



MINISTRY OF
FINANCIAL SERVICES
CAYMAN ISLANDS GOVERNMENT

Consultation Paper

Enhancement of the Beneficial Ownership Framework

07 September 2021

SUBMISSIONS

The Ministry of Financial Services invites you to respond to the questions in item 9 of this consultation paper.

Please note that any responses received may be made public, albeit on an anonymous basis where possible. Responses may also be shared with other public bodies to assist the Ministry with developing relevant policies.

All feedback is to be submitted through industry associations, or directly, via email to DFSLegislation@gov.ky. The deadline to respond to the Ministry is **5pm Monday, 04 October 2021**.

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1. PURPOSE OF THIS CONSULTATION

- 1.1. This consultation paper is being issued to seek feedback from financial services industry members and the wider public on measures that are being considered in order to enhance and improve the beneficial ownership framework in the Cayman Islands. The feedback received during this consultation will help inform the drafting of legislation, which will also be consulted upon.
- 1.2. It follows the commitment made in a public statement by the Cayman Islands in October 2019 for a public register of beneficial ownership information¹. In that statement, it was said that we will continue to refine and improve our legislation, and build the technological systems required to allow public access. In light of that commitment, this consultation outlines the measures that are being considered in order to improve the legislative framework and create a more effective beneficial ownership regime that is developed with the future in mind.
- 1.3. The proposals in this consultation, if implemented, would entail substantial changes to the Companies Act (2021 Revision), the Limited Liability Companies Act (2021 Revision), the Limited Liability Partnership Act (2021 Revision) (together, “the Acts”), related Regulations², and also consequential amendments to other pieces of legislation³, as well as significant changes to systems and processes.

2. BACKGROUND

- 2.1. The Cayman Islands General Registry provides a wealth of information to law enforcement, competent authorities and also the public, with 111,568 active companies and 31,733 active partnerships on the register at the end of 2020⁴. The Acts make it clear what information can

¹ https://archives.gov.ky/Archive/view_press_release/6212/statement-on-beneficial-ownership, retrieved 10 August 2021

² Beneficial Ownership (Companies) Regulations (2019 Revision), Beneficial Ownership (Limited Liability Companies) Regulations (2019 Revision), Beneficial Ownership (Limited Liability Partnership) Regulations, 2019.

³ Mutual Funds Act (2021 Revision), Insurance Act, 2010, Monetary Authority (Administrative Fines) Regulations, 2019, Companies Management Act (2021 Revision), Banks and Trust Companies Act (2021 Revision), Virtual Assets (Service Providers) Act, 2020, Exempted Limited Partnership Regulations (2021 Revision), Tax Information Authority Act (2021 Revision), and Police (Information and Assistance to International Law Enforcement Agencies) Regulations, 2017.

⁴ www.ciregistry.ky, retrieved 05 May 2021

be shared with each audience, with the public currently being able to obtain information including current directors, the entity's registered office, its nature of business and the date of the financial year end.

- 2.2. Financial services makes up a significant part of the Islands' economy, which equated to approximately 40.5 percent of GDP in 2019, inclusive of accounting and legal services that are overwhelmingly tied to the financial industry⁵. It is therefore extremely important to the jurisdiction that the financial services industry remains strong in the fight against abuse by bad actors. Transparency is a tool to assist with that.
- 2.3. With regards to beneficial ownership transparency, the legislative framework as we know it was created in 2017 following the entering into of an Exchange of Notes agreement, with the UK⁶. The Acts were modelled on the UK's legislation concerning persons with significant control. The framework for a central register of beneficial ownership information was introduced through amendments to the Companies Act and the Limited Liability Companies Act. The Limited Liability Partnership Act was also amended, although this came into force later in 2020. In the Acts, Cayman-registered entities are required to establish beneficial ownership registers, and their corporate services providers (or the Registrar of Companies for ordinary resident companies) are obligated to maintain the beneficial ownership information in a current and accurate format and provide that information to the beneficial ownership competent authority⁷.

[Legislation for a central register](#)

- 2.4. In the Companies Act and the Limited Liability Companies Act, a beneficial owner is defined as an individual who holds, directly or indirectly, 25% or more of the shares (capital for limited liability companies) or voting rights, or the right to appoint or remove the majority of the board of directors of a company, or managers for a limited liability company. The definition of beneficial owner for a limited liability partnership is slightly different, and can be found at section 54 of the Limited Liability Partnership Act. If no individual meets these conditions, an

⁵ <https://www.eso.ky/>, retrieved 11 August 2021

⁶ <https://www.gov.uk/government/publications/the-cayman-islands-sharing-beneficial-ownership-information>. Retrieved 09 August 2021

⁷ The beneficial ownership competent authority is the Minister responsible for financial services, which has been delegated to the Registrar of Companies.

individual is a beneficial owner if they have absolute and unconditional legal right to exercise, or actually exercises, significant influence or control over an entity other than solely in the capacity of a director, professional advisor or professional manager.

- 2.5. Since February 2020, the beneficial ownership competent authority has powers under the Acts to request additional information from entities and their corporate services providers for the purposes of carrying out its functions, and also the ability to search and verify the information provided to determine accuracy.
- 2.6. Where there is non-compliance with the Acts, a range of effective, proportionate and dissuasive criminal and administrative sanctions are available. With regards to criminal penalties, an entity that knowingly or wilfully contravenes beneficial ownership provisions in the Acts faces a fine of \$25,000 upon a first conviction, \$100,000 upon second conviction and the risk of being struck off by order of the Court upon third conviction. The beneficial ownership competent authority also has the statutory power to issue administrative fines to entities that are non-compliant with beneficial ownership provisions by issuing a fine of \$5,000 per breach, with a potential continuance of the fine up to \$25,000. Where these fines are not contested or paid within 90 days, the Registrar of Companies can strike the entity from the Register.

Financial Action Task Force

- 2.7. The Financial Action Task Force (“FATF”) defines a beneficial owner as the *“natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement”*.
- 2.8. FATF asks that jurisdictions require beneficial ownership information to be accurate and as up-to-date as possible, with timely access to the information by competent authorities and law enforcement authorities, including for international cooperation. FATF also require effective, proportionate and dissuasive sanctions, as appropriate, for any legal or natural person that fails to comply with beneficial ownership requirements.

- 2.9. The Caribbean Financial Action Task Force (“CFATF”)’s March 2019 Mutual Evaluation Report of the Cayman Islands⁸ gave a “Partially Compliant” technical compliance rating for the transparency of beneficial ownership information. Their reasons for this rating included challenges in verifying the information provided and a lack of adequate and effective sanctions for non-compliance. In CFATF’s Enhanced Follow-up Report of February 2021⁹, the rating for the transparency of beneficial ownership information was upgraded from “Partially Compliant” to “Largely Compliant” based on amendments to the framework that were made.
- 2.10. Following the FATF observation period, where the Cayman Islands was found to have met 60 out of 63 of the Recommended Actions that resulted from the Mutual Evaluation Report, the Cayman Islands was given a timeframe to complete three action items. The action item relevant to beneficial ownership, with the deadline of January 2022, is: *“imposing adequate and effective sanctions in cases where relevant parties (including legal persons) do not file accurate, adequate and up-to-date beneficial ownership information in line with those requirements¹⁰.”*

European Union (“EU”)

- 2.11. The EU’s 4th Anti-Money Laundering Directive (“AMLD4”)¹¹ imposes a mandatory requirement on EU Member States for central registers for ultimate beneficial owners for corporate and legal entities and trusts. These central registers should be available to a) the authorities and financial intelligence units without restrictions, b) “obliged entities”¹² in the fulfilment of their anti-money laundering duties, and (excluding trusts) to c) anyone able to demonstrate ‘legitimate interest’ (e.g., journalists).
- 2.12. The European Commission has an obligation under AMLD4 to identify high-risk third countries that have strategic deficiencies in their anti-money laundering and counter-financing of

⁸ <https://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-cayman-islands-2019.html>, retrieved 09 August 2021

⁹ <https://cfatf-gafic.org/home/cfatf-news/708-cayman-islands%E2%80%99-progress-in-strengthening-measures-to-tackle-money-laundering-and-terrorist-financing>, retrieved 09 August 2021

¹⁰ <http://www.fatf-gafi.org/countries/a-c/barbados/documents/increased-monitoring-june-2021.html#caymanislands>, retrieved 10 August 2021

¹¹ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

¹² ‘Obligated entities’ refers to specific financial institutions and businesses, which include financial institutions, money service businesses, auditors, accountants, lawyers, trust and corporate services providers and real estate agents.

terrorism regimes. Where a country is identified by the FATF as having strategic deficiencies, which is currently the case for the Cayman Islands, this will trigger the EU listing process. Those jurisdictions identified as high-risk are placed on the EU's anti-money laundering and counter-terrorist financing list of high-risk third countries, which requires all obliged entities in all EU Member States to apply enhanced due diligence measures in relation to business relationships or transactions involving the listed jurisdiction.

Need for change

- 2.13. Since the beneficial ownership legislative framework for a central registry was introduced in 2017, the Acts were amended in 2017, 2019 and three times in 2020. As outlined in the paragraphs above, much has changed in this space from 2017 and although the overwhelming majority of the legal entities registered in the Cayman Islands are law-abiding and used entirely for legitimate purposes, increased focus on transparency and evolving international standards have shown how criminals use complex corporate structures to hide their involvement in illegal activity. In order to combat these economic crime threats and to ensure that we remain a competitive and safe place to do business, there is a need for a multi-agency approach across public and private sectors.
- 2.14. In October 2019, the Cayman Islands publicly committed to introducing public registers of beneficial ownership information when it becomes the international standard anticipated by 2023. Public access to beneficial ownership information allows greater scrutiny of information and contributes to combating the misuse of corporate and other legal entities for the purposes of money laundering, terrorist financing and proliferation financing. As part of the commitment to public registers, there is a need to enhance and improve the legislative framework, as well as develop technological systems which are fit for purpose. This is necessary to ensure that the beneficial ownership information is available, accurate (and up-to-date) and that a framework is in place to deliver adequate corporate transparency, whilst also protecting individuals' privacy.
- 2.15. With this all in mind, a holistic review of the beneficial ownership framework has been undertaken with the objective of reform, in order for the register to be built upon relevant and accurate information, to provide greater efficiency to industry and strengthen the ability of the Registrar of Companies and other competent authorities to combat economic crime. This

also follows feedback the Ministry and General Registry have received over the years from industry members, that the framework should provide clearer obligations to legal entities and corporate services providers, as well as greater efficiency overall.

3. SUMMARY OF PROPOSALS

- 3.1. The Ministry's vision is for a central register of beneficial ownership information built upon relevant and accurate information, to provide greater efficiency to industry and strengthen the ability of the jurisdiction to combat economic crime. A number of measures have been considered in order to realise this vision and are summarised here, with further information provided in the relevant sections below.
- 3.2. In order to meet international standards in relation to beneficial ownership, the Ministry has considered the type of entities the framework should apply to. Although the term "*legal person*" most often refers to companies, the term has been expanded internationally¹³ to include certain types of partnerships. The Ministry is therefore considering expanding the beneficial ownership legislative framework to include exempted limited partnerships and limited partnerships.
- 3.3. Due to the importance of the beneficial ownership legislative framework in the transparency sphere, and also with additional entities becoming in scope of the framework over the years, the Ministry is considering the creation of a single Act for beneficial ownership transparency. It is expected that this would reduce burden, provide clarity to all users of the legislation and allow the overall effectiveness of the framework to be more easily improved.
- 3.4. With international standards having changed since the beneficial ownership legislative framework was introduced in 2017, the development of a single Act for beneficial ownership transparency would provide the Ministry with the opportunity to make some changes to ensure greater efficiency of the framework and enhance the consistency among other relevant regulations in the jurisdiction. The proposals considered include amending the definition of

¹³ <https://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html>, retrieved 12 August 2021

beneficial owner, and also reporting requirements – the type of information reported, as well as who should be reporting and when.

- 3.5. The final key area this consultation is reviewing is the access to information. This consultation paper has been developed because of where the jurisdiction is currently with regards to the beneficial ownership legislative framework, and where we intend to be. The public commitment made by the Cayman Islands in October 2019 indicated where we intend to be in 2023 with regards to public access, with the Ministry developing a framework to deliver adequate corporate transparency, whilst protecting individuals' privacy.

4. ADDITIONAL ENTITIES IN SCOPE

- 4.1. At present, the beneficial ownership legislative framework applies to companies, limited liability companies and limited liability partnerships. As part of the holistic review of the beneficial ownership framework, the Ministry has been considering whether this is sufficient, or whether other types of entities, namely exempted limited partnerships and limited partnerships, need to be included. As of December 2020 there were 31,733 partnerships on the Register, with the majority of these being exempted limited partnerships (31,144), followed by foreign limited partnerships (570) (not within scope of this consultation) and then limited partnerships (19).
- 4.2. In the FATF Methodology¹⁴, "*legal persons*" is defined as any entities other than natural persons that can establish a permanent customer relationship with a financial institution or otherwise own property, including companies, bodies corporate, partnerships, and other relevantly similar entities. As partnerships are considered legal persons by FATF, Recommendation 24 of FATF's Recommendations¹⁵ is relevant as it concerns transparency and beneficial ownership of legal persons. By the same token, beneficial ownership of legal arrangements (Recommendation 25) in the Cayman Islands is confined to trusts.

¹⁴ <https://www.fatf-gafi.org/media/fatf/documents/methodology/FATF%20Methodology%2022%20Feb%202013.pdf>, retrieved 09 August 2021

¹⁵ <https://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html>, retrieved 09 August 2021

- 4.3. Recommendation 24 requires competent authorities to be able to obtain, or have access in a timely fashion to, adequate, accurate and current information on the beneficial ownership and control of companies and other legal persons that are created in the country. Failure to comply with the requirements should result in proportionate and dissuasive sanctions.
- 4.4. The EU's AMLD5¹⁶ includes partnerships for general beneficial ownership obligations. It does not specify partnerships as legal arrangements, but uses the terminology of "*corporate and other legal entities, trusts and similar legal arrangements*". Similar to corporate entities, the beneficial ownership requirements involve the filing of beneficial ownership information into a central registry. Article 30 requires Member States to ensure that corporate and other legal entities incorporated within their territory are required to obtain and hold adequate, accurate and current information on their beneficial ownership. Again, although not explicitly stated, it is understood that this applies to partnerships.
- 4.5. In June 2021, the International Tax Co-operation (Economic Substance) (Amendment of Schedule) Regulations, 2021 and the International Tax Co-operation (Economic Substance) (Prescribed Dates) (Amendment) Regulations, 2021 came into force. These Regulations bring into scope limited partnerships and exempted limited partnerships, amongst other entity types, for economic substance in order to address concerns raised by the EU the prior year. These amendments signal the direction of travel for international standards and requirements.
- 4.6. At present, exempted limited partnerships and limited partnerships are required to file certain transparency information upon registration and annually, which includes the full name and address of the partners or general partners.
- 4.7. In order to ensure adequate transparency of all legal persons in the jurisdiction in line with evolving international standards and requirements relating to beneficial ownership, the inclusion of exempted limited partnerships and limited partnerships into the beneficial ownership legislative framework is being considered.

¹⁶ Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

- Q1. What impacts do you foresee in extending the beneficial ownership legislative framework to include exempted limited partnerships and limited partnerships?**
- Q2. In addition to exempted limited partnerships and limited partnerships, are there other types of legal entities that you think should be considered for inclusion into the beneficial ownership legislative framework?**
- Q3. What timeframe would you consider to be reasonable to include exempted limited partnerships and limited partnerships into the beneficial ownership legislative framework?**
- Q4. In your view, what other considerations should be made with regards to including exempted limited partnerships and limited partnerships into the beneficial ownership legislative framework?**

5. SINGLE ACT FOR BENEFICIAL OWNERSHIP TRANSPARENCY

- 5.1. The beneficial ownership legislative framework in the jurisdiction can be found in Part XVIIIA of the Companies Act, Part 12 of the Limited Liability Companies Act and Part 8 of the Limited Liability Partnership Act, and the Regulations made under those Acts. The provisions in each of these Acts are duplicative, with a slight change to the terminology used based on the entity type.
- 5.2. If exempted limited partnerships and limited partnerships were added to the beneficial ownership legislative framework, the Partnership Act and the Exempted Limited Partnership Act would require amendment. This would lead to five Acts having duplicative provisions, with each having a set of beneficial ownership regulations.
- 5.3. In order to provide clarity to the framework, the Ministry is considering whether to consolidate the beneficial ownership legislative framework across the various Acts to create a single Act. This would require the incorporation of broader terminology that is applicable to all of the types of entities, such as “*legal entity*” or “*legal person*” to describe each of the entities and the use of “*interest*” in addition to the use of “*shares*”.
- 5.4. Should the single Act be formed, one single set of Regulations would be developed in order to set out any matters prescribed. If progressed, this would lead to the consequential

amendments to a number of pieces of legislation, as outlined in footnote 3 above. Additionally, any guidance or procedures that the beneficial ownership competent authority has issued under the beneficial ownership legislative framework would be amended accordingly.

- 5.5. The Cayman Islands would not stand alone with having a single Act, with a number of jurisdictions already having beneficial ownership specific legislation in place. This includes the Bahamas with the Register of Beneficial Ownership Act, 2018; the Isle of Man with the Beneficial Ownership Act 2017; Guernsey with the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017; the British Virgin Islands with the Beneficial Ownership Secure Search System Act, 2017; and Jersey with the Financial Services (Disclosure and Provision of Information) (Jersey) Law 2020.
- 5.6. Consolidating the single Act would provide the opportunity to improve the overall effectiveness of the legislation. This would include ensuring legislative provisions are operational in practice, functional and clear of any ambiguities. The legislative framework would streamline the processes to ensure compliance and allow for effective enforcement. The next section will speak more to these amendments that could be made.

- Q5. Do you have any views or comments on the introduction of one single Act for beneficial ownership transparency?**
- Q6. In your view, what considerations should be made in developing the single Act?**
- Q7. Are you aware of any other consequential amendments to legislation that would be required if the single Act is developed that have not already been listed in footnote 3?**

6. EFFECTIVENESS

- 6.1. With the international standards relating to beneficial ownership having changed over the years, new obligations have been added onto the existing framework, rather than the framework being amended as a whole. Developing a single Act would provide us with the opportunity to ensure it does exactly what we need it to, in the most clear and efficient way.

6.2. Additionally, the role of the beneficial ownership competent authority has evolved since the beneficial ownership framework was introduced shifting from solely being an Exchange of Notes function to a broader remit with FATF, with the legislation not necessarily reflecting the reality or the importance of the function, especially with regards to the beneficial ownership competent authority's role in the fight against economic crime. With respect to both legislative and procedural proposals, the following areas are being considered as part of this consultation: I) beneficial owner definition; II) reporting requirements; III) routes to compliance; IV) pending status; and V) enforcement framework.

I. [Beneficial owner definition](#)

6.3. The definition of a beneficial owner within the current beneficial ownership legislative framework is an individual (X) who meets one or more of the following conditions in relation to the legal entity (Y) -

- a. X must hold, directly or indirectly, 25% or more of the shares or interest in Y;
- b. X must hold, directly or indirectly, 25% or more of the voting rights in Y;
- c. X must hold the right, directly or indirectly, to appoint or remove the majority of the board of directors, managers or managing partners of company Y.

If no individual meets the conditions in the subsections above, X is a beneficial owner of Y if X has the absolute and unconditional legal right to exercise, or actually exercises, significant influence or control over Y through the ownership structure or interests described in the subsections above, other than solely in the capacity as a manager, a director, a professional advisor or professional manager.

6.4. The definition above was based on the UK's definition as defined in the Exchange of Notes agreement, which itself is based on the EU's AMLD4. The definition, however, differs from the definition of beneficial owner used in Cayman's anti-money laundering framework, which has reportedly been challenging with industry members having to identify beneficial owners of client entities using two different sets of rules.

- 6.5. The definition of a beneficial owner within the Anti-Money Laundering Regulations means a natural person who ultimately owns or controls the customer or on whose behalf a transaction or activity is being conducted and includes but is not restricted to —
- a. in the case of a legal person other than a company whose securities are listed on a recognised stock exchange, a natural person who ultimately owns or controls, whether through direct or indirect ownership or control, 10% or more of the shares or voting rights in the legal person;
 - b. in the case of any legal person, a natural person who otherwise exercises ultimate effective control over the management of the legal person; or
 - c. in the case of a legal arrangement, the trustee or other person who exercises ultimate effective control over the legal arrangement.
- 6.6. Only part (a) and (b) of the definition are relevant to this consultation, as we are looking at legal persons rather than legal arrangements. There are two main differences between the beneficial owner definitions; the use of “*ultimate effective control*” terminology within the Anti-Money Laundering Regulations and the percentage threshold used for voting rights and shares.
- 6.7. In order to reduce the burden to industry by the use of two definitions and also to allow improved verification of beneficial ownership data, the Ministry is considering whether the definition of a beneficial owner in the single Act will use the same terminology (“*ultimate effective control*”) and threshold (10% or more) as the definition in the Anti-Money Laundering Regulations, allowing industry members to perform their obligations under both frameworks and upload a single time.
- 6.8. Access to the beneficial ownership information by law enforcement agencies and competent/supervisory authorities, including the Cayman Islands Monetary Authority (“CIMA”), would be provided at all the thresholds via the beneficial ownership competent authority and later, to the public, at 25% or more.
- 6.9. To enable access based on thresholds, a threshold of control for ownership through voting rights or shares could be indicated within the beneficial ownership register for each beneficial owner i.e., “10% - less than 25%”, “25% - less than 50%” and “50% - up”. It is of paramount

importance that access to beneficial ownership information is done in accordance with legislative requirements and the Ministry is of the opinion that the reporting of threshold ownership would effectively allow for this.

- Q8. What impacts do you foresee on you or your business if the terminology used in the definitions of beneficial owner in the beneficial ownership legislative framework were aligned with the definitions used in the Anti-Money Laundering Regulations? Please provide further information.**
- Q9. What would be the impact on you or your business if the thresholds were aligned with the definitions used in the Anti-Money Laundering Regulations? Please provide further information.**
- Q10. In your view, what does the Ministry need to consider if aligning the definitions of beneficial owner in the Anti-Money Laundering Regulations and the beneficial ownership legislative framework?**

II. Reporting Requirements

- 6.10. The Ministry understands that international standards are evolving with regards to beneficial ownership particulars that are required to be held. Additional information on beneficial owners is also needed to help law enforcement investigations, as well as for supervisory purposes.
- 6.11. The Ministry is therefore considering adding a new data point, and a requirement to file the mechanism of control a beneficial owner has over an entity. This requirement would ask an entity to input into its beneficial ownership register the nature of the beneficial owner's control— whether this is, for example, “ownership of shares”, “ownership of voting rights”, or “ultimate effective control”. This would be achieved through a new column in the CSV file.
- 6.12. Additionally, the nationality of the beneficial owner is another particular that is being considered for reporting. The reporting of nationality would assist the jurisdiction with understanding our exposure to certain risks, including terrorist and proliferation financing

risks. Although the identity document country of issue is currently captured, this is not always an indication of nationality and that has led to this reporting consideration in the future.

- Q11. How would reporting the mechanism of control a beneficial owner has over an entity and the nationality of a beneficial owner impact you or your business?**
- Q12. What timeframe would you consider to be reasonable to include the reporting of the mechanism of control a beneficial owner has over an entity and the nationality of a beneficial owner into the beneficial ownership legislative framework?**
- Q13. What other measures do you think the Ministry needs to consider with regards to reporting requirements?**

III. [Routes to compliance](#)

6.13. FATF's Recommendation 24 requires countries to ensure that there is adequate, accurate and up-to-date information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities. In their [Best Practices on Beneficial Ownership for Legal Persons](#) guide, FATF outline the following three approaches that can be used to meet Recommendation 24:

- a. Registry Approach – requires company registries to obtain and hold up-to-date information on beneficial ownership;
- b. Company Approach – requires companies to obtain and hold up-to-date information on shareholders or members; and
- c. Existing Information Approach – uses existing sources of information including financial institutions, company, land, property or other types of registers, other authorities and commercial databases.

6.14. In line with FATF's recommendation, the Cayman Islands uses a multi-pronged approach in the beneficial ownership legislative framework, with alternative routes to compliance being available based on the Existing Information Approach. At present, the following alternative

routes to comply (often referred to as “*exemptions*”) with the beneficial ownership legislative framework are available:

A legal entity or subsidiary of one or more legal entity, any of which is –

- a. listed on the Cayman Islands Stock Exchange or an approved stock exchange;
- b. registered or holding a licence under a regulatory law;
- c. managed, arranged, administered, operated or promoted by an approved person¹⁷ 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;
- d. regulated in a jurisdiction that is designated as having measures for combating money laundering and the financing of terrorism which are equivalent to that of the Islands in accordance with section 5(2) of the Proceeds of Crime Act (2020 Revision);
- e. a general partner of a vehicle, fund or scheme referred to in paragraph (c) which vehicle, fund or scheme –
 - (i) is registered or holds a licence under a regulatory law; or
 - (ii) is managed, arranged, administered, operated or promoted by an approved person;
- f. holding directly a legal or beneficial interest in the shares of a legal entity which holds a licence under the Banks and Trust Companies Act (2021 Revision), the Companies Management Act (2021 Revision), the Insurance Act, 2010, Part III of the Mutual Funds Act (2021 Revision) or the Securities Investment Business Act (2020 Revision); or
- g. exempted by the Regulations.

6.15. As part of the wider beneficial ownership programme of work, the Ministry has reviewed and tested each of these alternative routes to compliance in order to ensure they are working as

¹⁷ “Approved person” means a person or a subsidiary of a person that meets (a), (b) or (d).

intended i.e., that the information is adequate, available and accessible in a timely manner. This review commenced at the end of 2020, and concluded in the first quarter of 2021.

- 6.16. With regards to those entities under (a) above, relating to listing on a stock exchange, the Ministry found that the exemption is working effectively. The beneficial ownership information is, for the most part, available publicly and therefore the exemption is working as intended.
- 6.17. At the time of the review, 40% of all entities on the beneficial ownership platform utilised exemption (b), (c), (d), (e) or (f). These exemptions rely on the beneficial ownership information being held or accessible by CIMA. Although CIMA does have access to beneficial ownership information, the review concluded that, in the majority of instances, it is not possible for the beneficial ownership competent authority to obtain the necessary information within the time constraints specified within the Exchange of Notes agreement (typically 24 hours), and cannot always be described as “timely” in line with FATF requirements. Additionally, as the regulatory reporting requirements may differ depending on whether the entity is licenced or registered with CIMA, it could be difficult to obtain the specific beneficial ownership information required.
- 6.18. To enhance the timeliness of access to beneficial ownership information, the Ministry is considering the removal of exemptions (b), (c), (d), (e) and (f). This would mean that entities that were previously exempt from the beneficial ownership legislative requirements due to being a legal entity, or the subsidiary of a legal entity, that is regulated by CIMA or in an equivalent jurisdiction would be required to file beneficial ownership information.
- 6.19. Due to the distinctive nature of investment funds regulated by CIMA under the Mutual Funds Act (2021 Revision) and the Private Funds Act (2021 Revision), consideration is being given to how these should be treated under the beneficial ownership legislative framework. This may be achieved through the introduction of a new requirement that would allow for regulated investment funds to provide details of a Cayman-based point of contact that the beneficial ownership competent authority may approach to produce beneficial ownership information within 24 hours.

- Q14. What would be the impact on you or your business if beneficial ownership requirements for entities regulated by CIMA were introduced?**
- Q15. Do you have views on how investment funds could comply with the proposed beneficial ownership legislative framework?**
- Q16. What timeframe would you consider to be reasonable to include requirements for those entities regulated by CIMA in the beneficial ownership legislative framework?**
- Q17. In your view, what does the Ministry need to consider with regards to routes to compliance? Please provide further information.**

IV. [Pending status](#)

- 6.20. At present, and by law, there is a three calendar month time period within which an entity has to take reasonable steps to find out if there is anyone who is a registrable person in relation to the entity. In these circumstances, the entity uses the reporting status "*enquiries pending*". Where the entity has identified a registrable person, but all the required particulars have not yet been confirmed, the reporting status "*confirmations pending*" is used. There is presently no statutory timeframe to limit the use of "*confirmations pending*".
- 6.21. There have been some misunderstandings in relation to the use of each of these statuses, with the filing of registrable person particulars with the "*enquiries pending*" status and limited use of "*confirmations pending*" status. Additionally, as mentioned above, there is not a legislative time period for "*confirmations pending*" statuses, leaving it open for beneficial ownership information to remain unconfirmed for unlimited periods of time.
- 6.22. The Ministry is considering combining the two statuses into one single "*pending status*", which could be used where enquiries over the identity of the beneficial owner, and confirmation of the particulars in relation to the identity of the beneficial owner, are established and confirmed. If progressed, the time period of three calendar months would likely remain, though future work could look into whether this is appropriate, especially with the alignment of the beneficial ownership definitions and with existing obligations under the Anti-Money Laundering Regulations.

Q18. What impacts do you foresee on you or your business if the pending and confirmation statuses were combined? Please provide further information.

Q19 In your view, what does the Ministry need to consider with regards to combining the two pending and confirmation statuses?

V. [Enforcement framework](#)

6.23. In accordance with FATF recommendations, the Cayman Islands has introduced a variety of effective and proportionate sanctions and penalties for breaches of beneficial ownership obligations. This is through a variety of measures, including restrictions notices, administrative fines, criminal penalties, impacts on the Good Standing Certificate and also strike-off. The use of these measures ensure that non-compliance is appropriately detected and punished, but also acts as a deterrent to others.

6.24. The administrative fines framework introduced in 2020 illustrates how effective enforcement measures can be. Between 01 October 2020 and 31 March 2021, the beneficial ownership competent authority issued 18 Warning Letters and 226 administrative fines. The Ministry notes that there was increased compliance with the filing of beneficial ownership information from 63% in September 2020 to 89% in October 2020. With the administrative fines legislative framework being drafted nearly a year ago and since operationalised, the Ministry is also considering how to improve its enforcement framework. These considerations include early payment discounts and other dissuasive sanctions measures.

Q20. Do you consider that a discount should be provided for early payment of a fine? Please provide further information.

Q21. Do you have any views or comments on other sanctions measures that should be considered?

Q22. In your view, what does the Ministry need to consider with regards to the enforcement framework? Please provide further information.

7. PUBLIC ACCESS

- 7.1. In October 2019, the Cayman Islands publicly committed to introducing public registers of beneficial ownership information when it becomes the international standard, anticipated by 2023. This will require the Acts to be amended in order to allow for public access of beneficial ownership information. As part of these plans to introduce a public register of beneficial ownership information, it is intended that law enforcement agencies and competent/supervisory authorities will also have improved levels of access to the beneficial ownership information.
- 7.2. The Ministry commits to the effective protection of personal data, and recognises the need to strike the right balance between delivering adequate corporate transparency whilst protecting individuals' privacy. As such, the Ministry is proposing that only an adult beneficial owner's name, month and year of birth, country of residence, nationality and the nature of control the person has over the entity, would be accessible by the public following request.
- 7.3. As part of these plans to widen access, a discrepancy reporting feature would be introduced to create an obligation for those viewing the beneficial ownership information to report any inconsistencies with the data to the beneficial ownership competent authority. This will act as a tool for verification, in order to ensure the beneficial ownership information is kept accurate and up-to-date.
- 7.4. Additionally, a framework will be developed which will allow a beneficial owner to request for all of their information to be restricted from public disclosure because of certain considerations e.g., the nature of activities of the associated entity, or because of their characteristics or personal attributes when associated with that entity, that will put the beneficial owner, or any person living with them, at serious risk of harm or intimidation. Any application for restriction from public disclosure would be required to be accompanied by evidence and will be considered on a case by case basis. Where the application is unsuccessful, the framework would allow the applicant to appeal the decision.

- 7.5. It is important to note that the restriction from public disclosure framework would only apply to public access. This means that law enforcement agencies and supervisory bodies would have access to beneficial ownership information for all beneficial owners.

Q23. Do you have any concerns with the release of the beneficial owner’s name, month and year of birth, country of residence, nationality and the nature of control the person has over the entity?

Q24. How would public access to beneficial ownership information impact you or your business?

Q25. In your view, what does the Ministry need to consider as part of the development of the restrictions from public disclosure framework? Please provide further information.

8. GENERAL

8.1. The above measures if all taken, would provide a robust beneficial ownership legislative framework that is future ready and has data protection principles at its heart. Improvements will be made to areas identified either by the Ministry or industry members as needing reform. As mentioned at the start of this consultation paper, a strengthened transparency system will increase the jurisdiction’s efforts to combat economic crime, and a more streamlined framework for beneficial ownership will provide efficiency to both industry and public sector alike.

8.2. The Ministry recognises the role of corporate services providers in supporting an effective beneficial ownership legislative framework in the Cayman Islands and the abovementioned measures have been identified and considered with that in mind.

Q26. Do you have any other views or comments that you wish to share on this consultation?

9. CATALOGUE OF CONSULTATION QUESTIONS

- 9.1. The questions can be found in the table below and responses should be sent to DFSlegislation@gov.ky before **Monday, 04 October 2021**.
- 9.2. A Word version of this table accompanies this consultation for ease of responding.

Person / Firm / Organisation:	
Contact Details:	
If responding on behalf of another person, please provide details:	
Q1.	What impacts do you foresee in extending the beneficial ownership legislative framework to include exempted limited partnerships and limited partnerships?
Q2.	In addition to exempted limited partnerships and limited partnerships, are there other types of legal entities that you think should be considered for inclusion into the beneficial ownership legislative framework?
Q3.	What timeframe would you consider to be reasonable to include exempted limited partnerships and limited partnerships into the beneficial ownership legislative framework?
Q4.	In your view, what other considerations should be made with regards to including exempted limited partnerships and limited partnerships into the beneficial ownership legislative framework?
Q5.	Do you have any views or comments on the introduction of one single Act for beneficial ownership transparency?
Q6.	In your view, what considerations should be made in developing the single Act?
Q7.	Are you aware of any other consequential amendments to legislation that would be required if the single Act is developed that have not already been listed in footnote 2?
Q8.	What impacts do you foresee on you or your business if the terminology used in the definitions of beneficial owner in the beneficial ownership legislative framework were aligned with the definitions used in the Anti-Money Laundering Regulations? Please provide further information.
Q9.	What would be the impact on you or your business if the thresholds were aligned with the definitions used in the Anti-Money Laundering Regulations? Please provide further information.
Q10.	In your view, what does the Ministry need to consider if aligning the definitions of beneficial owner in the Anti-Money Laundering Regulations and the beneficial ownership legislative framework?
Q11.	How would reporting the mechanism of control a beneficial owner has over an entity and the nationality of a beneficial owner impact you or your business?
Q12.	What timeframe would you consider to be reasonable to include the reporting of the mechanism of control a beneficial owner has over an entity and the nationality of a beneficial owner into the beneficial ownership legislative framework?
Q13.	What other measures do you think the Ministry needs to consider with regards to reporting requirements?
Q14.	What would be the impact on you or your business if beneficial ownership requirements for entities regulated by CIMA were introduced?
Q15.	Do you have views on how funds could comply with the proposed beneficial ownership legislative framework?

Q16.	What timeframe would you consider to be reasonable to include requirements for those entities regulated by CIMA in the beneficial ownership legislative framework?
Q17.	In your view, what does the Ministry need to consider with regards to routes to compliance? Please provide further information.
Q18.	What impacts do you foresee on you or your business if the pending and confirmation statuses were combined? Please provide further information.
Q19.	In your view, what does the Ministry need to consider with regards to combining the pending and confirmation statuses?
Q20.	Do you consider that a discount should be provided for early payment of a fine? Please provide further information.
Q21.	Do you have any views or comments on other sanctions measures that should be considered?
Q22.	In your view, what does the Ministry need to consider with regards to the enforcement framework? Please provide further information.
Q23.	Do you have any concerns with the release of the beneficial owner's name, month and year of birth, country of residence, nationality and the nature of control the person has over the entity?
Q24.	How would public access to beneficial ownership information impact you or your business?
Q25.	In your view, what does the Ministry need to consider as part of the development of the restrictions from public disclosure framework? Please provide further information.
Q26.	Do you have any other views or comments that you wish to share on this consultation?