Court to object to the restrictions being imposed.

12.3 Failure to comply with the requirements contained in the BOT Act may also result in administrative penalties and criminal penalties may also be imposed as follows:

Administrative Fines: An initial fine of \$5,000 may be imposed for failing to identify and report beneficial owners. Repeated non-compliance can result in ongoing monthly fines of \$1,000 per month up to a maximum fine of \$25,000.

Striking Off: An entity may be struck off or removed from the Register where a fine goes unpaid for 90 days.

Criminal Sanctions: Wilful non-compliance can lead to criminal penalties, fines of up to US\$100,000 and potential restrictions on business operations.

Director & Officer Liability: Directors and officers may also be subject to personal liability.

INSTRUCTIONS FOR COMPLETING THE BO FORM

IMPORTANT INFORMATION

To ensure you comply with the requirements of the BOT Act prior to 1 January 2025 enforcement date, please complete the BO Form as soon as possible and no later than **22 November 2024**.

As stated above, the BOT Act is now in force. The Ministry of Financial Services and Commerce has stated that enforcement will commence from 1 January 2025.

BO FORM

Our BO Form is interactive and designed to facilitate the efficient collection of beneficial ownership information. Each in-scope legal person must maintain a Register at its CSP. The information reported on the BO Form must be verified by a director, general partner, managing member as applicable, or their authorised representative of each legal person.

Our BO Form is supported by our beneficial ownership legal guide. Please ensure you read our beneficial ownership legal guide prior to completing the BO Form as the BO Form must be completed in one single review. It is not possible to complete only certain sections of the BO Form and pick this up again at a later stage.

COMPLETING THE BO FORM

All applicable data fields for an entity must be completed in accordance with the below instructions in order for an entity to be compliant with the BOT Act. Where incomplete data is provided, the BO Form will be returned.

As CSP, we are required to note in your Register the word “pending” to show that either; (a) you are in the process of taking steps to identify all of the required particulars of the registrable beneficial owner; or (b) you have identified a registrable beneficial owner in relation to the legal person but all the required particulars of that beneficial owner have not yet been confirmed by you or verified by us, as required.

If your Register contains the “pending” status for longer than three or more calendar months, you will be deemed to have breached various provisions of the BOT Act. In such situations, we as CSP are required to give notice to you that you have failed to comply with your obligations under the BOT Act.

DATA SUBJECT CONSENT

Prior to submitting the completed BO Form, please ensure that you have obtained the required consents of the relevant individuals to provide their personal data in the BO Form under relevant data protection laws and/or that the required notices are in place to lawfully transfer this personal data to us for the duration of the period in which we are appointed as CSP and by which the legal person is subject to the BOT Act.

LEGAL ADVICE

If you need assistance classifying certain legal persons for the purposes of completing this form, please reach out to your usual Appleby contact or otherwise to the Appleby Regulatory Team at **ky-beneficial-ownership@applebyglobal.com** for specific legal advice.

ADMINISTRATIVE ASSISTANCE

If you require information which may be held by us as CSP, please feel free to contact us at **CaymanBOContactPerson@global-ags.com**

COMPLETING THE BO FORM

NB: PLEASE READ OUR BENEFICIAL OWNERSHIP LEGAL GUIDE BEFORE COMPLETING THE BO FORM. WE RECOMMEND PRINTING THIS GUIDE BEFORE COMPLETING THE BO FORM AS YOU WILL ONLY BE ABLE TO SAVE THE BO FORM ONCE IT HAS BEEN COMPLETED

Name of legal person: Pre-populated with name of legal person. If there are more than one legal person, this will contain a list of all entities for which we require a response from you.

Applicable category: See drop-down category covering in-scope legal persons, listed exemption, CIMA licensee, CIMA registered funds. For details on the Contact Person arrangement for CIMA registered funds, see **beneficial ownership legal guide** for further details.

Legal Person Category: complete all data fields for all registrable beneficial owners. The data fields vary depending on whether the beneficial owners is an individual, RLE, Deemed Beneficial Owner, Foreign Trustee or SMO.

Nature of Ownership or Exercise of Control: Please select the basis by which the person is a registrable beneficial owner e.g., shares, partnership interest, voting rights, ultimate effective control, SMO, other.

Incomplete BO Forms will be returned and you will remain non-compliant with the BOT Act until the BO Form is fully completed.

GLOSSARY

Approved Stock Exchange	means a stock exchange listed in Schedule 4 of the Companies Act (as revised). The BO Form contains a drop-down list of all approved stock exchanges
Beneficial Owner	means an individual (i) who ultimately owns or controls (directly or indirectly) 25% per cent or more of the shares, voting rights or partnership interests in the relevant Cayman Islands entity; (ii) who otherwise exercises ultimate effective control over the management of the relevant Cayman Islands entity; or (iii) who is identified as exercising control of the relevant Cayman Islands entity through other means
CIMA	Cayman Islands Monetary Authority
Contact Person	means a CIMA licensed registered office service provider or a CIMA licensed fund administrator or another appropriately licensed or registered Cayman Islands service provider
Deemed Beneficial Owner	means an entity who is regarded as an individual for the beneficial ownership purposes, being (a) a corporation sole; (b) a government or government department of a country or territory or a part of a country or territory; (c) an international organization whose members include two or more countries or territories (or their governments); or (d) a public authority
Foreign Trustee	a trustee, other than an individual or Cayman Islands entity acting in such a capacity
Listed Parent	a listed entity which holds (i) seventy-five per cent or more of the shares or voting rights in the relevant Cayman Islands entity; (ii) exercises ultimate effective control over the relevant Cayman Islands entity; or (iii) controls the relevant Cayman Islands entity by other means
Professional Adviser	Lawyer, accountant or a financial advisor who provides advice or direction in a professional capacity
Professional Manager	Liquidator, receiver or a restructuring officer who exercises a statutory function
Regulatory Law	means any of the following (1) Banks and Trust Companies Act (as revised); (2) Building Societies Act (as revised); (3) Companies Management Act (as revised); (4) Cooperative Societies Act (as revised); (5) Development Bank Act (as revised); (6) Insurance Act (as revised); (7) Money Services Act (as revised); (8) Mutual Funds Act (as revised); (8) Securities Investment Business Act (as revised), and any other laws that may be prescribed by the Cabinet by regulations
Reportable Legal Entity	means another Cayman Islands entity (other than a foreign company, foreign entity or a foreign limited partnership) that if it were an individual would be a beneficial owner of the legal person
Senior Managing Official	includes a director or a chief executive officer of the legal person
Subsidiary	means a Cayman Islands entity which is a direct or indirect subsidiary of a listed entity, where such listed entity either (i) holds seventy-five per cent or more of the shares or voting rights in the relevant Cayman Islands entity; (ii) exercises ultimate effective control over the relevant Cayman Islands entity; or (iii) controls the relevant Cayman Islands entity by other means