

CAYMAN ISLANDS



LIMITED LIABILITY COMPANIES (AMENDMENT) BILL, 2020

Supplement No. 5 published with Legislation Gazette No. 3 dated 8th January, 2020.

A BILL FOR A LAW TO AMEND THE LIMITED LIABILITY 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 Limited Liability 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 a definition of “Cayman Islands Stock Exchange”.

Clause 3 amends section 71 of the principal Law by repealing subsections (1), (2) and (2A) which provides for application of Part 12 of the principal Law and substituting a new subsection (1) to provide for the Part to apply to all limited liability companies formed and registered or registered by way of continuation under the principal Law. The Part shall not however apply to a legal entity or subsidiary of a legal entity which is listed on the Cayman Islands Stock Exchange or an approved stock exchange under Schedule 4 of the Companies Law (2018 Revision) or which is exempted by Regulations. Clause 3 also amends subsection 71 to define an LLC as a subsidiary of one or more legal entities if such legal entities separately or collectively hold seventy-five per cent or more of the LLC interests with respect to profit sharing or voting rights in a limited liability company.

Clause 4 inserts proposed new section 71A which would exempt a legal entity or a subsidiary of a legal entity that satisfies certain criteria, from the application of sections 86, 87 and 88 of Part 12 of the principal Law. The proposed new section also defines “approved person” and sets out how a determination is to be made on if an entity is operated or managed by an approved person and how a determination is to be made on if a limited liability company is a subsidiary of a legal entity.

Clause 5 amends section 73 of the principal Law to allow a corporate services provider engaged for the provision of registered office services by a limited liability company to rely, without further enquiry, on the response of a person to a notice in writing sent in good faith by a corporate services provider, unless the corporate services provider has reason to believe that the response is misleading or false. Clause 5 also amends subsection 73 to amend the definition of a beneficial owner to mean an individual who holds directly or indirectly, an LLC interest in a limited liability company representing a right to share in twenty-five per cent or more of the capital, or as the case may be, the profits of the limited liability company or an LLC interest in a limited liability company representing twenty-five per cent or more of the voting rights in a limited liability company.

Clause 6 amends section 74 of the principal Law to require a corporate services provider engaged for the provision of registered office services by a limited liability company to

take all reasonable steps to identify all relevant legal entities that exist in relation to the limited liability company. Clause 5 also amends section 74 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 7 amends section 75 of the principal Law to require a corporate services provider engaged for the provision of registered office services by a limited liability company to give notice in writing to beneficial owners, relevant legal entities and any person it knows or has reasonable cause to believe is a registrable person in relation to the limited liability company in respect of which the corporate services provider has been engaged. Clause 6 also amends section 75 to empower the corporate services provider to give notice in writing to a member of a legal entity that it knows or has reasonable cause to believe is a relevant legal entity in relation to the limited liability company, if it knows or has reasonable cause to believe that the member or legal entity knows the identity of a registrable person. The clause further amends section 75 to remove the requirement for the corporate services provider to give notice to an individual or entity if it knows that the individual or entity is not a registrable person or if it has already been informed of the person's status as a registrable person and has received all the required particulars.

Clause 8 amends section 76 of the principal Law to require a registrable person who does not believe that the person's required particulars are stated in the limited liability company's beneficial ownership register and who has not received a notice from the limited liability company or its corporate services provider to notify the corporate services provider of the person's status as a non-registrable person in relation to the limited liability company and give the corporate services provider the required particulars.

Clause 9 amends section 78 by repealing the section and substituting a new section 78 which requires a limited liability company to keep its beneficial ownership at its registered office. Clause 9 also requires a corporate services provider engaged for the provision of registered office services by the limited liability company to establish and maintain the beneficial ownership register of the limited liability company. The proposed section also provides for a fine of five hundred dollars where the corporate services provider engaged by the limited liability 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 10 amends section 79 to remove 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 a limited liability



company which is exempt from the requirements of Part 12 of the principal Law, to the corporate services provider or Registrar.

Clause 11 amends section 88 to remove the requirement for a senior official to certify that a request to search a limited liability company's beneficial ownership register meets the conditions under section 262(2) of the Companies Law (2018 Revision). The clause also amends section 88 to allow the competent authority to search the beneficial ownership register of a limited liability company for the purpose of verifying the accuracy of the information provided by the limited liability company or corporate services provider.

Clause 12 inserts proposed new section 88A in the principal Law. The proposed new section 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 limited liability 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 13 inserts proposed new section 90A. The proposed new section empowers the competent authority to request additional information from a limited liability company or a corporate services provider, by notice in writing. The proposed section also provides for a fine of five hundred dollars where the corporate services provider engaged by the limited liability 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 14 amends section 100 to provide for an offence where a limited liability company knowingly and wilfully contravenes sections 73(1), 74(1), 78, 79(1) or (1A) or 81(2) of the principal Law.

Clause 15 amends section 101 to provide for an offence where a person to whom a notice under section 75 or 81 is addressed knowingly and wilfully fails to comply with the notice.

Clause 16 amends section 102 to provide for an offence where a person knowingly and wilfully fails to comply with a duty under section 76 or 83 of the principal Law, within the time specified in those sections.

Clause 17 amends section 106 by deleting the reference to section 71(1)(g) which is being repealed by clause 3 of the Bill and replacing it with a reference to section 71(1)(b) which provides for the exemption of limited liability companies under Regulations.

CAYMAN ISLANDS



**LIMITED LIABILITY COMPANIES
(AMENDMENT) BILL, 2020**

Arrangement of Clauses

Clause	Page
1. Short title and commencement	9
2. Amendment of section 2 of the Limited Liability Companies Law (2018 Revision) - interpretation.....	9
3. Amendment of section 71 - application	10
4. Insertion of section 71A - application of Part in relation to investment funds	10
5. Amendment of section 73 - duty of limited liability companies to identify beneficial owners	11
6. Amendment of section 74 - duty of limited liability companies to identify relevant legal entities.....	11
7. Amendment of section 75 - duty of limited liability companies to give notice to registrable persons.....	12
8. Amendment of section 76 - duty of beneficial owners and relevant legal entities to supply information.....	12
9. Repeal and substitution of section 78 - duty to establish and maintain beneficial ownership register	12
10. Amendment of section 79 - role of corporate services provider	13
11. Amendment of section 88 - limits on searches that may be executed	13
12. Insertion of section 88A - beneficial ownership information in relation to investment funds	13
13. Insertion of section 90A - request for additional information	15
14. Amendment of section 100 - failure of a limited liability company to establish or maintain beneficial ownership register.....	16
15. Amendment of section 101 - failure to comply with notices	16
16. Amendment of section 102 - failure to provide information.....	16
17. Amendment of section 106 - regulations.....	16



CAYMAN ISLANDS



LIMITED LIABILITY COMPANIES (AMENDMENT) BILL, 2020

A BILL FOR A LAW TO AMEND THE LIMITED LIABILITY 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) This Law may be cited as the Limited Liability 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 Limited Liability Companies Law (2018 Revision) - interpretation

- The *Limited Liability Companies Law (2018 Revision)*, in this Law referred to as the “principal Law” is amended in section 2 by inserting after the definition of the word “Authority” the following definition —

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

Amendment of section 71 - application

3. The principal Law is amended in section 71 as follows —
- (a) by repealing subsections (1), (2) and (2A) and substituting the following subsection —
 - “(1) This Part applies in respect of limited liability companies formed and registered or registered by way of continuation under this Law, except a legal entity or a subsidiary of a legal entity which is —
 - (a) listed on the Cayman Islands Stock Exchange or an approved stock exchange in Schedule 4 of the *Companies Law (2018 Revision)*; 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 71A - application of Part in relation to investment funds

4. The principal Law is amended by inserting after section 71, the following section —

“Application of Part in relation to investment funds

- 71A.** (1) Notwithstanding section 71(1), sections 86, 87 and 88 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 of the *Companies Law (2018 Revision)*.
- (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 limited liability 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 LLC interests with respect to profit sharing or voting rights in S or distributions of capital from S;
 - (b) each such legal entity is a member of S and, separately or collectively, such legal entities have the right to appoint or remove a majority of its managers; 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 73 - duty of limited liability companies to identify beneficial owners

5. The principal Law is amended in section 73 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 words “limited liability company” wherever they appear, 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 74 - duty of limited liability companies to identify relevant legal entities

6. The principal Law is amended in section 74 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 limited liability company”, the words “or corporate services provider”; and
- (c) in subsection (2) by inserting after the words “limited liability company” wherever they appear, the words “or corporate services provider”.

Amendment of section 75 - duty of limited liability companies to give notice to registrable persons

7. The principal Law is amended in section 75 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 words “limited liability 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 limited liability company”;
- (c) in subsection (3) as follows —
 - (i) by inserting after the words “A limited liability company”, the words “or corporate services provider”; and
 - (ii) by inserting after the words “the limited liability company”, the words “or corporate services provider”; and
- (d) in subsection (5) by inserting after the words “limited liability company” wherever they appear, the words “or corporate services provider”.

Amendment of section 76 - duty of beneficial owners and relevant legal entities to supply information

8. The principal Law is amended in section 76 as follows —

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

Repeal and substitution of section 78 - duty to establish and maintain beneficial ownership register

9. The principal Law is amended by repealing section 78 and substituting the following section —



“Duty to establish and maintain beneficial ownership register

- 78.** (1) A limited liability company to which this Part applies shall keep its beneficial ownership register at the limited liability company’s registered office.
- (2) A corporate services provider engaged for the provision of registered office services by a limited liability company to which this Part applies, shall establish and maintain the beneficial ownership register of the limited liability company.
- (3) If there is a default in complying with subsection (2), 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.”.

Amendment of section 79 - role of corporate services provider

10. The principal Law is amended in section 79(1A) by repealing paragraph (a) and substituting the following paragraph —

- “(a) written confirmation of the exemption identifying the paragraph under section 71(1) that provides for the exemption; and”.

Amendment of section 88 - limits on searches that may be executed

11. The principal Law is amended in section 88 as follows —

- (a) in subsection (1)(a) by deleting the words “, provided that the senior official certifies that the request meets the conditions referred to in section 262(2) of that Law”; and
- (b) by inserting after subsection (2), the following subsection —
- “(3) The competent authority may execute a search of the beneficial ownership register of a limited liability company in accordance with this Part for the purpose of verifying the accuracy of the information provided by the limited liability company or corporate services provider.”.

Insertion of section 88A - beneficial ownership information in relation to investment funds

12. The principal Law is amended by inserting after section 88, the following section —

“Beneficial ownership information in relation to investment funds

- 88A.**(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 —
- (a) is 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) is a general partner of a vehicle, fund or scheme referred to in paragraph (a) if the vehicle, fund or scheme —
 - (i) is registered or holds a licence under a regulatory law; or
 - (ii) is 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 that 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 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) —
 - (i) a penalty of one thousand dollars; and
 - (ii) 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
 - (c) listed on the Cayman Islands Stock Exchange or an approved stock exchange in Schedule 4 of the *Companies Law (2018 Revision)*.
- (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 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 limited liability 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 LLC interests with respect to profit sharing or voting rights in S or distributions of capital from S;
 - (b) each such legal entity is a member of S and, separately or collectively, such legal entities have the right to appoint or remove a majority of its managers; 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).”.

Insertion of section 90A - request for additional information

13. The principal Law is amended by inserting after section 90, the following section —

“Request for additional information

- 90A.**(1) The competent authority may by notice in writing, request additional information from a limited liability company or corporate services provider for the purposes of carrying out its functions under this Part.
- (2) A limited liability company or corporate services provider 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 limited liability 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 100 - failure of a limited liability company to establish or maintain beneficial ownership register

14. The principal Law is amended in section 100(1) by inserting after the words “company that knowingly” the words “and wilfully”.

Amendment of section 101 - failure to comply with notices

15. The principal Law is amended in section 101(1)(a) by inserting after the word “knowingly” the words “and wilfully”.

Amendment of section 102 - failure to provide information

16. The principal Law is amended in section 102(1)(a) by inserting after the word “knowingly” the words “and wilfully”.

Amendment of section 106 - regulations

17. The principal Law is amended in section 106(3) by deleting the words “section 71(1)(g)” and substituting the words “section 71(1)(b)”.

Passed by the Legislative Assembly the day of , 2020.

Speaker

Clerk of the Legislative Assembly

