

CONSULTATION DRAFT

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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; TO MAKE CONSEQUENTIAL AMENDMENTS TO THE COMPANIES MANAGEMENT LAW (2003 REVISION); AND FOR INCIDENTAL AND CONNECTED MATTERS

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THE COMPANIES (AMENDMENT) BILL, 2017

MEMORANDUM OF OBJECTS AND REASONS

*[TO BE COMPLETED WHEN THE PROVISIONS OF THE BILL HAVE BEEN
SETTLED]*

CONSULTATION DRAFT

**THE COMPANIES LAW AND LIMITED LIABILITY COMPANIES LAW
(AMENDMENT) BILL, 2017
ARRANGEMENT OF CLAUSES**

1. Short title and commencement
2. Amendment of the Companies Law (2016 Revision) – insertion of new Part XVIIIA
3. Renumbering of sections 244 and 245 of Companies Law (2016 Revision)
4. Amendment of Companies Law (2016 Revision) – insertion of Schedule 6
5. Consequential amendment of Companies Management Law (2003)
6. Transitional Provision

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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; TO MAKE CONSEQUENTIAL AMENDMENTS TO THE COMPANIES MANAGEMENT LAW (2003 REVISION); AND FOR INCIDENTAL AND CONNECTED MATTERS

ENACTED by the Legislature of the Cayman Islands.

1. (1) This Law may be cited as The Companies Law (Amendment) Bill, 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 Companies Law (2016 Revision) – 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 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);

“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 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;

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

(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 in the Islands that are registered under the Companies Law (2016 Revision), except a company or subsidiary of a company -

- (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) that is a special purpose company or a private equity or collective investment scheme or investment fund (or if such fund is an exempted limited partnership, its general partner) 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); 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) 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 right to exercise, or actually exercises, significant influence or control over company Y;
- (e) (i) 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, meet any of conditions (a) to (d) (in their capacity as such) in relation to company Y, or would do so if

they were individuals, and

- (ii) X has the 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.

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 section 247 or 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)

to (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 all the conditions in subsection (1)(a) to (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 paragraph (1)(a) and (b); and
- (b) the relevant legal entity or entities described in paragraph (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 right to exercise, or actually exercises, significant influence or control over company W; 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) to (d); and
 - (b) V has the right to exercise, or actually exercises, significant influence or control over the activities of that trust or firm.

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 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) Every company to which this Part applies by virtue of section 245 shall keep a 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) non-resident companies;
- (c) companies registered as special economic zone companies under the Special Economic Zones Law, 2011.

(Law 22 of 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.

(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).

(2015 Revision)

Duties of corporate services provider and Registrar

255. (1) Every company that is subject to this Part 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; and
- (b) the date on which the change was made and 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 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 -

- (a) provide the corporate services provider or the Registrar, as the case may be, with the particulars required under section 255 or 257 pertaining to registrable persons that are missing; and
- (b) if the company fails or is unable to provide such particulars within one month of receipt of the notice, issue a restrictions notice with regard to the shares or other interests of such registrable persons in the company.

(3) A company that issues a restrictions notice under this section shall send a copy of the notice to the competent authority within two weeks of issuing the notice.

(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 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 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 Registry.

- (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 IT solution, either directly or through another corporate services provider, that -

- (a) maintains the company's 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 of -

- (a) the financial intelligence unit, as defined in the Proceeds of Crime Law (2016 Revision);
- (b) the Financial Reporting Authority, as defined in that Law;
- (c) the Cayman Islands Monetary Authority;
- (d) the Department of International Tax Cooperation; or
- (e) the Financial Crime Unit of the Royal Cayman Islands Police Service.

(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 of the agency and any international agreements administered by it; or
- (b) is in response to a request from a designated law enforcement official from a jurisdiction listed in Schedule 6 that has entered into an agreement with the Government in respect of

Schedule 6

the sharing of beneficial ownership information and is 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 1

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.

(Law 23 of 2016)

(2) Information maintained by a corporate service provider or the Registrar pursuant to this Part respecting beneficial ownership information is deemed to be confidential information under the Confidential Information Disclosure Law, 2016 (Law 23 of 2016), and may be disclosed only in accordance with that Law.

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 right 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 commits an offence who, knowing that the relevant interest is subject to restrictions -

- (a) exercises or purports to exercise any right to dispose of a relevant interest;
- (b) exercises or purports to exercise any right to dispose of any right to be issued with a relevant interest; or
- (c) votes in respect of a relevant interest (whether as holder of the interest or as proxy) or appoints a proxy to vote in respect of a 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 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(2), 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.

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 not exceeding 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 not exceeding 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 of
legal entities

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 any neglect 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.

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 register as a registrable individual or a registrable relevant legal entity 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 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 may make regulations respecting the interpretation of the terms "beneficial owner", "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).

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

Renumbering of sections 244 and 245 of Companies Law (2016 Revision)

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

Amendment of Companies Law (2016 Revision) – insertion of Schedule 6

“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”.

5. The Companies Management Law (2003 Revision) is amended -

Consequential amendment of Companies Management Law (2003 Revision)

- (a) in section 3 by inserting after paragraph (b) in the definition of “business of company management” the following -

“(ba) establishing and maintaining a beneficial ownership register on behalf of a company and offering an IT solution to make the register searchable by the competent authority established by Part XVIIIA of the Companies Law;”;

- (b) in section 18(1)(c) by inserting after the word “this” the words “or any other”; and

- (c) in sections 19(2)(a) and (b) by inserting by inserting after the word “this” the words “or any other”.

Transitional Provision

6. (1) No prosecution may be commenced against a company for an offence under section 275 of the Companies Law (2016 Revision) unless the act or omission that constituted the offence took place at least one year after the coming into force of that section.

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