

CAYMAN ISLANDS



COMPANIES (AMENDMENT) BILL, 2020

Supplement No. 4 published with Legislation Gazette No. 3 dated 8th January, 2020.

A BILL FOR A LAW TO AMEND THE COMPANIES LAW (2018 REVISION) TO INCREASE THE EFFECTIVENESS OF THE BENEFICIAL OWNERSHIP REGIME; AND FOR INCIDENTAL AND CONNECTED PURPOSES

PUBLISHING DETAILS

Sponsoring Ministry/Portfolio:



Memorandum of OBJECTS AND REASONS

This Bill seeks to amend the Companies Law (2018 Revision) (the “principal Law”) to increase the effectiveness of the beneficial ownership regime.

Clause 1 provides the short title of the legislation and contains the commencement provision.

Clause 2 amends section 2 of the principal Law by inserting definitions of “Cayman Islands Stock Exchange” and “Cayman Islands exempted limited partnership”.

Clause 3 amends section 40(3)(a) of the principal Law in the definition of “voting rights” to include the right of a shareholder to appoint or remove directors of a company.

Clause 4 amends section 244 of the principal Law in the definition of “beneficial ownership register” to specify that the information to be maintained in the register is beneficial ownership information.

Clause 5 amends section 245 of the principal Law to provide for Part XVIII of the principal Law to apply to all companies incorporated or registered by way of continuation under the principal Law, except a legal entity or a subsidiary of a legal entity which is listed on the Cayman Islands Stock Exchange or an approved stock exchange under Schedule 4, or which is exempted by Regulations. Clause 4 also amends section 245(3) of the principal Law to define an entity which separately or collectively holds seventy-five per cent or more of the shares or voting rights in a company as a subsidiary of a legal entity for the purposes of the section.

Clause 6 inserts proposed new section 245A in the principal Law. The proposed new section 245A exempts a legal entity or a subsidiary of a legal entity which satisfies certain criteria from the application of sections 260, 261 and 262 of Part XVIII of the principal Law. The proposed new section 245A also defines “approved person” and sets out how a determination is to be made where an entity is operated or managed by an approved person and how a determination is to be made where a company is a subsidiary of a legal entity.

Clause 7 amends section 247 of the principal Law to allow the corporate services provider engaged by a company to rely, without further enquiry, on the response of a person to a notice in writing sent in good faith by the corporate services provider. The corporate services provided would be able to rely on the response of the person unless it has reason to believe that the response is misleading or false. Clause 8 also amends the definition of a beneficial owner to mean an individual who holds, whether directly or indirectly, twenty-five per cent or more of the shares or voting rights of a company.

Clause 8 amends section 248 of the principal Law to require the corporate services provider engaged by a company to take all reasonable steps to identify all relevant legal

entities that exist in relation to the company in respect of which the corporate services provider has been engaged. Clause 9 also amends section 248 to allow the corporate services provider to rely, without further enquiry, on the response of a legal entity to a notice in writing sent in good faith by the corporate services provider, unless the corporate services provider has reason to believe that the response is misleading or false.

Clause 9 amends section 249 of the principal Law to require the corporate services provider engaged by a company to give notice in writing to beneficial owners, relevant legal entities and any person that the corporate services provider knows or has reasonable cause to believe is a registrable person in relation to the company in respect of which the corporate services provider has been engaged.

Clause 10 amends section 250 of the principal Law to require a registrable person who does not believe that the person's required particulars are stated in the company's beneficial ownership register and who has not received a notice from the company or corporate services provider, to notify the corporate services provider engaged by the company of the person's status as a registrable person in relation to the company and give the corporate services provider the required particulars.

Clause 11 amends section 252 of the principal Law to require a corporate services provider engaged for the provision of registered office services by an exempted company, an ordinary non-resident company or a company registered to carry on a special economic zone business in a special economic zone, to establish and maintain the beneficial ownership register of the company. Clause 10 also amends section 252 of the principal Law to enable an ordinary resident company to engage the Registrar to assist the company to establish and maintain its beneficial ownership register. The proposed section also provides for a fine of five hundred dollars where the corporate services provider engaged by the company and any officer of the corporate services provider commits the offence of failing to comply with the requirement to establish and maintain the beneficial ownership register. Further, where the competent authority is satisfied that the offence was knowingly or wilfully authorised or permitted, an additional fine of one thousand dollars may be imposed, and where the offence is a continuing one, a fine of one hundred dollars for each day the offence continues may be imposed.

Clause 12 amends section 253 of the principal Law by removing the requirement to include prescribed information about the regulated legal entity, regulated parent entity or approved person in the written confirmation of the exemption required to be given by an exempt company to the corporate services provider or Registrar.

Clause 13 amends section 262 of the principal Law by removing the requirement for a senior official to certify that a request to search a company's beneficial ownership register is proper and lawfully made before the competent authority may execute the search. The clause also amends section 262 to allow the competent authority to search the beneficial ownership register of a company for the purpose of verifying the accuracy of the information provided by the company or the corporate services provider engaged by the company.



Clause 14 inserts proposed new section 262A in the principal Law. The proposed new section 262A empowers the competent authority to request by notice in writing, information from a legal entity or a subsidiary of a legal entity which satisfies certain criteria. The proposed section also provides for a fine of five hundred dollars where the corporate services provider engaged by the company and any officer of the corporate services provider commits the offence of failing to comply with a request. Further, where the competent authority is satisfied that the offence was knowingly or wilfully authorised or permitted, an additional fine of one thousand dollars may be imposed, and where the offence is a continuing one, a fine of one hundred dollars for each day the offence continues may be imposed.

Clause 15 amends section 277 of the principal Law by deleting the reference to section 262(2) which is being repealed by clause 14 of the Bill and replacing it with a reference to section 262(3A), which empowers the competent authority to execute a search of the beneficial ownership register of a company in accordance with PART XVIIIA for the purpose of verifying the accuracy of the information provided by the company or corporate services provider.

Clause 16 inserts proposed new section 279A in the principal Law. The proposed new section 279A empowers the competent authority to request additional information from a company or corporate services provider. The proposed section also provides for a fine of five hundred dollars where the corporate services provider engaged by the company and any officer of the corporate services provider commits the offence of failing to comply with a request. Further, where the competent authority is satisfied that the offence was knowingly or wilfully authorised or permitted, an additional fine of one thousand dollars may be imposed, and where the offence is a continuing one, a fine of one hundred dollars for each day the offence continues may be imposed.

Clause 17 amends section 280 of the principal Law by deleting the reference to section 245(1)(g) which is being repealed by clause 6 of the Bill and replacing it with a reference to section 245(1)(b) which provides for the exemption of companies under Regulations.

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CAYMAN ISLANDS**COMPANIES (AMENDMENT) BILL, 2020**

A BILL FOR A LAW TO AMEND THE COMPANIES LAW (2018 REVISION) TO INCREASE THE EFFECTIVENESS OF THE BENEFICIAL OWNERSHIP REGIME; 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, 2020.
- (2) This Law shall come into force on such date as may be appointed by Order made by the Cabinet and different dates may be appointed for different provisions of this Law and in relation to different matters.

Amendment of section 2 of the Companies Law (2018 Revision) - definitions and interpretation

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

“**Cayman Islands Stock Exchange**” means the Cayman Islands Stock Exchange Company incorporated under section 4 of the *Stock Exchange Company Law (2014 Revision)*; and

“**Cayman Islands exempted limited partnership**” means an exempted limited partnership registered in accordance with section 9 of the *Exempted Limited Partnership Law (2018 Revision)*;”.

Amendment of section 40 - register of members

3. The principal Law is amended in section 40(3)(a), by inserting after the words “rights conferred on shareholders” the words “, including the right to appoint or remove directors,”.

Amendment of section 244 - interpretation

4. The principal Law is amended in section 244(1), in the definition of “beneficial ownership register”, by inserting after the word “current” the words “beneficial ownership”.

Amendment of section 245 - application

5. The principal Law is amended in section 245 as follows —
- (a) by repealing subsections (1), (2) and (2A) and substituting the following subsection —
 - “(1) This Part applies in respect of companies incorporated or registered by way of continuation under this Law, except a legal entity or a subsidiary of one or more legal entities, any of which is —
 - (a) listed on the Cayman Islands Stock Exchange or an approved stock exchange in Schedule 4; or
 - (b) exempted by the Regulations.”; and - (b) in subsection (3)(a) by deleting the words “in excess of 75%” and substituting the words “seventy-five per cent or more”.

Insertion of section 245A - application of Part in relation to investment funds

6. The principal Law is amended by inserting after section 245, the following section —

“Application of Part in relation to investment funds

245A.(1) Notwithstanding section 245(1), sections 260, 261 and 262 shall not apply to a legal entity or a subsidiary of a legal entity which is —

- (a) managed, arranged, administered, operated or promoted by an approved person as a special purpose vehicle, private equity fund, collective investment scheme or investment fund, including where the vehicle, fund or scheme is a Cayman Islands exempted limited partnership; or



- (b) a general partner of a vehicle, fund or scheme referred to in paragraph (a) if the vehicle, fund or scheme is —
 - (i) registered or holds a licence under a regulatory law; or
 - (ii) managed, arranged, administered, operated or promoted by an approved person.
- (2) In this section, “**approved person**” means a person or a subsidiary of a person that is —
 - (a) regulated, registered or holding a licence in the Islands under a regulatory law;
 - (b) regulated by a regulatory authority in a country with a low degree of risk of money laundering, terrorist financing and proliferation financing; or
 - (c) listed on the Cayman Islands Stock Exchange or an approved stock exchange in Schedule 4.
- (3) For the avoidance of doubt, a legal entity shall not be considered —
 - (a) to be operated or managed by an approved person solely as a consequence of the legal entity having appointed an individual who is an employee of a legal entity which holds a licence under a regulatory law as a director; or
 - (b) to be managed, arranged, administered, operated or promoted by an approved person solely as a consequence of the legal entity having appointed an approved person to provide its registered office in the Islands.
- (4) For the purposes of this section, a company (“company S”) is a subsidiary of a legal entity described in subsection (1) if —
 - (a) the legal entity, separately or collectively, holds seventy-five per cent or more of the shares or voting rights in company S;
 - (b) each such legal entity is a member of company S and, separately or collectively, has 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).”.

Amendment of section 247 - duty of companies to identify beneficial owners

7. The principal Law is amended in section 247 as follows —

- (a) in the section heading by inserting after the word “companies”, the words “or corporate services providers”;

- (b) in subsection (2) by inserting after the word “company” wherever it appears, the words “or corporate services provider”; and
- (c) in subsection (3) by deleting the words “more than 25%” wherever they appear and substituting the words “twenty-five per cent or more”.

Amendment of section 248 - duty of companies to identify relevant legal entities

8. The principal Law is amended in section 248 as follows —

- (a) in the section heading by inserting after the word “companies”, the words “or corporate services providers”;
- (b) in subsection (1) by inserting after the words “A company”, the words “or corporate services provider”; and
- (c) in subsection (2) by inserting after the word “company” wherever it appears, the words “or corporate services provider”.

Amendment of section 249 – duty of companies to give notice to registrable persons

9. The principal Law is amended in section 249 as follows —

- (a) in the section heading by inserting after the word “companies”, the words “or corporate services providers”;
- (b) in subsection (1) as follows —
 - (i) by inserting after the word “company” the words “or corporate services provider”; and
 - (ii) by deleting the words “in relation to it” and substituting the words “in relation to the company”;
- (c) in subsection (3) as follows —
 - (i) by inserting after the words “A company” the words “or corporate services provider”; and
 - (ii) by inserting after the words “the company” wherever they appear, the words “or corporate services provider”; and
- (d) in subsection (5) as follows —
 - (i) by inserting after the words “A company” the words “or corporate services provider”; and
 - (ii) by inserting after the words “the company” wherever they appear, the words “or corporate services provider”.

Amendment of section 250 - duty of beneficial owners and relevant legal entities to supply information

10. The principal Law is amended in section 250 as follows —



- (a) in subsection (1)(d) by inserting after the word “company” the words “or corporate services provider”; and
- (b) in subsection (2) as follows —
 - (i) in paragraph (a) by inserting after the words “notify the company”, the words “or corporate services provider”; and
 - (ii) in paragraph (c) by inserting after the word “company” the words “or corporate services provider”.

Amendment of section 252 - duty to establish and maintain beneficial ownership register

11. The principal Law is amended in section 252 as follows —

- (a) by repealing subsections (2) and (3) and substituting the following subsections —
 - “(2) A corporate services provider engaged for the provision of registered office services by —
 - (a) an exempted company;
 - (b) an ordinary non-resident company; or
 - (c) a company registered to carry on a special economic zone business in a special economic zone under the *Special Economic Zones Law (2017 Revision)*,shall establish and maintain the beneficial ownership register of the company.
 - (3) An ordinary resident company to which this Part applies may engage the Registrar to assist the company to establish and maintain its beneficial ownership register.
 - (3A) Where an ordinary resident company does not engage the Registrar under subsection (3), the corporate services provider engaged by the ordinary resident company shall establish and maintain the beneficial ownership register of the ordinary resident company.”;
- (b) by inserting after subsection (4), the following subsections —
 - “(5) If there is a default in complying with subsection (2) or (3A), the corporate services provider and any officer of the corporate services provider who is in default —
 - (a) shall incur a penalty of five hundred dollars; and
 - (b) if the competent authority is satisfied that the default was knowingly and wilfully authorised or permitted, shall incur in addition to the penalty under paragraph (a), a penalty of one

thousand dollars and a further penalty of one hundred dollars for every day during which the default continues.

(6) In this section —

“**ordinary non-resident company**” means a company designated by the Financial Secretary as a non-resident company in accordance with section 2(3) of the *Local Companies (Control) Law (2019 Revision)*; and

“**ordinary resident company**” means a company which carries on business in the Islands in accordance with section 2(2) of the *Local Companies (Control) Law (2019 Revision)*.”.

Amendment of section 253 - role of corporate services provider and Registrar

12. The principal Law is amended in section 253(1A) by repealing paragraph (a) and substituting the following paragraph —

“(a) written confirmation of the exemption identifying the paragraph under section 245(1) that provides for the exemption; and”.

Amendment of section 262 - limits on searches that may be executed

13. The principal Law is amended in section 262 as follows —

- (a) in subsection (1) by deleting the words “Subject to subsection (2), the” and substituting the word “The”;
- (b) by repealing subsection (2); and
- (c) by inserting after subsection (3), the following subsection —

“(3A)The competent authority may execute a search of the beneficial ownership register of a company in accordance with this Part for the purpose of verifying the accuracy of the information provided by the company or corporate services provider.”.

Insertion of section 262A - beneficial ownership information in relation to investment funds

14. The principal Law is amended by inserting after section 262, the following section —

“Beneficial ownership information in relation to investment funds

262A.(1) The competent authority may by notice in writing, request beneficial ownership information from a legal entity or a subsidiary of a legal entity which is —



- (a) managed, arranged, administered, operated or promoted by an approved person as a special purpose vehicle, private equity fund, collective investment scheme or investment fund, including where the vehicle, fund or scheme is a Cayman Islands exempted limited partnership; or
 - (b) a general partner of a vehicle, fund or scheme referred to in paragraph (a) if the vehicle, fund or scheme is —
 - (i) registered or holds a licence under a regulatory law; or
 - (ii) managed, arranged, administered, operated or promoted by an approved person.
- (2) A legal entity or a subsidiary of a legal entity which receives a notice under subsection (1) shall comply with the notice within the period and in the manner specified in the notice.
- (3) If there is a default in complying with subsection (2), the legal entity or a subsidiary of a legal entity which is in default —
- (a) shall incur a penalty of five hundred dollars; and
 - (b) if the competent authority is satisfied that the default was knowingly and wilfully authorised or permitted, shall incur in addition to the penalty under paragraph (a), a penalty of one thousand dollars and a further penalty of one hundred dollars for every day during which the default continues.
- (4) In this section, “**approved person**” means a person or a subsidiary of a person that is —
- (a) regulated, registered or holding a licence in the Islands under a regulatory law;
 - (b) regulated by a regulatory authority in a country with a low degree of risk of money laundering, terrorist financing and proliferation financing; or
 - (b) listed on the Cayman Islands Stock Exchange or an approved stock exchange in Schedule 4.
- (5) For the avoidance of doubt, a legal entity shall not be considered —
- (a) to be operated or managed by an approved person solely as a consequence of the legal entity having appointed an individual who is an employee of a legal entity which holds a licence under a regulatory law as a director; or
 - (b) to be managed, arranged, administered, operated or promoted by an approved person solely as a consequence of the legal entity having appointed an approved person to provide its registered office in the Islands.

- (6) For the purposes of this section, a company (“company S”) is a subsidiary of a legal entity described in subsection (1) if —
- (a) the legal entity, separately or collectively, holds seventy-five per cent or more of the shares or voting rights in company S;
 - (b) each such legal entity is a member of company S and, separately or collectively, has 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).”.

Amendment of section 277 - unlawful search or disclosure of beneficial ownership information

15. The principal Law is amended in section 277 by deleting the words “section 262(2)” and substituting the words “section 262(3A)”.

Insertion of section 279A - request for additional information

16. The principal Law is amended by inserting after section 279, the following section —

“Request for additional information

- 279A.**(1) The competent authority may request by notice in writing, additional information from a company or corporate services provider for the purposes of carrying out its functions under this Part.
- (2) A company or corporate services provider which receives a notice for information under subsection (1) shall comply with the notice within the period and in the manner specified in the request.
 - (3) If there is a default in complying with subsection (2), the company or corporate services provider which is in default —
 - (a) shall incur a penalty of five hundred dollars; and
 - (b) if the competent authority is satisfied that the default was knowingly and wilfully authorised or permitted, shall incur in addition to the penalty under paragraph (a), a penalty of one thousand dollars and a further penalty of one hundred dollars for every day during which the default continues.”.



Amendment of section 280 - regulations

17. The principal Law is amended in section 280(3) by deleting the words “section 245(1)(g)” and substituting the words “section 245(1)(b)”.

Passed by the Legislative Assembly the day of , 2020.

Speaker

Clerk of the Legislative Assembly