

CAYMAN ISLANDS



COMPANIES (AMENDMENT) (NO.2) BILL, 2020

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A BILL FOR A LAW TO AMEND THE COMPANIES LAW (2020 REVISION) TO PROVIDE FOR AN ADMINISTRATIVE PENALTY REGIME; TO PERMIT THE REGISTRAR TO MAKE AVAILABLE FOR INSPECTION THE INFORMATION REQUIRED UNDER SECTION 26(3); AND FOR INCIDENTAL AND CONNECTED PURPOSES

PUBLISHING DETAILS

Sponsoring Ministry/Portfolio: Ministry of Financial Services and Home Affairs (FSHA)



Memorandum of OBJECTS AND REASONS

This Bill seeks to amend the *Companies Law (2020 Revision)* (the “principal Law”) to provide for an administrative penalty regime and to permit the Registrar to make available for inspection the information required under section 26(3).

Clause 1 provides for the short title.

Clause 2 provides for an amendment to section 2 of the principal Law in the definition of “regulatory Laws” to include the *Development Bank Law (2018 Revision)*, the *Directors Registration and Licensing Law, 2014* and the *Private Funds Law, 2020*.

Clause 3 provides for the repeal and replacement of section 26(3) of the principal Law. The amendment makes it a requirement for a register to be kept in which the particulars in Schedule 1A, except the particulars in paragraph (i), shall be entered. The amendment also provides for the Registrar to make the register available for inspection by a person on the payment of a fee.

Clause 4 provides for the amendment of section 168 of the principal Law to require an exempted company that does not hold a licence to carry on business in the Islands to which section 174 refers to state the nature of its business on the annual returns.

Clauses 5 and 6 provide for amendments to references in sections 174 and 202 of the principal Law which are consequent on the amendments to section 26(3).

Clause 7 provides for an amendment to section 245 of the principal Law to delete the words “excluded person” and substitute the words “registered person” wherever they appear. The amendment is consequent upon amendments to the *Securities Investment Business Law (2020 Revision)* that removed the category of “excluded persons”.

Clauses 8 to 12 provide for amendments to sections 256, 265, 270, 271, 273 and 280 of the principal Law to adjust the specified references to “company” to references to “corporate services provider”. The amendment, in each case, relates to the shifting of the responsibility for issuing a restrictions notice from the company to the corporate services provider.

Clause 13 provides for the insertion of Part XVIIIB into the principal Law. The proposed new Part XVIIIB sets out the administrative fine framework. The proposed new section 281A. empowers the Registrar to impose administrative fines on persons who breach any provision specified in Schedule 7. The proposed new section 281B provides that the fine for an initial breach is five thousand dollars. The proposed new section also provides that the Registrar may, in addition to the fine for the initial breach, impose a further fine of one thousand dollars for every month during which the breach continues until either the breach stops, payment is made for the initial fine and the fines for the continuing breaches or the total of the fines amount to twenty-five thousand dollars.

The proposed new section 281F provides that the Registrar may issue guidance on the enforcement of administrative fines. The proposed new section 281H empowers the Cabinet to, among other things, provide for the forms and procedures for imposing fines and appeals against decisions under Part XVIIIB by way for regulations.

Clause 14 provides for the amendment of section 282 to adjust a cross reference consequent on the amendment of the principal Law.

Clause 15 provides for the insertion of new Schedule 1A pursuant to the amendment of section 26(3). The new schedule provides for the required particulars that are required to be entered in the register of companies.

Clause 16 provides for the amendment of Schedule 5 of the principal Law to set out, among other things, the fee that is payable for the inspection of the register.

Clause 17 provides for the insertion of Schedule 7 into the principal Law. The new schedule is pursuant to the amendments to section 281A to provide for administrative fines.

Clause 18 provides for transitional provisions in relation to the administrative fine regime and the filing of annual returns on the commencement of the amending legislation. The provisions in the sections 13 and 17 shall not apply to any person until thirty days after the commencement of this amending Law. The clause also provides that, notwithstanding that an exempted company under section 168 of the principal Law has already filed the annual return due in January 2020 at the commencement of this Law, the information at section 168(aa) is required to be filed within three months of the commencement by every exempted company under section 168.



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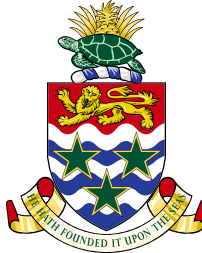


COMPANIES (AMENDMENT) (NO.2) BILL, 2020

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A BILL FOR A LAW TO AMEND THE COMPANIES LAW (2020 REVISION) TO PROVIDE FOR AN ADMINISTRATIVE PENALTY REGIME; TO PERMIT THE REGISTRAR TO MAKE AVAILABLE FOR INSPECTION THE INFORMATION REQUIRED UNDER SECTION 26(3); AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

Short title

1. This Law may be cited as the Companies (Amendment) (No. 2) Law, 2020.

Amendment of section 2 of the Companies Law (2020 Revision) – definitions and interpretation

2. The *Companies Law (2020 Revision)*, in this Law referred to as the “principal Law”, is amended in section 2 in the definition of “regulatory Laws” as follows —
- (a) in paragraph (g), by deleting the word “and” where it appears at the end of the paragraph;
 - (b) in paragraph (h), by deleting the comma and substituting a semicolon; and
 - (c) by inserting after paragraph (h), the following paragraphs —
 - “(i) *Development Bank Law (2018 Revision)*;
 - (j) *Directors Registration and Licensing Law, 2014*; and
 - (k) *Private Funds Law, 2020*.”.

Amendment of section 26 - registration

3. The principal Law is amended in section 26 by repealing subsection (3) and substituting the following subsections —

“(3) A register of companies shall be kept by the Registrar in which shall be entered the particulars set out in Schedule 1A and, save for the particulars set out in paragraph (i) of Schedule 1A, such particulars shall be annexed to the memorandum of association and articles of association, if any, insofar as they are not included therein.

(3A) The Registrar shall make the register under subsection (3) available for inspection by any person on payment of the fee specified in Part 1A of Schedule 5 and the inspection shall be subject to such conditions as the Registrar may impose.

(3B) The Cabinet may amend Schedule 1A by Order.”.

Amendment of section 168 - annual return

4. The principal Law is amended in section 168 by inserting after paragraph (a) the following paragraph —

“(aa) states the nature of the business;”.

Amendment of section 174 - prohibited enterprises

5. The principal Law is amended in section 174(3) by deleting the words “26(3)(a)” and substituting the words “26(3)”.

Amendment of section 202 - registration under this Part

6. The principal Law is amended in section 202(2) by deleting the words “paragraphs (a) to (h) of”.

Amendment of section 245 - application

7. The principal Law is amended in section 245 by deleting the words “an excluded person” wherever they appear and substituting the words “a registered person”.

Amendment of section 256 - consequences of failure to declare beneficial ownership

8. The principal Law is amended in section 256(3) by deleting the words “the company shall” and substituting the words “the corporate services provider shall”.

Amendment of section 265 - right to issue enforcement notices

9. The principal Law is amended in section 265 as follows —

(a) in subsection (1), by deleting the words “A company to which this Part applies” and substituting the words “The corporate services provider of a company to which this Part applies”; and



- (b) in subsection (2), by deleting the words “the company” and substituting the words “the corporate services provider”.

Amendment of sections 270 and 271 - relaxation of restrictions; and orders for sale

10. The principal Law is amended in sections 270(1) and 271 by deleting the word “company” wherever it appears and substituting the words “corporate services provider” in each instance.

Amendment of section 273 - company may withdraw restrictions notice

11. The principal Law is amended in section 273 as follows —
- (a) in the section heading, by deleting the word “company” and substituting the words “corporate services provider”; and
 - (b) by deleting the word “company” wherever it appears and substituting the words “corporate services provider” in each instance.

Amendment of section 280 - regulations

12. The principal Law is amended in section 280(1)(h) by deleting the word “companies” and substituting the words “corporate services providers”.

Insertion of Part XVIIIB – administrative fines

13. The principal Law is amended by inserting after Part XVIIIA the following Part —

“Part XVIIIB – Administrative fines

Registrar’s power to fine

- 281A. The Registrar has the power to impose an administrative fine on a person who breaches a provision of this Law that is specified in Schedule 7.

Fine amounts

- 281B. The fine shall be five thousand dollars for a breach and the Registrar may, in addition to the fine for the initial breach, impose a further fine of one thousand dollars for every month that the breach continues, until one of the following occurs —

- (a) the breach stops or is remedied;
- (b) payment of the initial fine and all fines imposed for the continuing breach; or
- (c) the total of the initial fine and all fines for the continuing breach amounts to twenty-five thousand dollars.

The power to fine

- 281C.** For the avoidance of doubt —
- (a) a fine may be imposed for a breach that is not an offence;
 - (b) where a breach set out in Schedule 7 is also an offence, a fine for the breach is not limited by the penalty under the provision or by sections 6(2)(ii) and 8 of the Criminal Procedure Code (2019 Revision); and
 - (c) the Registrar shall not impose a fine where criminal proceedings have commenced or have been concluded in relation to the acts that constitute the breach.

Limitation period

- 281D.**(1) The Registrar shall not impose a fine after the expiration of six months after the date on which the Registrar became aware of the occurrence of the breach.
- (2) For the purpose of subsection (1), the Registrar becomes aware of the breach when information is first received from which the breach could reasonably have been inferred.

Relationship with penalties

- 281E.** If a breach set out in Schedule 7 is an offence, a fine for the breach shall not preclude a prosecution for the breach or liability for any relevant fees.

Registrar may issue guidance

- 281F.** The Registrar may issue guidance on the enforcement of administrative fines.

Registrar's rule-making power for this Part

- 281G.** The Registrar may, by rules published in the Gazette, provide for —
- (a) aggravating and mitigating factors for fines; and
 - (b) the publishing of fines imposed in accordance with this Part.

Regulation-making powers for this Part

- 281H.** Regulations made by Cabinet may provide for —
- (a) forms and procedures for imposing fines;
 - (b) appeals against decisions under this Part;
 - (c) how fines shall be paid and may be enforced;
 - (d) interest on outstanding fines;
 - (e) evidentiary provisions for proceedings relating to this Part; and



- (f) such other matters that are necessary or convenient to give effect to the purposes or provisions of this Part.”.

Amendment of section 282 - amendment of Schedules

14. The principal Law is amended in section 282 by deleting the words “Schedule 4 or Schedule 5” and substituting the words “Schedule 4, Schedule 5 or Schedule 7”.

Insertion of Schedule 1A - required particulars

15. The principal Law is amended by inserting after Schedule 1 the following Schedule —

“SCHEDULE 1A

(section 26(3))

Required Particulars

The required particulars are —

- (a) the name of the company and, in the case of an exempted company, the exempted company’s dual foreign name (if any) together with its translated name;
- (b) the part of the Islands in which the registered office of the company is proposed to be situate;
- (c) the amount of capital of the company and, in the case of a company having its share capital divided into shares of a nominal or par value, the number of shares into which it is divided and the fixed amounts thereof;
- (d) the names and addresses of the subscribers to the memorandum and the number of shares taken by each subscriber;
- (e) the date of execution of the memorandum of association;
- (f) the date of filing of the memorandum of association;
- (g) the number assigned to the company;
- (h) in the case of a company limited by guarantee or a company that has no limit placed on the liability of its members —
 - (i) a statement that the company is limited by guarantee or is unlimited, as the case may be; and
 - (ii) the omission of any of the particulars specified in this Schedule which are irrelevant or inappropriate;
- (i) the nature of the business; and
- (j) the date of the end of the company’s financial year.”.

Amendment of Schedule 5 - fees

16. The principal Law is amended in Schedule 5 as follows —

- (a) in the Schedule cross-heading by deleting the words “(sections 26(4), 41(2), 45(2), 169(1), 184(2), 199(1) and 213(4) and (5))” and substituting the following Schedule cross-heading —
- “(sections 26(3), 26(4), 41(2), 45(2), 169(1), 184(2), 199(1), 213(4) and 213(5))”; and
- (b) by inserting after Part 1 the following Part —

“PART 1A

The fees payable for the inspection of the register under section 26(3A) is \$50.”.

Insertion of Schedule 7 – administrative fines

17. The principal Law is amended by inserting after Schedule 6 the following Schedule —

“SCHEDULE 7

(section 281A)

Administrative fines

No.	Section	Description of breach
1.	247(1)	Failure of a company to take reasonable steps to identify any beneficial owner of the company
2.	248(1)	Failure of a company to take reasonable steps to identify any relevant legal entities that exist in relation to the company
3.	249(1)	Failure of a company to give notice in writing to beneficial owners and relevant legal entities identified under section 249(1).
4.	250(2)	Failure of a beneficial owner or relevant legal entity to supply information under section 250(2) within the timeframe specified at 250(3).
5.	252(1)	Failure of a company to keep its beneficial ownership register at the company’s registered office.



No.	Section	Description of breach
6.	252(2)	Failure of a corporate services provider engaged for the provision of registered office services to establish and maintain the company's beneficial ownership register in accordance with section 252(2).
7.	252(3) and 252(3A)	Failure of an ordinary resident company to either engage a corporate service provider or the Registrar to assist the ordinary resident company to establish and maintain the beneficial ownership register.
8.	253(1)	Failure of a company to provide in writing to a corporate services provider or to the Registrar the required particulars of registrable persons in respect of the company once the particulars have been confirmed.
9.	253(1A)	Failure of a company to provide- (a) written confirmation of the exemption to the corporate services provider; or (b) instructions to file the written confirmation with the competent authority under section 253(1A).
10.	253(1A)(a)(i)	Incorrect reporting by a person that the person is a legal entity or a subsidiary to whom Part XVIII A does not apply by virtue of section 245(1).
11.	255(1)	Failure of a company to give notice requesting confirmation of a change under section 255(1) to a registrable person as soon as reasonably practicable after the company becomes aware of a relevant change with respect to a registrable person.
12.	255(2)	Failure of a company that receives confirmation of a relevant change to instruct the corporate services provider or the Registrar to enter the change in the company's beneficial ownership register in accordance with section 255(2).
13.	256(1)	Failure of the corporate services provider to give notice of its opinion to a company if it is of the opinion that the company has failed to comply with section 253 or 255 without reasonable excuse, or has made a statement that is false, deceptive or misleading in accordance with section 256(1).

No.	Section	Description of breach
14.	256(2)	Failure of a company to provide the corporate services provider or the Registrar with a response to a notice under section 256(2).
15.	256(3)	Failure of a corporate services provider to — (a) issue a restrictions notice; and (b) send a copy of the notice to the competent authority within two weeks, where the registrable person does not comply with the obligations under section 256(3).
16.	257(2)	Failure of a person to whom the section applies— (a) to notify the company of the relevant changes; (b) to state the date the change occurred; and (c) to give the company the information needed to update the beneficial ownership register under section 257(2), within the timeframe specified under section 257(3).
17.	261(2)	Failure of the corporate services provider to regularly deposit beneficial ownership information in such place, such manner and at such intervals as may be prescribed in accordance with section 261(2).
18.	266(1)	Failure of an entity to act in a manner consistent with the terms of a restrictions notice under section 266(1).
19.	279A	Failure of a company or a corporate services provider to respond to a request for additional information under section 279A within the time specified.

”.

Transitional

- 18.** (1) Sections 13 and 17 shall not apply to any person until thirty days after the commencement of this Law.
- (2) Notwithstanding that the annual return due in January 2020 has already been filed at the commencement of this Law, every exempted company under section



168 shall file the information required in section 168(aa) within three months after the commencement of this Law.

- (3) Section 170 shall apply, subject to any necessary modifications, to an exempted company referred to under subsection (2) that fails to comply with the requirement to file information within three months after the commencement of this Law.

Passed by the Legislative Assembly the day of , 2020.

Speaker

Clerk of the Legislative Assembly

