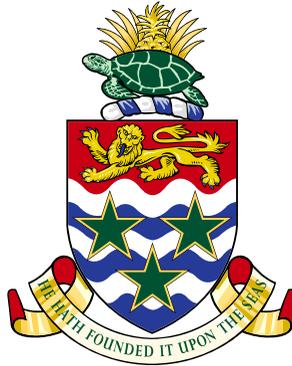


CAYMAN ISLANDS



COMPANIES (AMENDMENT) BILL, 2019

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A BILL FOR A LAW TO AMEND THE COMPANIES LAW (2018 REVISION) TO MAKE CERTAIN INFORMATION RELATED TO COMPANIES ACCESSIBLE; TO REQUIRE COMPANIES TO MAINTAIN CERTAIN ADDITIONAL SHAREHOLDER INFORMATION; TO INCREASE THE PENALTY FOR THE FAILURE TO COMPLY WITH BENEFICIAL OWNERSHIP REQUIREMENTS; AND FOR INCIDENTAL AND CONNECTED PURPOSES

PUBLISHING DETAILS



Memorandum of
OBJECTS AND REASONS

The Bill seeks to amend the Companies Law (2018 Revision) (the “principal Law”) to make certain information related to companies accessible, to require companies to maintain certain additional shareholder information and to increase the penalty for the failure to comply with beneficial ownership requirements.

Clause 1 contains the short title and commencement provisions.

Clause 2 seeks to insert a new section 26A which would require the Registrar of Companies upon receipt of a request in writing, to provide information to the Anti-Corruption Commission, the Cayman Islands Monetary Authority, the Financial Crimes Unit of the Royal Cayman Islands Police Service, the Financial Reporting Authority, the Tax Information Authority and any competent authority as defined under section 2 of the *Proceeds of Crime Law (2019 Revision)*, which is assigned responsibility for monitoring compliance with money laundering regulations under section 4(9) of the *Proceeds of Crime Law (2019 Revision)*.

Clause 3 repeals section 40 of the principal Law and substitutes a new section which would require a company to record in its register of members, the names and addresses of the members of the company and a statement of the shares held by each member. The statement would include the shares kept by each member, confirm the number and category of shares held by each member and confirm whether each relevant category of shares held carries voting rights under the articles of association of a company and whether those rights are conditional. The clause would also require the date on which a person became or ceased to be a member of the company, to be recorded in the register of members. Clause 3 would also make it an offence for a company which fails to comply with the requirement to keep the register of members in accordance with subsection (1). The clause also contains a definition of “voting rights” for the purposes of subsection (1).

Clause 4 amends section 55 of the principal Law by replacing the section heading. The clause also amends section 55 to reduce the time period within which a company is required to notify the Registrar of a change in directors or officers of a company from sixty days to thirty days.

Clause 5 introduces a new section 55A which would require the Registrar to make a list of the names of the directors and alternate directors of a company available for inspection by any person.

Clause 6 amends section 274 of the principal Law to provide for a fine of twenty-five thousand dollars in the case of a first offence where a company knowingly and wilfully contravenes sections 247(1), 248(1), 252, 253(1) or (1A) or 255(2) of the principal Law or knowingly and wilfully fails to issue a notice as required by section 249, 255 or 256(3) of the principal Law. Clause 6 also provides for a fine of one hundred thousand dollars



where a company commits a second offence and empowers the court to strike the company off the register where it is convicted of a third offence.

Clause 7 amends section 275 of the principal Law to provide for a fine of twenty-five thousand dollars for a person who commits a first offence of failing to comply with a notice issued under section 249 or 255 of the principal Law and in the case of a second or subsequent offence, a fine of fifty thousand dollars.

Clause 8 amends section 276 of the principal Law to provide for a fine of twenty-five thousand dollars for a person who commits a first offence of failing to comply with a duty under section 250 or 257 of the principal Law and in the case of a second or subsequent offence, a fine of fifty thousand dollars.

Clause 9 amends Schedule 5 which prescribes fees payable throughout the Law. Clause 9 inserts a new Part 6A which sets out the fee for inspecting the list of current directors and current alternate directors of a company.

Clause 10 provides for the transitional provision which would bar the commencement of a prosecution for an offence committed under section 40 of the principal Law unless the act or omission that constitutes the offence takes place three months after the commencement of this Law.



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A BILL FOR A LAW TO AMEND THE COMPANIES LAW (2018 REVISION) TO MAKE CERTAIN INFORMATION RELATED TO COMPANIES ACCESSIBLE; TO REQUIRE COMPANIES TO MAINTAIN CERTAIN ADDITIONAL SHAREHOLDER INFORMATION; TO INCREASE THE PENALTY FOR THE FAILURE TO COMPLY WITH BENEFICIAL OWNERSHIP REQUIREMENTS; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

Short title and commencement

1. (1) This Law may be cited as the Companies (Amendment) Law, 2019.
- (2) Section 5 of this Law shall come into force on such date as may be appointed by Order made by the Cabinet.

Insertion of section 26A in the Companies Law (2018 Revision) - registrar to provide information

2. The *Companies Law (2018 Revision)*, in this Law referred to as the “principal Law” is amended by inserting after section 26 the following section —

“Registrar to provide information

- 26A.**(1) The Registrar shall, upon request by an entity under subsection (2), provide any information required to discharge any function or exercise any power, under the following Laws —
 - (a) the *Anti-Corruption Law (2019 Revision)*;

- (b) the *Monetary Authority Law (2018 Revision)*;
 - (c) the *Proceeds of Crime Law (2019 Revision)*; or
 - (d) the *Tax Information Authority Law (2017 Revision)*.
- (2) For the purposes of subsection (1), the following entities may request information from the Registrar —
- (a) the Anti-Corruption Commission established under section 3 of the *Anti-Corruption Law (2019 Revision)*;
 - (b) the Authority;
 - (c) the Financial Crimes Unit of the Royal Cayman Islands Police Service;
 - (d) the Financial Reporting Authority, as defined under section 2 of the *Proceeds of Crime Law (2019 Revision)*;
 - (e) the Tax Information Authority, designated under section 4 of the *Tax Information Authority Law (2017 Revision)*; or
 - (f) a competent authority as defined under section 2(1) of the *Proceeds of Crime Law (2019 Revision)*, which is assigned responsibility for monitoring compliance with the money laundering regulations under section 4(9) of the *Proceeds of Crime Law (2019 Revision)*.
- (3) A request for information by an entity under subsection (2) shall be made in writing.
- (4) Where a request for information is made under subsection (1), the information shall be provided within forty-eight hours of receipt of the request.
- (5) The recipient of any information provided by the Registrar under this section shall —
- (a) use the information for the purpose for which it was provided;
 - (b) retain the information for as long as is necessary to carry out the purpose for which it was provided; and
 - (c) not disclose the information for any purpose other than the purpose for which it was provided, without the consent of the Registrar.”.

Repeal and substitution of section 40 - register of members

3. The principal Law is amended by repealing section 40 and substituting the following section —



“Register of members

- 40.** (1) Every company shall cause to be kept in writing, a register of its members and there shall be entered therein —
- (a) the names and addresses of the members of the company, with the addition of, in the case of a company having a capital divided into shares, a statement of the shares held by each member, and the statement shall —
 - (i) distinguish each share by its number (so long as the share has a number);
 - (ii) confirm the amount paid, or agreed to be considered as paid on the shares of each member;
 - (iii) confirm the number and category of shares held by each member; and
 - (iv) confirm whether each relevant category of shares held by a member carries voting rights under the articles of association of the company, and if so, whether such voting rights are conditional;
 - (b) the date on which the name of any person was entered on the register as a member;
 - (c) the date on which any person ceased to be a member; and
 - (d) in the case of shares of an exempted company issued to bearer, the particulars of the date of issue of the share or shares, distinguishing each share by its number where the share has a number, the name of the custodian of its bearer shares and the fact that a certificate in respect thereof was issued to bearer.
- (2) Any company making default in complying with this section shall incur a penalty of five thousand dollars; and every director or manager of the company who knowingly and wilfully authorises or permits such default shall incur the like penalty.
- (3) For the purpose of subsection (1), “**voting rights**” —
- (a) includes rights that arise only in certain circumstances, conferred on shareholders in respect of their shares (or, in the case of an entity not having a share capital, on members) conferred to vote at general meetings of the company or legal entity in question; and
 - (b) in relation to a legal entity that does not have general meetings at which matters are decided by the exercise of voting rights, shall be read as a reference to rights in relation to the entity that are equivalent to those of a person entitled to exercise voting rights in a company.”.

Amendment of section 55 - list of directors, including alternate directors, and officers

4. The principal Law is amended in section 55 as follows —
- (a) by repealing the section header and substituting the following section header —
“Filing deadline for updated list of directors etc.”; and
 - (b) in subsection (1)(b) by deleting the word “sixty” and substituting the words “thirty”.

Insertion of section 55A - registrar to make list of directors available for inspection

5. The principal Law is amended by inserting after section 55, the following section —
- “Registrar to make list of directors available for inspection**
- 55A.** (1) The Registrar shall maintain a list of the names of the current directors, and where applicable, the current alternate directors of a company.
- (2) The Registrar shall make available, the list of the names of the current directors of a company and where applicable, the current alternate directors of a company under subsection (1), for inspection by any person, on payment of the fee specified in Part 6A of Schedule 5, for each inspection, and subject to such conditions as the Registrar may impose.
- (3) For the purposes of subsection (1), an alternate director is a person who is registered by a company as an alternate director under section 55.”

Amendment of section 274 - failure of a company to establish or maintain beneficial ownership register

6. The principal Law is amended in section 274 as follows —
- (a) by renumbering the section as section 274(1);
 - (b) in section 274(1) as renumbered by repealing paragraphs (a) and (b) and substituting the following paragraphs —
 - “(a) in the case of a first offence, to a fine of twenty-five thousand dollars; or
 - (b) in the case of a second or subsequent offence, to a fine of one hundred thousand dollars.”; and
 - (c) by inserting after subsection (1) as renumbered, the following subsection —



“(2) Where a company is convicted of a third offence under subsection (1), the court may order that the company be struck off the register by the Registrar in accordance with Part VI, as if it is a company that the Registrar has reasonable cause to believe is not carrying on business or is not in operation.”.

Amendment of section 275 - failure to comply with notices

7. The principal Law is amended in section 275(3) by repealing paragraph (a) and substituting the following paragraph —

“(a) on conviction on indictment —

- (i) in the case of a first offence, to a fine of twenty-five thousand dollars; or
- (ii) in the case of a second or subsequent offence, to a fine of fifty thousand dollars or to imprisonment for a term of two years, or to both; or”.

Amendment of section 276 - failure to provide information

8. The principal Law is amended in section 276(2) by repealing paragraph (a) and substituting the following paragraph —

“(a) on conviction on indictment —

- (i) in the case of a first offence, to a fine of twenty-five thousand dollars; or
- (ii) in the case of a second or subsequent offence, to a fine of fifty thousand dollars or to imprisonment for a term of two years, or to both; or”.

Amendment of Schedule 5 - fees

9. The principal Law is amended in Schedule 5, by inserting after Part 6, the following Part —

“PART 6A

(section 55A(2))

The fee payable under section 55A(2) for each inspection of the list of the current directors of a company, and where applicable, the current alternate directors of a company is \$50.”.

Transitional provision

- 10.** No prosecution may be commenced against a company for an offence under section 40 as enacted by section 3 of this Law, unless the act or omission that constitutes the offence takes place at least three months after the coming into force of this Law.

Passed by the Legislative Assembly the day of , 2019.

Speaker

Clerk of the Legislative Assembly

