

CAYMAN ISLANDS



LIMITED LIABILITY COMPANIES (AMENDMENT) (NO.2) BILL, 2020

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A BILL FOR A LAW TO AMEND THE LIMITED LIABILITY COMPANIES LAW (2020 REVISION) TO PROVIDE FOR AN ADMINISTRATIVE PENALTY REGIME; AND FOR INCIDENTAL AND CONNECTED PURPOSES

PUBLISHING DETAILS

Sponsoring Ministry/Portfolio: Ministry of Financial Services and Home Affairs (FSHA)



Memorandum of OBJECTS AND REASONS

This Bill seeks to amend the *Limited Liability Companies Law (2020 Revision)* (the “principal Law”) to provide for an administrative penalty regime.

Clause 1 provides for the short title.

Clause 2 provides for the insertion of Part 10A in the *Limited Liability Companies Law (2020 Revision)*. The new Part 10A sets out the administrative fine framework.

The proposed new section 56A. empowers the Registrar to impose administrative fines on persons who breach any provision specified in the Schedule. The proposed new section 56B further provides that the fine for an initial breach is five thousand dollars. The new section also provides that the Registrar may, in addition to the fine for the initial breach, impose a further fine of one thousand dollars for every month during which the breach continues until either the breach stops, payment is made for the initial fine and the fines for the continuing breaches or the total of the fines amount to twenty thousand dollars.

The proposed new section 56F provides that the Registrar may issue guidance on the enforcement of administrative fines. The proposed new section 56H empowers the Cabinet to, among other things, provide for the forms and procedures, for imposing fines and for appeals against decisions under Part 10A by way of regulations.

Clause 3 provides for an amendment to section 71 of the principal Law by deleting the words “excluded person” and substituting the words “registered person” wherever they appear. The amendment is consequent upon amendments to the *Securities Investment Business Law (2020 Revision)* that removed the category of excluded persons”.

Clauses 4 to 7 provide for amendments to sections 91, 96, 97, 99 and 106 of the principal Law to adjust the specified references to “limited liability company” to references to “corporate services provider”. The amendment, in each case, relates to shifting the responsibility for issuing a restrictions notice from the limited liability company to the corporate services provider.

Clause 8 of the Bill provides for the insertion of the Schedule into the principal Law. The new schedule is being inserted pursuant to the amendments to section 56A to provide for administrative fines.

Clause 9 provides for a transition period regarding clauses 2 and 8 of the Bill. The specified provisions shall not apply to any person until thirty days after the commencement of this amending Law.

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(AMENDMENT) (NO.2) BILL, 2020**

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A BILL FOR A LAW TO AMEND THE LIMITED LIABILITY COMPANIES LAW (2020 REVISION) TO PROVIDE FOR AN ADMINISTRATIVE PENALTY REGIME; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

Short title

1. This Law may be cited as the Limited Liability Companies (Amendment) (No.2) Law, 2020.

Insertion of Part 10A in the Limited Liability Companies Law (2020 Revision) – administrative fines

2. The *Limited Liability Companies Law (2020 Revision)*, in this Law referred to as the “principal Law”, is amended by inserting after Part 10 the following Part —

“Part 10A – Administrative fines

Registrar’s power to fine

- 56A.**(1) The Registrar has the power to impose an administrative fine on a person who breaches a provision of this Law that is specified in the Schedule.
- (2) Cabinet may by order amend the Schedule.

Fine amounts

- 56B.** The fine shall be five thousand dollars for a breach and the Registrar may, in addition to the fine for the initial breach, impose a further fine of one thousand dollars for every month that the breach continues until one of the following occurs —
- (a) the breach stops or is remedied;
 - (b) payment of the initial fine and all fines imposed for the continuing breach; or
 - (c) the total of the initial fine and all fines for the continuing breach amounts to twenty thousand dollars.

The power to fine

- 56C.** For the avoidance of doubt —
- (a) a fine may be imposed for a breach that is not an offence;
 - (b) where a breach set out in the Schedule is also an offence, a fine for the breach is not limited by the penalty under the provision or by sections 6(2) and 8 of the Criminal Procedure Code (2019 Revision).

Limitation period

- 56D.**(1) The Registrar shall not impose a fine after the expiration of six months after the date on which the Registrar became aware of the commission of the breach.
- (2) For subsection (1), the Registrar shall be deemed to have become aware of the breach when information was first received from which the breach can reasonably be inferred.

Relationship with penalties

- 56E.** If a breach set out in the Schedule is an offence, a fine for the breach shall not preclude a prosecution for the breach or liability for any relevant fees.



Registrar may issue guidance

56F. The Registrar may issue guidance on the enforcement of administrative fines under this Law.

Registrar’s rule-making power for Part

56G. The Registrar may, by rules published in the Gazette, provide for —

- (a) aggravating and mitigating factors for fines; and
- (b) the publication of fines imposed in accordance with this Part.

Regulation-making powers for this Part

56H. Regulations made by Cabinet may provide for —

- (a) forms and procedures for imposing fines;
- (b) appeals against decisions under this Part;
- (c) how fines shall be paid and may be enforced;
- (d) interest on outstanding fines;
- (e) evidentiary provisions for proceedings relating to this Part; and
- (f) other matters required or permitted to be prescribed under this Part or that are necessary or convenient to give effect to the purposes or provisions of this Part.”.

Amendment of section 71 - application

- 3.** The principal Law is amended in sections 71(1)(b) and 71(2)(a) by deleting the words “an excluded person” wherever they appear and substituting the words “a registered person”.

Amendment of section 91 - right to issue restrictions notice

- 4.** The principal Law is amended in section 91 as follows —
- (a) in subsection (1), by deleting the words “A limited liability company” and substituting the words “A corporate services provider for a limited liability company”; and
 - (b) in subsection (2), by deleting the words “the limited liability company” and substituting the words “the corporate services provider”.

Amendment of sections 96, 97 and 106 - relaxation of restrictions; orders for sale; and regulations

- 5.** The principal Law is amended in sections 96(1), 97(1) and 97(2) by deleting the words “limited liability company” wherever they appear and substituting the words “corporate services provider”.

Amendment of section 99 - limited liability company may withdraw restrictions notice

6. The principal Law is amended in section 99 as follows —
- (a) in the section heading, by deleting the words “limited liability company” and substituting the words “corporate services provider”; and
 - (b) by deleting the words “limited liability company” wherever they appear and substituting the words “corporate services provider”.

Amendment of section 106 - regulations

7. The principal Law is amended in section 106(1)(g) by deleting the words “limited liability companies” and substituting the words “corporate services providers”.

Amendment of the principal Law- insertion of the Schedule

8. The principal Law is amended by inserting after section 107 the following Schedule —

“SCHEDULE

(section 56A)

Administrative fines

No.	Section	Description of breach
1.	73(1)	Failure of a limited liability company to take reasonable steps to identify any beneficial owner of the limited liability company.
2.	74(1)	Failure of a limited liability company to take reasonable steps to identify any relevant legal entities.
3.	75(1)	Failure of a limited liability company to give notice in writing to beneficial owners and relevant legal entities identified under sections 73 and 74.
4.	76(2)	Failure of a beneficial owner or relevant legal entity to supply information under section 76(2) within the timeframe specified at 76(3).



No.	Section	Description of breach
5.	78	Failure of a limited liability company to keep its beneficial ownership register at the registered office.
6.	79(1)	Failure of a limited liability company to provide in writing to a corporate services provider or to the Registrar the required particulars of registrable persons once the required particulars have been confirmed.
7.	79(1A)(a)(i)	Incorrect reporting by a person that the person is a legal entity or a subsidiary to whom Part 12 does not apply by virtue of section 71(1).
8.	79(1A)	Failure of a limited liability company which is exempt under Part 12 to provide — (a) written confirmation of the exemption to the corporate services provider; or (b) instructions to file the written confirmation with the competent authority under section 79(1A).
9.	81(1)	Failure of a limited liability company to give notice requesting confirmation of the change under section 81(1) to a registrable person as soon as reasonably practicable after the limited liability company becomes aware of a relevant change with respect to a registrable person.
10.	81(2)	Failure of a limited liability company which receives confirmation of a relevant change to instruct the corporate services provider or the Registrar to enter the change in the limited liability company's beneficial ownership register in accordance with section 81(2).
11.	82(1)	Failure of the corporate services provider to give notice of its opinion to

No.	Section	Description of breach
		the limited liability company if it is of the opinion that the limited liability company has failed to comply with section 79 or 81 without reasonable excuse, or has made a statement that is false, deceptive or misleading in accordance with section 82(1).
12.	82(2)	Failure of the limited liability company to provide the corporate services provider or the Registrar with a response to a notice under section 82(2).
13.	82(3)	Failure of a limited liability company to — <ul style="list-style-type: none"> (a) issue a restrictions notice; and (b) send a copy of the notice to the competent authority within two weeks, where the registrable person does not comply with the obligations under section 82(3).
14.	83(2)	Failure of a person to whom the section applies— <ul style="list-style-type: none"> (a) to notify the limited liability company of the relevant changes; (b) to state the date the change occurred; and (c) to give the limited liability company the information needed to update the beneficial ownership register under section 83(2) within the timeframe specified at section 83(3).
15.	87(2)	Failure of the corporate services provider to regularly deposit beneficial ownership information in such place,



No.	Section	Description of breach
		such manner and at such intervals as may be prescribed in accordance with section 87(2)
16.	90A(2)	Failure of a limited liability company or a corporate services provider to comply with a request for additional information under section 90A.
17.	92(1)	Failure to act in a manner consistent with the terms of a restrictions notice under section 92(1).

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Transition period

9. Sections 2 and 8 shall not apply to any person until thirty days after the commencement of this Law

Passed by the Legislative Assembly the day of , 2020.

Speaker

Clerk of the Legislative Assembly