

CAYMAN ISLANDS



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**A BILL FOR A LAW TO AMEND THE COMPANIES LAW (2016
REVISION) IN ORDER TO REQUIRE COMPANIES INCORPORATED
IN THE ISLANDS TO ESTABLISH AND MAINTAIN BENEFICIAL
OWNERSHIP REGISTERS WHICH MAY BE SEARCHED BY THE
COMPETENT AUTHORITY; AND FOR INCIDENTAL AND
CONNECTED MATTERS**

THE COMPANIES (AMENDMENT) BILL, 2016

MEMORANDUM OF OBJECTS AND REASONS

Further to the Financial Action Task Force (FATF) Recommendation 24 and the Exchange of Notes between the Cayman Islands and the United Kingdom signed in April 2016, the Bill seeks to require companies incorporated in the Islands to maintain registers of information concerning their beneficial owners, whether individuals or legal entities. The Bill would provide access to company beneficial ownership registers by the competent authority designated by the Minister of Financial Services via a search platform to be established by that authority. Searches could only be performed in response to a request from a designated official in a jurisdiction that has entered into an agreement with the Government to share beneficial ownership information or to a request from a specified law enforcement body if the request is in compliance with the legislation governing the affairs of such body.

Clause 1 provides for the short title and commencement of the legislation.

Clause 2 amends the principal Law by inserting a new Part XVIIIA entitled “Beneficial Ownership Registers”, which contains new sections 244 to 281 providing as follows:

Section 244 provides the definitions for terms used in the legislation and includes an interpretation provision that provides that a number of legal persons, including governments and government departments, shall be treated as individuals under the Law.

Section 245 provides that the Law applies in respect of companies incorporated in the Islands and sets out several exceptions to this rule.

Section 246 designates the competent authority and empowers that authority to do all things necessary to perform its functions under the Law.

Section 247 sets out a company’s duty to obtain information about individuals who are beneficial owners of the company and defines who is a beneficial owner.

Section 248 sets out a company’s duty to obtain information about relevant legal entities and defines the meaning of that term.

Section 249 provides that a company must give notice to anyone whom it knows or has reasonable cause to believe is a registrable person in relation to it. In addition, a company may give notice to a person it knows or has reasonable cause to believe knows the identity of a registrable person. The section also provides for cases where such notice is not required and protects from disclosure information subject to legal professional privilege and information that a person is prohibited by law from disclosing.

Section 250 places a proactive disclosure obligation on registrable persons and relevant legal entities in certain circumstances. The obligation to notify the company arises where persons know that they are registrable persons or relevant legal entities and that their particulars are not already registered in the company's beneficial ownership register, and where they have not received a notice from the company and these circumstances have continued for a period of at least one month. They must notify the company, within a specified time period, that they are registrable persons or relevant legal entities, stating the date on which they became such and giving the company their required particulars.

Section 251 provides that an individual or relevant legal entity is not registrable if the only interest that the individual or entity holds in the company is through one or more relevant legal entities. The determination of whether an individual or relevant legal entity holds an interest in a company directly or holds it through another legal entity is set out in sections 252 and 253.

Section 252 provides that V holds an interest in company W directly if V holds shares, voting rights or the right to appoint or remove a member of the board of company W either directly or indirectly or exercises significant control over company W. Where the interest in the company is held by a trust or a firm that is not a legal person, V holds an interest in company W directly where the trustees or firm hold shares, voting rights or the right to appoint or remove a member of the board of company W either directly or indirectly and V has significant control over the trust or firm.

Section 253 provides that V indirectly holds an interest in company W where V indirectly holds shares or a right in company W by virtue of having a majority stake in a legal entity that holds the shares or right directly or as part of a chain of legal entities.

Section 254 requires exempted, non-resident and special economic zone companies subject to the Law to engage a corporate services provider to establish a register of their beneficial owners and relevant legal entities and

requires that the register must be kept at their registered office. Local companies must also keep a beneficial ownership register at their registered office, but may engage either a corporate services provider or the Registrar to establish and maintain the register on their behalf.

Section 255 requires a company to give to its corporate services provider or the Registrar the required particulars of registrable persons and entities. No particulars shall be entered in the company's register until the information has been confirmed. Particulars are "confirmed" if they have been provided or confirmed to the company by the person or relevant legal entity or with their knowledge, or if they were included in the statement of initial significant control delivered to the Registrar when the company was formed.

Section 256 sets out the required particulars in respect of an individual, a person referred to in the interpretation provision in section 244(2) and in respect of a relevant legal entity.

Section 257 requires a company to keep information in its beneficial ownership register up to date. The section defines the expression "relevant change" and requires the company to give notice to registrable persons and relevant legal entities as soon as reasonably practicable once the company knows that a relevant change has occurred. The notice must require the addressee to confirm, within the time period provided, whether the change has occurred and if so, to state the date of the change and to correct, complete, or confirm the particulars included in the notice.

Section 258 requires corporate services providers or the Registrar to notify the company that engaged them if they are of the opinion that the company is not in compliance with its obligations under the Law to establish and update its beneficial ownership register or that the company has provided them with false, deceptive or misleading information. On receipt of the notice the company must bring itself into compliance with the Law. If the company is not able to provide the missing information for its beneficial ownership register, it must issue a restrictions notice to the registrable persons whose particulars are missing. The section gives a person who receives a restrictions notice the right to apply to the Grand Court to set it aside.

Section 259 requires a registrable person or relevant legal entity to notify the company of relevant changes to information in its beneficial ownership register. The obligation arises where the person is entered in the company's beneficial ownership register, has not received notice from the company under section 249, but knows that a relevant change has occurred and that

the company's register has not been altered to reflect the change. The notification must state the date on which the change occurred and provide any information needed by the company to update the register. The notification must be given within one month after the person discovered the change.

Section 260 provides that an entry in the beneficial ownership register relating to a person who used to be a registrable person or an entity that used to be a registrable relevant legal entity may be removed five years after the date on which the person or entity ceased to be registrable.

Section 261 provides that a person aggrieved or a person who is a registrable person or relevant legal entity in relation to a company may apply to the Grand Court for rectification of the company's beneficial ownership register. The grounds for the application are that the information is or is not entered in the register without sufficient cause; or that there is delay or default in recording that a person is no longer a registrable person or relevant legal entity. The section sets out the action the court may take in response to such an application. The Court must require the company, in rectifying its register, to give notice of the rectification to the competent authority.

Section 262 requires the competent authority to establish a search platform that will enable it to search companies' beneficial ownership registers. The search platform must be secure, prevent disclosure of the search or the fact that a search has been carried out, and allow searches by the name of a company, an individual or a legal entity.

Section 263 requires corporate services providers and the Registrar to provide the companies that engage them with an information technology solution that maintains their beneficial ownership registers and connects those registers with the search platform.

Section 264 provides the list of bodies that may request searches of beneficial ownership registers. The section requires a senior official from the relevant body to certify that the search request is proper and lawful under the legislation governing that agency or that it is in response to a request from a jurisdiction that has signed an agreement with the Government respecting the sharing of beneficial ownership information.

Section 265 provides that information respecting searches of the Registry shall be kept confidential except for information that is permitted to be disclosed under the Confidential Information Disclosure Law, 2016.

Section 266 provides that if a company serves notice on a person with a relevant interest under section 249 or 257 and that person fails to comply with the notice within the specified time frame, the company may issue the person with a restrictions notice. A restrictions notice may be served one month after the date of non-compliance with the section 249 or 257 notice if no valid reason has been provided for the non-compliance. The company must have regard to the rights of third parties in respect of the relevant interest in deciding whether to issue a restrictions notice.

Section 267 sets out the effect of a restrictions notice and circumstances in which the restrictions do not apply. Interests subject to restrictions may not be transferred and no rights may be exercised or shares issued in respect of that interest. The company may not pay any sums due in respect of the interest other than in a liquidation.

Section 268 provides that, following application by any person aggrieved that a restrictions notice issued by the company unfairly affects the rights of third parties in respect of the interest subject to restrictions, the Grand Court may give a direction that certain acts do not constitute a breach of the restrictions. The direction is given by the Court for the purpose of protecting the third party rights in question and is subject to such terms as the Court thinks fit.

Section 269 specifies the actions that constitute offences in relation to an interest subject to restrictions. It is an offence for a person who knows their interest to be subject to restrictions to fail to tell any person with the right to vote in respect of that interest of that fact (unless they know the person to be aware of that fact). It is also an offence for a person to enter into an agreement in respect of an interest that is void, knowing that to be the case.

Section 270 provides that it is an offence to issue shares in contravention of a restrictions notice.

Section 271 provides that a person aggrieved may apply to the Grand Court for the restrictions to be lifted. The Court may only do so if the relevant facts about the interest have been disclosed without any person having gained an unfair advantage or if the interest is to be sold.

Section 272 sets out the procedure by which shares subject to restrictions may be sold. An application to the Grand Court to sell the shares may only be made by the company in question.

Section 273 provides that, where shares are sold, the proceeds of the sale (less costs) must be paid into the Court for the benefit of persons beneficially interested in the relevant interest, who may apply to the Court to have the proceeds paid to them.

Section 274 provides that a company must itself withdraw the restrictions imposed if it is satisfied that there is a valid reason to justify the person's failure to comply with a restrictions notice. The company must also withdraw the restrictions if the relevant information in respect of the notice is provided or if it discovers that there is an unfair impact on third parties in respect of the interest subject to restrictions.

Section 275 provides that it is an offence for a company to contravene sections 247(1), 248(1), 254, 255(1) or 257(2) or to fail to issue a notice as required by sections 249, 257 or 258(3). The section also provides for a continuing offence where the contravention or failure continues.

Section 276 provides that it is an offence for a person to whom a notice is addressed under section 249 or 257 to fail to comply with the notice or to knowingly or recklessly make a false statement. However, the offence does not apply if the person can prove that the requirement was frivolous or vexatious. The offence is triable by summary conviction or indictment.

Section 277 makes it an offence for a person to fail to comply with a duty under section 250 or 259 or to knowingly or recklessly make a false statement in respect of that duty. The offence is triable by summary conviction or indictment.

Section 278 provides that it is an offence to contravene section 264(2) or (3) or to disclose confidential beneficial ownership information contrary to section 265.

Section 279 provides that it is an offence for directors or officers of a company or legal entity to connive in, consent to or wilfully neglect their duties in relation to an offence committed by the company under this Law and makes them liable to the same punishment as the company.

Section 280 empowers the competent authority to exempt an individual or legal entity from various requirements of the Law in accordance with criteria prescribed by the Regulations, where there are special reasons to do so.

Section 281 provides enabling powers for Cabinet to make regulations required to implement the Law, including prescribing anything required to be prescribed under it. It enables Cabinet to make regulations for the interpretation of certain expressions that are central to the Part and to adjust the percentages set out in the specified conditions. Finally the section empowers Cabinet to exempt any company or subsidiary of a company from the application of the Law by enacting Regulations subject to the affirmative resolution procedure.

Clause 3 renumbers sections 244 and 245 of the principal Law as a consequence of inserting new Part XVIII.

Clause 4 inserts into the principal Law a new Schedule 6, listing countries or territories that have entered into agreements with the Government for the sharing of beneficial ownership information.

Clause 5 contains a transitional provision that delays prosecutions of companies for offences under section 275 in clause 2 of the amending Law until one year has elapsed from the coming into force of the Law.

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THE COMPANIES LAW (AMENDMENT) BILL, 2016
ARRANGEMENT OF CLAUSES

1. Short title and commencement
2. Amendment of the principal Law - insertion of new Part XVIIIA
3. Renumbering of sections 244 and 245 of the principal Law
4. Amendment of the principal Law - insertion of Schedule 6
5. Transitional Provision

CAYMAN ISLANDS

A BILL FOR A LAW TO AMEND THE COMPANIES LAW (2016 REVISION) IN ORDER TO REQUIRE COMPANIES INCORPORATED IN THE ISLANDS TO ESTABLISH AND MAINTAIN BENEFICIAL OWNERSHIP REGISTERS WHICH MAY BE SEARCHED BY THE COMPETENT AUTHORITY; AND FOR INCIDENTAL AND CONNECTED MATTERS

ENACTED by the Legislature of the Cayman Islands.

Short title and commencement

1. (1) This Law may be cited as The Companies (Amendment) Law, 2016.

(2) This Law shall come into force on such date as may be appointed by the Cabinet and different dates may be appointed for different provisions.

Amendment of the principal Law – insertion of new Part XVIII

2. The Companies Law (2016 Revision), in this Law referred to as “the principal Law”, is amended by inserting after Part XVII the following Part -

“PART XVIII - Beneficial Ownership Registers

Preliminary

Interpretation

244. (1) In this Part -

“beneficial owner”, in relation to a company, has the meaning assigned by section 247(2);

“beneficial ownership register” means a register of

adequate, accurate and current information maintained by a company pursuant to section 254 respecting registrable persons in relation to the company;

“competent authority” has the meaning assigned by section 246(1);

(2003 Revision)
(2013 Revision)
(Law 32 of 2010)

(2016 Revision)

“corporate services provider” means an individual or legal entity that provides corporate services under the Companies Management Law (2003 Revision), the Banks and Trust Companies Law (2013 Revision), the Insurance Law, 2010 or any other “regulatory law” as defined in section 2 of the Monetary Authority Law (2016 Revision) pursuant to which the individual or legal entity is licensed or permitted to provide registered office services;

“individual” means a natural person;

“legal entity” means a body corporate, firm or other body that is a legal person under the law by which it is governed;

“prescribed” means prescribed by regulations made under section 281;

“registered shareholder” means a person who is named as a shareholder of a company or member of a company on the register of members of the company;

“registrable persons” means beneficial owners of companies or relevant legal entities identified pursuant to section 247 or 248, other than those described in section 251, that are obliged to register their required particulars in the company’s beneficial ownership register;

“relevant interest” means an interest that a person holds in a company consisting of -

- (a) shares or voting rights in the company; or
- (b) the right to appoint or remove a majority of the directors of the company;

“relevant legal entity”, in relation to a company, has the meaning assigned by section 248(2);

“required particulars” means particulars in respect of an

individual or legal entity required to be kept in a company's beneficial ownership register pursuant to sections 255 and 256;

“restrictions notice” means a notice issued under section 266; and

“specified conditions” means the conditions specified in section 247(2).

(2) This Part is to be read and have effect as if each of the following were an individual, even if they are legal persons under the laws by which they are governed -

- (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);
- (d) a local authority or local government body.

Application (2016 Revision) 245. (1) This Part applies in respect of companies incorporated in the Islands that are registered under the Companies Law (2016 Revision), except a company or subsidiary of a company -

- Schedule 4 (2016 Revision) (a) listed on the Cayman Islands Stock Exchange or an approved stock exchange in Schedule 4;
- (b) registered or holding a licence under a “regulatory law” as defined in section 2 of the Monetary Authority Law (2016 Revision);
- (2015 Revision) (c) managed, arranged, administered or promoted by a person regulated in, or listed on a stock exchange in the Islands or a jurisdiction listed in Schedule 3 of the Money Laundering Regulations (2015 Revision) that is -
 - (i) a special purpose company;
 - (ii) a private equity or collective investment scheme; or
 - (iii) an investment fund (or if such fund is

- an exempted limited partnership, its general partner); or
- (d) exempted by the Regulations.

(2) For the purposes of this section, a company (“company S”) is a subsidiary of another company if -

- (a) that other company holds a majority of the shares or the voting shares in company S;
- (b) that other company is a member of company S and has the right to appoint or remove a majority of its board of directors; or
- (c) it is a subsidiary of a company that is itself a subsidiary of that company.

Competent authority

246. (1) The Minister charged with responsibility for Financial Services is the competent authority for the purposes of this Part and shall exercise the functions of the competent authority under this Part acting alone or through a person designated by the Minister to act for a specific purpose.

(2) The competent authority may do all things necessary or convenient to be done in the performance of the competent authority’s functions under this Law.

Identifying Beneficial Owners, Relevant Legal Entities and Registrable Persons

Duty of companies to identify beneficial owners

247. (1) Companies to which this Part applies shall take reasonable steps to identify any individual who is a beneficial owner of the company.

(2) An individual (“X”) is a beneficial owner of a company (“company Y”) if the individual meets one or more of the following conditions in relation to the company -

- (a) X must hold, directly or indirectly, more than 25% of the shares in company Y;
- (b) X must hold, directly or indirectly, more than 25% of the voting rights in company Y;

- (c) X must hold the right, directly or indirectly, to appoint or remove a majority of the board of directors of company Y;
- (d) X has the absolute and unconditional right to exercise, or actually exercises, significant influence or control over company Y through the ownership structure described in paragraph (a), (b) or (c);
- (e) (i) X has the absolute and unconditional right to exercise, or actually exercises, significant influence or control over the activities of a trust or firm described in subparagraph (ii), other than in a professional advisory capacity; and
(ii) the trustees of the trust or the members of the firm that, under the law by which it is governed is not a legal person, meet any of conditions (a), (b), (c) or (d) (in their capacity as such) in relation to company Y, or would do so if they were individuals.

Duty of companies to identify relevant legal entities

248. (1) A company to which this Part applies shall take reasonable steps to identify all relevant legal entities that exist in relation to the company.

(2) A “relevant legal entity” in relation to a company is a legal entity –

- (a) that would be a beneficial owner of the company if it were an individual; or
- (b) that meets a prescribed description.

Duty of companies to give notice to registrable persons

249. (1) Subject to subsection (5), a company to which this Part applies shall give notice to beneficial owners and relevant legal entities identified under sections 247 and 248 and to any person that it knows or has reasonable cause to believe is a registrable person in relation to it.

(2) The notice shall require the persons to whom it is addressed, within one month of the date of receipt of the notice -

- (a) to state whether or not they are registrable

persons, within the meaning of this Part;
and

- (b) if they are registrable persons, to confirm or correct any particulars that are included in the notice and supply any required particulars that are missing from the notice.

(3) A company may also give notice to a registered shareholder or relevant legal entity if it knows or has reasonable cause to believe that the registered shareholder or relevant legal entity knows the identity of a registrable person.

(4) A notice under subsection (3) may require the persons to whom it is addressed -

- (a) to state whether or not they know the identity of a registrable person or any person likely to have that knowledge; and
- (b) if so, within one month of receipt of the notice, to supply, at the expense of the company, any required particulars respecting such persons that are within the addressee's knowledge, and to state whether the particulars are being supplied with or without the knowledge of the person concerned.

(5) A company is not required to give a notice to an individual or a relevant legal entity if -

- (a) the individual or entity is not a registrable person;
- (b) the company has already been informed of the individual's or entity's status as a registrable person in relation to it, and has received all the required particulars; or
- (c) in the case of an individual who is a registrable person, the information and particulars have been provided either by the individual concerned or with their knowledge.

(6) A person to whom a notice under this section is given is not required by that notice to disclose any

information -

- (a) in respect of which a claim to legal professional privilege could be maintained in legal proceedings; or
- (b) that the person is prohibited by any law, whether within or outside of the Islands, from disclosing.

Duty of beneficial owners and relevant legal entities to supply information

250. (1) This section applies to a person if -

- (a) the person is a beneficial owner of a company to which this Part applies or is a relevant legal entity in relation to such a company;
- (b) the person knows the facts referred to in paragraph (a);
- (c) the person has no reason to believe that the person's required particulars are stated in the company's beneficial ownership register;
- (d) the person has not received a notice from the company under section 249; and
- (e) the circumstances described in paragraphs (a), (b), (c) and (d) have continued for a period of at least one month.

(2) The person, unless not a registrable person, shall-

- (a) notify the company of the person's status as a registrable person in relation to the company;
- (b) state the date, to the best of the person's knowledge, on which the person acquired that status; and
- (c) give the company the required particulars.

(3) The duty under subsection (2) must be complied with by the end of the period of one month beginning with the day on which the conditions in subsection (1)(a), (b) and (c) were first met with respect to the person.

Individuals and relevant legal entities that are not registrable

251. (1) An individual is not a registrable person in respect of a company if the only interest the individual holds in the company is through one or more legal entities -

- (a) in relation to which the individual is a beneficial owner; and
- (b) each of which is a relevant legal entity in relation to the company.

(2) A relevant legal entity is not a registrable person in respect of a company if the only interest the legal entity holds in the company is through one or more legal entities -

- (a) in relation to each of which the legal entity would meet the specified conditions if it were an individual; and
- (b) each of which is a relevant legal entity in relation to the company.

(3) For greater certainty, under subsections (1) and (2) the following are registrable persons -

- (a) the legal entity or legal entities described in subsection (1)(a) and (b); and
- (b) the relevant legal entity or entities described in subsection (2)(b) that directly hold the shares in the company.

(4) Whether a person (“V”) holds an interest in a company (company “W”) directly or holds the interest in that company through another legal entity shall be determined in accordance with sections 252 and 253.

Holding an interest in a company directly

252. (1) V holds an interest in company W directly if -

- (a) V holds shares in company W, directly or indirectly;
- (b) V holds, directly or indirectly, voting rights in company W;
- (c) V holds, directly or indirectly, the right to appoint or remove any member of the board of directors of company W;
- (d) V has the absolute and unconditional right to exercise, or actually exercises, significant influence or control over company W through the ownership structure described in paragraph (a), (b) or (c); or
- (e) subsection (2) is satisfied.

(2) This subsection is satisfied where -

- (a) the trustees of a trust or the members of a firm that, under the law by which it is governed, is not a legal person hold an interest in company W in a way mentioned in subsection (1)(a), (b), (c) or (d); and
- (b) V has the absolute and unconditional right to exercise, or actually exercises, significant influence or control over the activities of that trust or firm, other than in a professional advisory capacity.

Holding an interest in a company through a legal entity

253 (1) This paragraph applies where V -

- (a) holds an interest in company W by virtue of indirectly holding shares or a right; and
- (b) does so by virtue of having a majority stake in -
 - (i) a legal entity (“L”) which holds the shares or right directly; or
 - (ii) a legal entity that is part of a “chain of legal entities”, as that term is prescribed, that includes L.

(2) Where this paragraph applies, V holds the interest in company W through L and through each other legal entity in the chain mentioned in subsection (1)(b)(ii).

(3) For the purposes of paragraph (1)(b), V has a majority stake in a legal entity described in subparagraphs (i) or (ii) where -

- (a) V holds a majority of the voting rights in the legal entity; or
- (b) V is a member of the legal entity and has the right to appoint or remove a majority of the board of directors.

Establishing Beneficial Ownership Registers

Duty to establish and maintain beneficial ownership register

254. (1) A company to which this Part applies by virtue of section 245(1) shall keep its beneficial ownership register at the company’s registered office.

(2) The following types of companies shall engage a corporate services provider to assist them to establish and

maintain their beneficial ownership registers -

- (Law 22 of 2011)
- (a) exempted companies;
 - (b) ordinary non-resident companies;
 - (c) companies registered as special economic zone companies under the Special Economic Zones Law, 2011.

(3) Local companies to which this Part applies shall engage either a corporate services provider or the Registrar to assist them to establish and maintain their beneficial ownership registers.

(4) The Registrar may charge the prescribed fees for establishing and maintaining a beneficial ownership register on behalf of a local company.

- (2015 Revision)
- (5) In this section, “local company” has the meaning assigned to that term in section 2(1) of the Local Companies (Control) Law (2015 Revision).

Role of corporate services provider and Registrar

255. (1) A company to which this Part applies shall provide in writing to a corporate services provider or to the Registrar, as the case may be, the required particulars of registrable persons in respect of that company, once those particulars have been confirmed.

(2) The company shall instruct the corporate services provider or the Registrar, as the case may be, to enter the required particulars of registrable persons in the company’s beneficial ownership register in the prescribed form and manner, or if no registrable persons are identified to enter a nil return.

(3) Particulars need not be entered concerning an individual or relevant legal entity that is not a registrable person.

(4) For the purposes of this section, particulars are considered to have been confirmed if -

- (a) the individual or entity supplied or confirmed them to the company;
- (b) another person supplied or confirmed them

- to the company, with the knowledge of the individual or entity; or
- (c) the particulars were included in a statement of initial significant control delivered to the Registrar by subscribers wishing to form a company.

Required
particulars

256. (1) The required particulars of an individual are -

- (a) name;
- (b) residential address and, if different, an address for service of notices under this Law;
- (c) date of birth;
- (d) information identifying the individual from their passport, driver's licence or other government-issued document; and
- (e) the date on which the individual became or ceased to be a registrable person in relation to the company in question.

(2) In the case of a person in relation to whom this Part has effect by virtue of section 244(2), the required particulars are -

- (a) name;
- (b) principal office;
- (c) the legal form of the person and the law by which the person is governed; and
- (d) the date on which the person became or ceased to be a registrable person in relation to the legal entity in question.

(3) The required particulars of a relevant legal entity are -

- (a) corporate or firm name;
- (b) registered or principal office;
- (c) the legal form of the entity and the law by which it is governed;
- (d) if applicable, the register of companies in which it is entered and its registration number in that register; and
- (e) the date on which it became or ceased to be a registrable relevant legal entity in relation to the company in question.

Duty of company
to keep register up
to date

257. (1) If a company to which this Part applies becomes aware of a relevant change with respect to a registrable person whose particulars are stated in its beneficial ownership register, the company shall give notice to the registrable person, as soon as reasonably practicable after it learns of the change or first has reasonable cause to believe that the change has occurred, requesting confirmation of the change.

(2) If the person or entity to which a notice is sent under subsection (1) confirms the relevant change, the company shall record the details of the change and instruct the corporate services provider or the Registrar, as the case may be, to enter in the company's beneficial ownership register in the prescribed form and manner -

- (a) the details of the relevant change confirmed by the company;
- (b) the date on which the change was made; and
- (c) whether there are further alterations to be made.

(3) For the purposes of this section, a relevant change occurs if -

- (a) the registrable person ceases to be registrable in relation to the company; or
- (b) any other change occurs as a result of which the particulars stated respecting the registrable person in the company's beneficial ownership register are materially incorrect or incomplete.

(4) A relevant change with respect to a registrable person is considered to have been confirmed if -

- (a) the company has given notice to the person requesting confirmation, within the period of one month from the date of the notice, of the relevant change, the date of the change and the particulars included in the notice; and
- (b) the details, date and particulars of the change have been supplied or confirmed to the company by the registrable person, or

by another person, with the knowledge of the registrable person.

Consequences of failure to disclose beneficial ownership

258 (1) If a company's corporate services provider or the Registrar, as the case may be, is of the opinion that the company has failed to comply with section 255 or 257 without reasonable excuse or has made a statement to them that is false, deceptive or misleading in respect of a material particular, the corporate services provider or the Registrar, as the case may be, shall give notice of their opinion to the company.

(2) On receipt of a notice under subsection (1), the company shall provide the corporate services provider or the Registrar, as the case may be, with the missing particulars required under section 255 or 257 pertaining to registrable persons.

(3) If the company fails or is unable to provide such particulars within one month of receipt of the notice, it shall-

- (a) issue a restrictions notice to the registrable persons whose particulars are missing with regard to the shares or other interests of such registrable persons in the company; and
- (b) send a copy of the notice to the competent authority within two weeks of issuing it.

(4) A person to whom a restrictions notice is issued under this section may apply to the Grand Court to set aside any restriction imposed by the notice.

Duty of other persons to update register

259. (1) This section applies to persons or relevant legal entities if -

- (a) they have stated that they are registrable persons, within the meaning of this Part, in response to a notice received under section 249 or they have reason to believe that their required particulars are stated in a company's beneficial ownership register;
- (b) a relevant change, within the meaning of section 257(3), occurs;

- (c) they know of the change;
- (d) they have no knowledge that the beneficial ownership register has been altered to reflect the change; and
- (e) they have not received a notice from the company under section 257 by the end of the period of one month beginning with the day on which the change occurred.

(2) A person or relevant legal entity to which this section applies shall -

- (a) notify the company of the relevant change;
- (b) state the date on which it occurred; and
- (c) give the company any information needed to update the company's beneficial ownership register.

(3) The duty under subsection (2) shall be complied with by the end of the period of one month beginning with the day on which the person or relevant legal entity discovered the relevant change.

Removal of entries from company's beneficial ownership register

260. A company may cause an entry relating to a person that is no longer a registrable person to be removed from its beneficial ownership register on the expiration of five years from the date on which the person ceased to be a registrable person in relation to the company.

Power of Grand Court to rectify beneficial ownership register

261. (1) If -

- (a) the name of any individual or relevant legal entity is, without sufficient cause, entered in or omitted from a company's beneficial ownership register as a registrable person; or
- (b) default is made or unnecessary delay takes place in entering on a company's beneficial ownership register the fact that the individual or relevant legal entity has ceased to be a registrable person,

the person aggrieved, or any individual or relevant legal entity that is a registrable person in relation to the company, may apply to the Grand Court for rectification of the

company's register.

(2) The Grand Court may -

- (a) refuse the application; or
- (b) order rectification of the beneficial ownership register and payment by the company of any damages sustained by any party aggrieved.

(3) On an application under this section, the Grand Court may decide any question -

- (a) as to whether the name of any person who is a party to the application should or should not be entered in or omitted from the company's register; and
- (b) that is necessary or expedient to be decided for rectification of the company's beneficial ownership register.

(4) If the Grand Court makes an order for rectification of a company's beneficial ownership register against the company, it shall direct notice of the rectification to be given to the competent authority.

Access to Beneficial Ownership Information

Duty of competent authority to establish search platform

262. (1) The competent authority shall establish a search platform by means of which access may be provided to all beneficial ownership registers maintained on behalf of companies subject to this Part by corporate services providers or the Registrar.

(2) The search platform must -

- (a) be secure and accessible only by the competent authority;
- (b) be able to search simultaneously all company beneficial ownership registers connected to the search platform by the name of an individual, legal entity or company; and
- (c) prevent communication to any person of the fact that a search is being made or has taken

place, except where the competent authority expressly discloses such communication.

Duties of Registrar and corporate services providers

263. A company services provider engaged by a company pursuant to section 254, or the Registrar if so engaged, shall provide the company with an information technology solution, either directly or through another corporate services provider, that -

- (a) enables the company to establish and maintain its beneficial ownership register; and
- (b) connects that register with the search platform.

Limits on searches that may be executed

264. (1) Subject to subsection (2), the competent authority shall execute a search of a company's beneficial ownership register by means of the search platform if formally requested to do so by a senior official designated by name or position by the Minister, representing one of the following bodies -

(2016 Revision)

(a) the financial intelligence unit, as defined in the Proceeds of Crime Law (2016 Revision);

(2016 Revision)

(b) the Financial Reporting Authority, as defined in the Proceeds of Crime Law (2016 Revision);

(c) the Cayman Islands Monetary Authority;

(d) the Department of International Tax Cooperation;

(e) the Financial Crime Unit of the Royal Cayman Islands Police Service;

(2016 Revision)

(f) any other body which is assigned responsibility for monitoring compliance with money laundering regulations under section 4(9) of the Proceeds of Crime Law (2016 Revision).

(2) The competent authority may only execute the search if the senior official referred to in subsection (1) certifies that the request for the search -

- (a) is proper and lawful and in compliance with the legislation governing the affairs or responsibilities of the body ; or

Schedule 6

- (b) is in response to a request from a jurisdiction listed in Schedule 6 that has entered into an agreement with the Government respecting the sharing of beneficial ownership information made -
 - (i) by a law enforcement official designated by the agreement; and
 - (ii) in compliance with that agreement.

(3) No person shall use the search platform to search a company's beneficial ownership register except the competent authority.

Non-disclosure of information concerning requests for beneficial ownership information

265. (1) Neither the competent authority nor any employee, servant or agent of the competent authority shall disclose any information relating to a request for beneficial ownership information, including the fact that such a request was made or that a search was carried out, to any person other than the authorized personnel of the competent authority or the law enforcement agency that requested the search.

(2) Information maintained by a corporate service provider or the Registrar in respect of the beneficial ownership of a company is deemed to be confidential information under the Confidential Information Disclosure Law, 2016 and may be disclosed only in accordance with that Law.

(Law 23 of 2016)

Enforcement

Restrictions Notices

Right to issue restrictions notice

266. (1) A company to which this Part applies may send a restrictions notice to a person who has a relevant interest in that company if -

- (a) a notice under section 249 or 257 was served on the person;
- (b) the person has not -
 - (i) complied with the notice by the end of the period of one month beginning with the date of receipt of the notice;
 - or

- (ii) provided the company with a valid reason sufficient to justify the person's failure to comply with the notice; and
- (c) the relevant interest is not subject to a security interest granted to a third party who is not affiliated with the person.

(2) In deciding whether to send a restrictions notice, the company shall have regard to the effect of the notice on the rights of persons in respect of the relevant interest, including third parties, persons with a security interest over the relevant interest, shareholders and other beneficial owners.

Effect of
restrictions notice

267. (1) The effect of a restrictions notice with respect to a relevant interest is as follows -

- (a) any transfer or agreement to transfer the interest is void;
- (b) no rights are exercisable in respect of the interest;
- (c) no shares may be issued in right of the interest or in pursuance of an offer made to the interest-holder;
- (d) except in a liquidation, no payment may be made of sums due from the company in respect of the interest, whether in respect of capital or otherwise; and
- (e) other than in a liquidation, an agreement to transfer any of the following associated rights in relation to the relevant interest is void -
 - (i) a right to be issued with any shares issued in respect of the relevant interest; or
 - (ii) a right to receive payment of any sums due from the company in respect of the relevant interest.

(2) This section does not apply to an agreement to transfer a relevant interest referred to in subsection (1)(a) or to an associated right referred to in subsection (1)(e), if the agreement results from the making of an order referred to in section 271(2)(b).

Protection of third party rights

268. (1) The Grand Court may, on application by any person aggrieved, give a direction for the purpose of protecting the rights of third parties, persons with a security interest over the relevant interest, shareholders or other beneficial owners in respect of a relevant interest, if the Court is satisfied that a restrictions notice unfairly affects those rights.

(2) An order under this section -

- (a) shall direct, subject to such terms as the Court thinks fit, that certain acts will not constitute a breach of the restrictions placed on the relevant interest by the restrictions notice;
- (b) shall specify the acts that will not constitute a breach of the restrictions; and
- (c) may confine the direction to cases where those acts are done by persons, or for purposes, described in the order.

Breach of restrictions an offence

269. (1) A person who, knowing that a relevant interest is subject to restrictions, commits an offence if the person -

- (a) exercises or purports to exercise any right to dispose of the relevant interest;
- (b) exercises or purports to exercise any right to dispose of any right to be issued with the relevant interest; or
- (c) votes in respect of the relevant interest (whether as holder of the interest or as proxy) or appoints a proxy to vote in respect of the relevant interest.

(2) A person who has a relevant interest that the person knows to be subject to restrictions commits an offence if the person -

- (a) knows a person to be entitled (apart from the restrictions) to vote in respect of the interest, whether as holder or as proxy;
- (b) does not know the person to be aware of the fact that the interest is subject to restrictions; and
- (c) fails to notify the person of that fact.

- (3) A person commits an offence if the person -
- (a) has a relevant interest that the person knows to be subject to restrictions or is entitled to an associated right; and
 - (b) enters into an agreement that is void by virtue of section 267(1)(a) or (e).

(4) A person who commits an offence under this section is liable on summary conviction to a fine of \$5,000.

(5) No person commits an offence who contravenes subsections (1) to (3) in compliance with a direction of the Grand Court given under section 268 or 271.

Company issuing shares in breach of restriction

270. Subject to a direction given under section 268 or 271, a company that issues shares in contravention of a restriction imposed by virtue of a restrictions notice, commits an offence and is liable on summary conviction to a fine of \$5,000.

Relaxation of restrictions

271. (1) A company that issues a restrictions notice, or any person aggrieved by such notice, may apply to the Grand Court for an order directing that the relevant interest cease to be subject to restrictions.

(2) The Grand Court may only make an order under this section if -

- (a) the Court is satisfied that the information required by the notice served under section 249 or 257 has been disclosed to the company and no unfair advantage has accrued to any person as a result of the earlier failure to make that disclosure; or
- (b) the relevant interest is to be transferred for valuable consideration and the Court approves the transfer.

(3) An order made by virtue of subsection (2)(b) may continue, in whole or in part, the restrictions mentioned in section 267(1)(c) and (d) so far as they relate to a right acquired or offer made before the transfer.

(4) Where any restrictions continue in force by virtue of subsection (3) -

- (a) an application may be made under this section for an order directing that the relevant interest cease to be subject to those restrictions; and
- (b) subsection (2) does not apply in relation to the making of such an order.

Orders for sale

272. (1) On application by a company that issues a restrictions notice, the Grand Court may order that the relevant interest subject to restrictions be sold, provided that the Court approves the sale.

(2) A Court that makes an order under subsection (1) may make such further order relating to the sale or transfer of the interest as it thinks fit on application by -

- (a) the company that issued the restrictions notice;
- (b) the person appointed in pursuance of the order to effect the sale; or
- (c) any person with an interest in the relevant interest.

(3) On making an order under subsection (1) or (2), the Court may order that the applicant's costs be paid from the proceeds of sale.

Proceeds of sale
of relevant interest

273. (1) If a relevant interest is sold pursuant to an order under section 272, the proceeds of the sale, less the costs of the sale, must be paid into the Grand Court for the benefit of those who are beneficially interested in the relevant interest.

(2) A person who is beneficially interested in the relevant interest may apply to the Grand Court for the whole or part of those proceeds to be paid to that person.

(3) On an application under subsection (2), the Court shall order the payment to the applicant of -

- (a) the whole of the proceeds of sale together with any interest on the proceeds; or
- (b) if another person was also beneficially

interested in the relevant interest at the time of the sale, such proportion of the proceeds (and any interest) as the value of the applicant's interest bears to the total value of the relevant interest.

(4) Where the Court has ordered under section 272(3) that the costs of an applicant be paid from the proceeds of sale, the applicant is entitled to payment of those costs before any person receives any part of the proceeds under this section.

Company may
withdraw
restrictions notice

274. A company that issues a restrictions notice to a person shall by notice withdraw the restrictions notice if -

- (a) it is satisfied that there is a valid reason sufficient to justify the person's failure to comply with the notice served under section 249 or 257;
- (b) the notice served under section 249 or 257 is complied with; or
- (c) the company discovers that the rights of a third party in respect of the relevant interest are being unfairly affected by the restrictions notice.

Offences

Failure of a
company to
establish or
maintain
beneficial
ownership register

275. A company that knowingly and willfully contravenes section 247(1), 248(1), 254, 255(1) or 257(2) or fails to issue a notice as required by section 249, 257 or 258(3) commits an offence and is liable on summary conviction for each such contravention -

- (a) to a fine of \$25,000; and
- (b) if the offence is a continuing one, to a fine of \$500 for each day or part of a day during which the offence continues, up to a maximum of \$25,000.

Failure to comply
with notices

276. (1) A person to whom a notice under section 249 or 257 is addressed commits an offence if the person -

- (a) knowingly and willfully fails to comply with the notice; or

- (b) in purported compliance with the notice -
 - (i) makes a statement that the person knows to be false in a material particular; or
 - (ii) recklessly makes a statement that is false in a material particular.

(2) A person does not commit an offence under subsection (1)(a) if the person proves that the requirement to give information was frivolous or vexatious.

(3) A person guilty of an offence under this section is liable -

- (a) on conviction on indictment, to imprisonment for a term of two years or a fine of \$10,000, or to both;
- (b) on summary conviction to imprisonment for a term of twelve months or a fine of \$5,000, or to both.

Failure to provide information

277. (1) A person commits an offence if the person -

- (a) knowingly and willfully fails to comply with a duty under section 250 or 259 within the time required by that section; or
- (b) in purported compliance with such a duty -
 - (i) makes a statement that the person knows to be false in a material particular; or
 - (ii) recklessly makes a statement that is false in a material particular.

(2) A person guilty of an offence under this section is liable -

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine of \$10,000, or to both;
- (b) on summary conviction to imprisonment for a term of twelve months or to a fine of \$5,000, or to both.

Unlawful search or disclosure of beneficial ownership information

278. A person who conducts a search of a company's beneficial ownership register contrary to section 264(2) or (3) or discloses beneficial ownership information contrary

to section 265 commits an offence and is liable on summary conviction to a fine of \$5,000 or imprisonment for twelve months, or to both.

Offences by
officers and
directors

279. (1) Where a company or a legal entity is guilty of an offence under this Part, and it is proved that the offence was committed with the consent or connivance of, or was attributable to wilful default on the part of a director or other officer concerned in the management of the company or legal entity, the director or other officer is guilty of the same offence and liable to the same penalty as the company or legal entity.

(2) In subsection (1), “director” includes a member, in relation to a company whose affairs are managed by its members.

Supplementary Provisions

Exemptions

280. (1) The competent authority, if satisfied, having regard to any undertaking given by an individual or a legal entity, that there are special reasons for an exemption from compliance with a notice or duty under this Part, may exempt -

- (a) the individual or legal entity from complying with a notice issued under section 249 or 257;
- (b) a company from taking steps to identify that individual or legal entity or give notice under sections 249 or 257 to or with respect to them;
- (c) anyone from sending a notice or giving information pursuant to a notice under section 249(3);
- (d) the individual or legal entity from the duties imposed by sections 250 and 257; or
- (e) the individual or legal entity from being entered on a company’s beneficial ownership register as a registrable person in relation to any company.

(2) The competent authority shall exercise the exemption powers in subsection (1) in accordance with the

prescribed criteria.

Regulations

281. (1) The Cabinet may make regulations respecting anything required to carry out this Part or prescribing anything required to be prescribed under this Part, including regulations -

- (a) specifying criteria for the exercise of the competent authority's exemption powers under section 280;
- (b) respecting the giving of notices under section 249 or 257, including the form, content and manner of giving such notices;
- (c) to add to or remove from any of the lists of required particulars, including specifying the particulars required respecting the nature of control of a person referred to in section 256 over a relevant legal entity referred to in that section;
- (d) requiring additional matters to be noted in a company's beneficial ownership register;
- (e) requiring the competent authority, the Registrar, a corporate services provider or a company to refrain from using or disclosing particulars of a prescribed kind from a company's beneficial ownership register (or to refrain from doing so except in prescribed circumstances) where an application is made to the competent authority requesting them to refrain from so doing;
- (f) specifying the manner and form in which a company shall keep its beneficial ownership register;
- (g) setting the fees that the Registrar may charge for services pursuant to an engagement by a company under section 254 to establish and maintain the company's beneficial ownership register; and
- (h) respecting the procedure to be followed by companies issuing and withdrawing restrictions notices, including regulations

providing for -

- (i) the form and content of restrictions notices, and the manner in which they must be given;
- (ii) the factors to be taken into account in deciding what counts as a reason sufficient to justify a person's failure to comply with a notice issued under section 249 or 257; and
- (iii) the effect of withdrawing a restrictions notice on matters that are pending with respect to the relevant interest when the notice is withdrawn.

(2) The Cabinet may make regulations respecting the interpretation of the terms “beneficial owner”, “significant influence or control”, “specified conditions”, “registrable person” and “relevant interest”, including regulations -

- (a) to replace any or all references in section 247(2) to a percentage figure with references to some other (larger or smaller) percentage figure;
- (b) to change or supplement the specified conditions section 247(2) so as to include circumstances (for example, circumstances involving more complex structures) that give individuals a level of control over company Y broadly similar to the level of control given by the other specified conditions;
- (c) in consequence of any provision made by virtue of paragraph (b), to change or supplement sections 252 or 253 so that circumstances specified in those sections in which a person is to be regarded as holding an interest in a company correspond to any of the specified conditions, or would do so but for the extent of the interest ; and
- (d) defining the terms used in and providing guidance to the interpretation of sections 252 or 253.

(3) The Cabinet may, by affirmative resolution, make

regulations to add to, remove from or otherwise revise the list of companies or subsidiaries of companies to which this Part applies or does not apply under section 245(d).”.

Renumbering of sections 244 and 245 of the principal Law

3. The principal Law is further amended by renumbering sections 244 and 245 as sections 282 and 283 respectively.

Amendment of the principal Law - insertion of Schedule 6

4 The principal Law is amended by inserting after Schedule 5 the following Schedule -

“SCHEDULE 6

(section 264)

COUNTRIES OR TERRITORIES THAT HAVE ENTERED INTO AGREEMENTS WITH THE GOVERNMENT FOR THE SHARING OF BENEFICIAL OWNERSHIP INFORMATION

1. United Kingdom”.

Transitional provision

5. No prosecution may be commenced against a company for an offence under section 275 as enacted by clause 2 of this Law, unless the act or omission that constituted the offence took place at least one year after the coming into force of that section.

Passed by the Legislative Assembly the day of , 2017.

Speaker.

Clerk of the Legislative Assembly.