

CAYMAN ISLANDS



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**THE COMPANIES (AMENDMENT) LAW, 2017
(LAW 2 OF 2017)**

THE BENEFICIAL OWNERSHIP (COMPANIES) REGULATIONS, 2017

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THE BENEFICIAL OWNERSHIP (COMPANIES) REGULATIONS, 2017

The Cabinet, in exercise of the powers conferred by section 280 of the Companies Law (2016 Revision), makes the following Regulations –

PART 1 - PRELIMINARY

1. (1) These Regulations may be cited as the Beneficial Ownership (Companies) Regulations, 2017. Citation and commencement

(2) These Regulations shall come into force immediately after the Companies (Amendment) Law, 2017 comes into force.

2. In these Regulations - Definitions

“arrangement” includes -

- (a) a scheme, agreement or understanding, whether or not it is legally enforceable; and
- (b) a convention, custom or practice of any kind,

but something does not count as an arrangement unless there is at least some degree of stability about it (whether by its nature or terms, the time it has been in existence or otherwise);

“company” means a company to which Part XVIIIA of the Law applies;

“joint arrangement” means an arrangement between the holders of shares (or rights) that they will exercise all or substantially all the rights conferred by their respective shares (or rights) jointly in a way that is pre-determined by the arrangement;

“limited partner” means -

(2013 Revision)
(Law 5 of 2014)

- (a) a limited partner in a limited partnership registered under the Partnerships Law (2013 Revision) or the Exempted Limited Partnership Law, 2014, other than one who takes part in the management of the partnership business; or
- (b) an individual or a legal entity who is a foreign limited partner and participates in limited partnership arrangements established under the law of a country or territory outside the Islands;

“voting rights” -

- (a) means rights to vote at general meetings of the company or legal entity in question, including rights that arise only in certain circumstances; 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; and

“withdrawal notice” means a notice issued by a company under section 273 of the Law that withdraws a restrictions notice.

PART 2 - ADDITIONAL MATTERS TO BE NOTED IN BENEFICIAL OWNERSHIP REGISTER

Duty of company to provide additional matters to corporate services provider or Registrar

3. (1) A company shall provide in writing to a corporate services provider or to the Registrar, as the case may be, the additional matters required to be noted by this Part.

(2) Where any additional matter noted in a company’s beneficial ownership register in accordance with regulation 4, 5, 6 or 7 ceases to be true, the company shall, within one month of becoming aware of that fact -

- (a) update its beneficial ownership register to reflect any new information received regarding the additional matter, once that information is confirmed; or
- (b) note in its beneficial ownership register -
 - (i) that the additional matter has ceased to be true; and
 - (ii) the date on which the additional matter ceased to be true.

Additional matters where there is no registrable beneficial owner or relevant legal entity

4. (1) This regulation applies where a company knows or has reasonable cause to believe that there is no registrable beneficial owner or relevant legal entity in relation to the company.

(2) The company shall note in its beneficial ownership register the words “no registrable person identified” to show that -

- (a) the company knows or has reasonable cause to believe that there is no registrable beneficial owner or relevant legal entity in relation to the company; or
- (b) the company has taken reasonable steps to identify all beneficial owners and relevant legal entities and has not, in the course of taking such steps, been able to identify any registrable person.

5. (1) This regulation applies where -

- (a) a company has identified a registrable person in relation to the company; and
- (b) all the required particulars of that person have not yet been confirmed for the purposes of section 253 of the Law.

Additional matters where an identified registrable person's particulars are not confirmed

(2) The company shall note in its beneficial ownership register the words "confirmations pending" to show that the company has identified a registrable person in relation to the company but that all the required particulars of that person have not yet been confirmed.

6. (1) This regulation applies where a company -

- (a) is not required to place a note in its beneficial ownership register by regulation 4, or 5;
- (b) has not entered, and is not required to enter, the required particulars of any registrable person or registrable relevant legal entity in its beneficial ownership register; and
- (c) has not yet completed taking reasonable steps to find out if there is anyone who is a registrable person.

Additional matters where a company's investigations are ongoing

(2) The company shall note in its beneficial ownership register the words "enquiries pending" to show that it is still in the process of taking reasonable steps to find out if there is anyone who is a registrable person in relation to the company.

7. (1) This regulation applies where a company has issued a restrictions notice.

Additional matters where a company has issued a restrictions notice

(2) The company shall note in its beneficial ownership register the words "restrictions notice issued" and the date of issue of the notice to show that it has issued the restrictions notice.

(3) Where the company withdraws a restrictions notice under section 273 of the Law, the company shall note in its beneficial ownership register -

- (a) the words “restrictions notice withdrawn” to show that it has withdrawn the restrictions notice by giving a withdrawal notice; and
- (b) the date specified in the withdrawal notice as the date on which the withdrawal notice was given.

(4) Where a court makes an order under section 270 of the Law directing that a relevant interest in the company cease to be subject to restrictions, the company shall note in its beneficial ownership register -

- (a) the words “restrictions ceased by court order” to show that the court has made an order under section 270 of the Law directing that a relevant interest in the company cease to be subject to restrictions; and
- (b) the date on which the court’s order takes effect.

PART 3 - RESTRICTIONS NOTICES

Content of a restrictions notice

8. A restrictions notice shall -

- (a) specify the date on which it is issued;
- (b) identify the addressee’s relevant interest in the company by reference to the shares or right in question;
- (c) explain the effect of the notice;
- (d) state that, by virtue of the notice, certain acts or failures to act may constitute an offence; and
- (e) state that an aggrieved person may apply to the court for an order directing that the relevant interest cease to be subject to restrictions.

Withdrawal of a restrictions notice

9. Where a company is required to withdraw a restrictions notice under section 273 of the Law, the withdrawal notice shall -

- (a) be given before the end of the period of fourteen days beginning with the day on which the company is required to withdraw the restrictions notice under that section;
- (b) specify the date on which the withdrawal notice is given;
- (c) identify the addressee’s relevant interest in the company by reference to the shares or right in question; and
- (d) state that the relevant interest is no longer subject to restrictions.

PART 4 - INTERPRETATION: HOLDING AN INTEREST IN A COMPANY DIRECTLY OR INDIRECTLY

Application of Part 4

10. For the purposes of determining whether a person meets the specified conditions for beneficial ownership under section 247 or 248 of the Law or is a

registrable person under section 251 of the Law, this Part specifies the circumstances in which -

- (a) a person (“V”) is to be regarded as directly holding an interest in a company (“company W”); and
 - (b) an interest held by V in company W is to be regarded as held indirectly through a legal entity.
11. (1) V holds an interest in company W directly if - Holding an interest in a company directly
- (a) V holds shares in company W directly;
 - (b) V holds, directly, voting rights in company W;
 - (c) V holds, directly, 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 directly over company W; or
 - (e) paragraph (2) is satisfied.
- (2) This paragraph is satisfied where -
- (a) the trustees of a trust (or the members of a partnership or other entity 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 regulation (1)(a) to (d); and
 - (b) V has the right to exercise, or actually exercises, significant influence or control directly over the activities of that trust, partnership or other entity.
12. (1) This regulation applies where V - Holding an interest in a company indirectly through a legal entity
- (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 as described in regulation 13(3) 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 such as is described in regulation 13(1)(b) or (2)(b) that includes L.
- (2) Where this regulation applies, V holds the interest in company W -
- (a) through L; and
 - (b) through each other legal entity in the chain mentioned in paragraph (1)(b)(ii).
13. (1) A person holds a share indirectly if the person has a majority stake in a legal entity and that entity - Shares or rights held indirectly
- (a) holds the share in question; or

- (b) is part of a chain of legal entities -
 - (i) each of which (other than the last) has a majority stake in the entity immediately below it in the chain; and
 - (ii) the last of which holds the share.
- (2) A person holds a right indirectly if the person has a majority stake in a legal entity and that entity -
 - (a) holds that right; or
 - (b) is part of a chain of legal entities -
 - (i) each of which (other than the last) has a majority stake in the entity immediately below it in the chain; and
 - (ii) the last of which holds that right.
- (3) For these purposes, A has a majority stake in B if -
 - (a) A holds a majority of the voting rights in B;
 - (b) A is a member of B and has the right to appoint or remove a majority of the board of directors of B;
 - (c) A is a member of B and controls alone, pursuant to a joint agreement with other shareholders or members, a majority of the voting rights in B; or
 - (d) A has the right to exercise, or actually exercises, dominant direct influence or control over B.

**PART 5 - INTERPRETATION OF MISCELLANEOUS TERMS
AND RULES RESPECTING THE HOLDING OF SHARES
AND RIGHTS AND RESPECTING LIMITED PARTNERS**

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|----------------------------------|--|
| Application of Part 5 | 14. This Part applies for the purposes of determining whether a person meets the specified conditions for beneficial ownership under section 247 or 248 of the Law or holds a relevant interest for the purposes of the provisions respecting restrictions notices under Part XVIIIA of the Law. |
| Joint interests and arrangements | 15. (1) If two or more persons each hold a share or right jointly, each of them is treated as holding that share or right.

(2) If shares or rights held by a person and shares or rights held by another person are the subject of a joint arrangement between those persons, each of them is treated as holding the combined shares or rights of both of them. |
| Calculating shareholdings | 16. (1) In relation to a company that has share capital, a reference to holding “more than 25% of the shares” in that entity is to holding shares comprised in the issued share capital of that entity having a paid-up value (including both as to nominal value and share premium) exceeding (in aggregate) 25% of the |

aggregate paid up value (including both as to nominal value and share premium) of the issued share capital of that entity.

- (2) In relation to a legal entity that does not have a share capital -
 - (a) a reference to holding shares in that entity is to holding a right to share in the capital or, as the case may be, profits of that entity;
 - (b) a reference to holding “more than 25% of the shares” in that entity is to holding a right or rights to share in more than 25% of the capital or, as the case may be, profits of that entity.

17. (1) A reference to the voting rights in a legal entity is to the rights conferred on shareholders in respect of their shares (or, in the case of an entity not having a share capital, on members) to vote at general meetings of the entity on all or substantially all matters. Voting rights

(2) In relation to a legal entity that does not have general meetings at which matters are decided by the exercise of voting rights, a reference to exercising voting rights in the entity shall be read as a reference to exercising rights in relation to the entity that are equivalent to those of a person entitled to exercise voting rights in a company.

18. In applying this Part, the voting rights in a legal entity shall be reduced by any rights held by the entity itself. Voting rights in a legal entity

19. A reference to the right to appoint or remove a majority of the board of directors of a legal entity is to the right to appoint or remove directors holding a majority of the voting rights at meetings of the board on all or substantially all matters. Rights to appoint or remove members of the board

20. References to a board of directors, in the case of an entity that does not have such a board, shall be read as references to the equivalent management body of that entity. References to Board of Directors

21. (1) Where a person controls a right, the right is to be treated for the purposes of these Regulations as held by that person (and not by the person who in fact holds the right, unless that person also controls it). Rights treated as held by person who controls their exercise

(2) Where a relevant interest is treated under this regulation as held by a person other than the person who in fact holds the interest, both the holder and the other person shall be regarded as having the relevant interest.

(3) A person controls a right if, by virtue of any arrangement between that person and others, the right is exercisable only -

- (a) by that person;
 - (b) in accordance with that person's directions or instructions; or
 - (c) with that person's consent or concurrence.
- Rights exercisable only in certain circumstances etc.
22. (1) Rights that are exercisable only in certain circumstances shall be taken into account only -
- (a) when the circumstances have arisen, and for so long as they continue to subsist; or
 - (b) when the circumstances are within the control of the person having the rights.
- (2) Notwithstanding paragraph (1), rights that are exercisable by an administrator or by creditors while a legal entity is in insolvency proceedings shall not be taken into account even while the entity is in those proceedings.
- (3) Rights that are normally exercisable but are temporarily incapable of exercise shall continue to be taken into account.
- Rights attached to shares held by way of security
23. Rights attached to shares held by way of security provided by a person shall be treated as held by that person -
- (a) where apart from the right to exercise them for the purpose of preserving the value of the security, or of realizing it, the rights are exercisable only in accordance with that person's instructions; and
 - (b) where the shares are held in connection with the granting of loans as part of normal business activities and apart from the right to exercise them for the purpose of preserving the value of the security, or of realizing it, the rights are exercisable only in that person's interests.
- Certain limited partners
24. (1) An individual or a legal entity does not meet the specified conditions for being a beneficial owner or a relevant legal entity in relation to a company by virtue only of being a limited partner.
- (2) An individual or a legal entity does not meet the specified conditions in section 247(3) of the Law in relation to a company (or to the extent they may otherwise apply to such legal entity by virtue of section 248(3) of the Law) by virtue only of, directly or indirectly -
- (a) holding shares; or
 - (b) holding a right,
- in or in relation to a limited partner which (in its capacity as such) would meet the condition if it were an individual.

(3) Paragraphs (1) and (2) do not apply for the purposes of determining under section 247(5) of the Law (to the extent such section would apply to such legal entity by virtue of section 248(3) of the Law) whether the members of a partnership or other entity meet the conditions in section 247(3) or (4) of the Law (to the extent such section would apply to such legal entity by virtue of section 248(3) of the Law) in their capacity as such.

Made in Cabinet the 23rd day of March, 2017.

Kim Bullings

Clerk of the Cabinet.