

CAYMAN ISLANDS



Supplement No. 1 published with Extraordinary
Gazette No. 31 dated 7th April, 2017.

THE COMPANIES (AMENDMENT) LAW, 2017

(LAW 2 OF 2017)

THE COMPANIES (AMENDMENT) LAW, 2017

ARRANGEMENT OF SECTIONS

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

Law 2 of 2017

I Assent

Helen Kilpatrick

Governor.

Date: 6th April, 2017

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.

1. (1) This Law may be cited as The Companies (Amendment) Law, 2017.

Short title and commencement

(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.

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 -

Amendment of the principal Law – insertion of new Part XVIII

“PART XVIII - Beneficial Ownership Registers

Preliminary

Interpretation

244. (1) In this Part -

“beneficial owner”, in relation to a company, has the meaning assigned by sections 247(3), (4) and (5);

“beneficial ownership register” means a register of adequate, accurate and current information maintained by a company pursuant to section 252, containing the required particulars of registrable persons in relation to the company;

“competent authority” means the Minister referred to in section 246(1) and includes the person designated by the Minister under that section;

(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 company, limited liability company or other body that is a legal person under the law by which it is governed;

“prescribed” means prescribed by regulations made under section 280;

“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 person” means an individual or relevant legal entity that is a registrable person under section 251;

“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(3);

“required particulars” means particulars in respect of a registrable person required to be kept in a company’s beneficial ownership register pursuant

to sections 253 and 254;

“restrictions notice” means a notice issued under section 265; and

“specified conditions” means the conditions specified in sections 247(3), (4) and (5).

(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

245. (1) This Part applies in respect of companies incorporated or registered by way of continuation under this Law, except a legal entity or subsidiary of one or more legal entities, each of which is -

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);
- (c) managed, arranged, administered, operated or promoted by an approved person as a special purpose vehicle, private equity fund, collective investment scheme or investment fund;
- (d) that is a general partner of a vehicle, fund or scheme referred to in paragraph (c) that is managed, arranged, administered, operated or promoted by an approved person; or
- (e) exempted by the Regulations.

(2) In this section, “approved person” means a person or a subsidiary of a person that is -

(2016 Revision)
Schedule 3

- (a) regulated, registered or holding a licence in the Islands under a “regulatory law” as defined in section 2 of the Monetary Authority Law (2016 Revision) or regulated in a jurisdiction listed in Schedule 3 of the Money Laundering

(2015 Revision)

Schedule 4

Regulations (2015 Revision); or

- (b) listed on the Cayman Islands Stock Exchange or an approved stock exchange in Schedule 4.

(3) For the purposes of this section, a company (“company S”) is a subsidiary of one or more legal entities described in subsection (1) if -

- (a) such legal entities, separately or collectively, hold in excess of 75% of the shares or voting rights in company S;
- (b) each such legal entity is a member of company S and, separately or collectively, such legal entities have the right to appoint or remove a majority of its board of directors; or
- (c) it is a subsidiary of one or more legal entities each of which is itself a subsidiary of one or more legal entities described in subsection (1).

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) For the purpose of identifying individuals who are beneficial owners under subsection (1), a company is entitled to rely, without further enquiry, on the response of a person to a notice in writing sent in good faith by the company, unless the company has reason to believe that the response is misleading or false.

(3) 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.

(4) If no individual meets the conditions in subsection (3), X is a beneficial owner of company Y if X has the absolute and unconditional legal right to exercise, or actually exercises, significant influence or control over company Y through the ownership structure or interests described in subsection (3), other than solely in the capacity of a director, professional advisor or professional manager.

(5) If no individual meets the conditions in subsections (3) and (4) but the trustees of a trust (or the members of a partnership or other entity that, under the law by which it is governed is not a legal person) meet one of those conditions in relation to company Y in their capacity as such, X is a beneficial owner of company Y if X has the absolute and unconditional legal right to exercise, or actually exercises, significant influence or control over the activities of that trust (or partnership or other entity), other than solely in the capacity of a director, professional advisor or professional manager.

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) For the purpose of identifying relevant legal entities under subsection (1), a company is entitled to rely, without further enquiry, on the response of a legal entity to a notice in writing sent in good faith by the company, unless the company has reason to believe that the response is misleading or false.

(3) A “relevant legal entity”, in relation to a company, is a legal entity that -

- (a) is incorporated, formed or registered (including by way of continuation or as a foreign company) in the Islands under the laws of the Islands; and
- (b) would be a beneficial owner of the company if it were an individual.

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 in writing 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 required 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 in writing to a registered shareholder or a legal entity that the company knows or has reasonable cause to believe is a relevant legal entity in relation to that company (or would be a relevant legal entity if it were registered under this Law), if the company knows or has reasonable cause to believe that such shareholder or 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 registrable 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 company knows that the individual or entity is not a registrable person; or
- (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.

(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 applicable in 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 registrable person in respect to a company to which this Part applies;
- (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 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 registrable persons

251. (1) The following are registrable persons in relation to a company -

- (a) an individual whom the company identifies pursuant to section 247 as a beneficial owner of the company;
- (b) a relevant legal entity identified by the company pursuant to section 248 that -
 - (i) holds an interest in the company or meets one or more of the specified conditions directly in respect of that company; and
 - (ii) through which any beneficial owner or relevant legal entity indirectly owns an interest in the company.

(2) Whether a person holds an interest in a company or meets a specified condition in relation to the company directly or indirectly shall

be determined in accordance with the Regulations.

Establishing Beneficial Ownership Registers

Duty to establish
and maintain
beneficial
ownership register

252. (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 -

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

(Law 22 of 2011)

(3) Ordinary resident 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 an ordinary resident company.

Role of corporate
services provider
and Registrar

253. (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 company has reasonable grounds to believe that they

were supplied or confirmed by the individual or entity to whom the particulars relate;

- (b) another person supplied or confirmed them to the company, and the company has reasonable grounds to believe that this was done with the knowledge of the individual or entity to whom the particulars relate; 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

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

- (a) full legal 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, including -
 - (i) identifying number;
 - (ii) country of issue; and
 - (iii) date of issue and of expiry; 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

person in relation to the company in question.

Duty of company
to keep register up
to date

255. (1) If a company to which this Part applies becomes aware of a relevant change with respect to a registrable person whose required 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 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 a registrable person in relation to the company; or
- (b) any other change occurs as a result of which the required 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 required 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

256. (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 253 or 255 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 -

- (a) the missing particulars required under section 253 or 255 pertaining to registrable persons; and
- (b) a justification or correction respecting any statement identified in the notice.

(3) If the company fails, due to the failure of a registrable person to comply with their obligations under this Law, to provide the missing particulars referred to in subsection (2)(a) within one month of receipt of the notice, the company shall -

- (a) issue a restrictions notice to the registrable persons whose particulars are missing with regard to the shares or other relevant interest 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

257. (1) This section applies to persons 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 255(3), occurs with respect to the person;
- (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 255 by the end of the period of one month

beginning with the day on which the change occurred.

- (2) A person 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 discovered the relevant change.

Removal of entries from company's beneficial ownership register

258. 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

259. (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 beneficial ownership 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 person 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 beneficial ownership 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

260. (1) The competent authority shall establish a search platform by means of which access may be provided to information on 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 all company beneficial ownership information provided to the competent authority by corporate service providers or the Registrar 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

261. A corporate services provider engaged by a company pursuant to section 252, or the Registrar if so engaged, shall provide an information technology solution, either directly or through another corporate services provider, that enables the corporate services provider or Registrar, as the case may be -

- (a) to establish and maintain the company's beneficial ownership register on its behalf; and
- (b) to provide the information on the beneficial ownership register to the competent authority by way of the search platform established pursuant to section 260.

Limits on searches that may be executed

262. (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);
- (2016 Revision) (c) the Cayman Islands Monetary Authority;
- (2016 Revision) (d) the Tax Information Authority, designated under section 4 of the Tax Information Law (2016 Revision); and
- (2016 Revision) (e) 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 is proper and lawfully made for any purpose under the legislation governing the affairs or responsibilities of the body.

(3) 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 the Financial Crime Unit of the Royal Cayman Islands Police Service if a senior official of the Unit certifies that the request for the search 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 -

Schedule 6

- (a) by a law enforcement official designated by the agreement; and
- (b) in compliance with that agreement.

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

Disclosure of beneficial ownership information by the Cayman Islands Monetary Authority

(2016 Revision)

263. (1) The Cayman Islands Monetary Authority may, on request by the competent authority, disclose any information in its possession respecting a company or a subsidiary of a company registered or holding a licence under a "regulatory law" as defined in section 2 of the Monetary Authority Law (2016 Revision) that the company or subsidiary would be required to provide under this Part as required particulars, if this Part applied to the company or subsidiary.

(2016 Revision)

(2) For greater certainty, section 50(1) of the Monetary Authority Law (2016 Revision) does not apply to a disclosure made under this section.

Non-disclosure of information concerning requests for beneficial ownership information

264. (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.

(Law 23 of 2016)

(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.

(2016 Revision)

(Law 23 of 2016)

(3) Subject to sections 18 and 19 of the Tax Information Law (2016 Revision), information deemed to be confidential under this subsection (2) shall only be disclosed in accordance with the Confidential Information Disclosure Law, 2016.

Enforcement

Restrictions Notices

Right to issue restrictions notice

265. (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, by the end of the period of one month beginning with the date of receipt of the notice -

- (a) a notice under section 249 or 255 was served on the person;
- (b) the person has not -
 - (i) complied with 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

266. (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 respect 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 270(2)(b).

Protection of third
party rights

267. (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

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

- (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 266(1)(a) or (e).
- (4) A person who commits an offence under this section is liable on summary conviction to a fine of five thousand dollars.
- (5) No person commits an offence who contravenes subsections (1) to (3) in compliance with a direction of the Grand Court given under section 267 or 270.

Company issuing shares in breach of restriction

269. Subject to a direction given under section 267 or 270, 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 five thousand dollars.

Relaxation of restrictions

270. (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 255 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 266(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

271. (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

272. (1) If a relevant interest is sold pursuant to an order under section 271, the proceeds of the sale, less the costs of the sale, must be paid into the Grand Court for the benefit of persons 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 271(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

273. 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 255;
- (b) the notice served under section 249 or 255 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

274. A company that knowingly and willfully contravenes section 247(1), 248(1), 252, 253(1) or 255(2) or knowingly and willfully fails to issue a notice as required by section 249, 255 or 256(3) commits an offence and is liable on summary conviction for each such contravention -

- (a) to a fine of twenty-five thousand dollars; and
- (b) if the offence is a continuing one, to a fine of five hundred dollars for each day or part of a day during which the offence continues, up to a maximum of twenty-five thousand dollars.

Failure to comply
with notices

275. (1) A person to whom a notice under section 249 or 255 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 ten thousand dollars, or to both;
 - (b) on summary conviction to imprisonment for a term of twelve months or a fine of five thousand dollars, or to both.

Failure to provide information

276. (1) A person commits an offence if the person -
- (a) knowingly and willfully fails to comply with a duty under section 250 or 257 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 ten thousand dollars, or to both;
 - (b) on summary conviction to imprisonment for a term of twelve months or to a fine of five thousand dollars, or to both.

Unlawful search or disclosure of beneficial ownership information

277. A person who conducts a search of a company's beneficial ownership register contrary to section 262(2), (3) or (4) or discloses beneficial ownership information contrary to section 264 commits an offence and is liable on summary conviction to a fine of five thousand dollars or imprisonment for twelve months, or to both.

Offences by officers and

278. (1) Where a company or a legal entity is guilty of an offence under

directors

this Part, and it is proved that the offence was committed with the consent or connivance of, or was attributable to willful 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

279. (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 255;
- (b) a company from taking steps to identify that individual or legal entity or give notice under sections 249 or 255 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 255; 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

280. (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 279;
- (b) respecting the giving of notices under section 249 or 255, 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 254 over the company referred to in the particulars;

- (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 252 to establish and maintain the company's beneficial ownership register;
- (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 255;
 - (iii) the effect of withdrawing a restrictions notice on matters that are pending with respect to the relevant interest when the notice is withdrawn; and
- (i) adding the name of any country or territory to Schedule 6, or deleting the name of any country or territory from that Schedule.

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

- (a) to replace any or all references in section 247(3) to a percentage figure with references to some other (larger or smaller) percentage figure;
- (b) to change or supplement the specified conditions in

section 247(3) 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; and

- (c) specifying the circumstances in which a person holds an interest in a company or meets a specified condition in relation to the company directly or indirectly through any number of persons or arrangements of any description.

(3) The Cabinet may, by affirmative resolution, make regulations to add to, remove from or otherwise revise the list of legal entities or subsidiaries of legal entities to which this Part applies or does not apply under section 245(1)(e).”.

3. The principal Law is further amended by renumbering sections 244 and 245 as sections 281 and 282 respectively. Renumbering of sections 244 and 245 of the principal Law

4. The principal Law is amended by inserting after Schedule 5 the following Schedule - Amendment of the principal Law - insertion of Schedule 6

“SCHEDULE 6

(section 262)

**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 274 as enacted by section 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 27th day of February, 2017.

Juliana O'Connor-Connolly

Speaker.

Zena Merren-Chin

Clerk of the Legislative Assembly.