



**Ministry of Finance and Ministry of Economic Development with  
the Bermuda Monetary Authority**

Explanatory Note

**Beneficial Ownership Regime - Legislative Proposals**

6 September, 2017

## Introduction

As a follow up to the consultation paper entitled “*Proposed Revisions to Beneficial Ownership Disclosures*” issued in May 2017, the **Ministry of Finance and Ministry of Economic Development with the Bermuda Monetary Authority** are now issuing the attached drafts of the Beneficial Ownership Amendments Act 2017, the Exchange Control Amendment Act 2017 and the Exchange Control Amendment Regulations 2017 for consultation.

This legislative package is intended to enable Bermuda to meet the standards for transparency with respect to registered entities as set forth by the Financial Action Task Force and the Organisation for Economic Co-operation and Development (OECD). It is also intended to support Bermuda’s fulfilment of obligations pursuant to the 2016 agreement between Bermuda and the United Kingdom for exchanges of beneficial ownership data and the development of a central registry.

The proposed legislative amendments will enhance our existing regime by:

- implementing comprehensive filing on specified beneficial owners of all companies and Limited Liability Companies (LLCs);
- expanding the disclosure requirements to include other types of controllers other than members with voting rights; and
- monitoring changes in the “ultimate beneficial owners” of persons holding 10% or more, and filing such changes.

The financial services industry and other interested parties are invited to submit their views on the the draft Bills and Regulations. Comments should be sent to the Bermuda Monetary Authority addressed to [policy@bma.bm](mailto:policy@bma.bm) or to the Ministry of Economic Development to [mbinns@gov.bm](mailto:mbinns@gov.bm) no later than 17 September, 2017. As time is of the essence in relation to these legislative amendments, comments received after the deadline may not be considered.

## **Explanatory Notes**

Please note that it is intended that guidance will be issued to assist in the implementation of the new requirements relating to Beneficial Ownership (BO). To assist in this consultative process, please note the following in relation to the drafts and underlying policy considerations:

\*\*As used herein, the term “companies” should be read to be inclusive of limited liability companies.

### **Exemptions**

There will be specific exemptions defined under the proposed legislation. In particular the exemptions will cover an investment fund as defined under the Investment Funds Act 2006 that is generally available to members of the public and otherwise follows the OECD guidelines. It also includes any closed ended fund that has engaged the services of a licensed CSP as the required BO information will be collected by the Corporate Service Provider (CSP) in accordance with POCA Regs 2008 CDD requirements.

### **Definition of Beneficial Owner (BO)**

1. We intend to provide guidance similar to that included in POCA Regs 2008 (Regulation 3) to provide examples of beneficial owners in relation to various types of entities and arrangements. For now, Regulation 3 may be considered to be illustrative of the intended approach with the exception of the 25% ownership or control threshold stated therein.
2. For purposes of these amendments, there is no threshold specified in the definition. Companies will generally need to identify 100% of their BOs. In addition, any BO with ownership or control of at least 10% of the shares or LLC interests or voting rights of the company (including any holdings through a legal entity in the ownership chain) must be both included in the register and filed with the Bermuda Monetary Authority (BMA.)

## **Requirement to obtain information on BOs**

1. Companies are required to take reasonable steps to identify their BOs. Although the legislation does not include an exhaustive list, examples of reasonable steps are included. It should be noted that reasonable steps must be determined in relation to the particular circumstances relating to a particular BO.
2. If after taking reasonable steps to identify the individuals who are the BOs, a company is satisfied that no such individuals have been identified, the company must maintain a record of the actions taken to identify the BOs.

## **Requirement to keep BO register**

1. BO registers should generally contain 100% of the BOs for the company. However, we intend to allow for circumstances under which this will not be an absolute requirement. As such, we intend to issue public guidance to assist with overall interpretation and implementation of this aspect.
2. Where there has been no BO identified with respect to ownership and control of shares or LLC interests and voting rights, the persons in senior management who are actually exerting control over the strategic direction and management of the company should be included on the BO register.
3. With respect to BOs holding less than 10% of the shares or LLC interests or voting rights in the company, such individuals should be included on the register except in circumstances where the company has:
  - a. conducted an appropriate risk assessment
  - b. determined that there is a lower risk in relation to such individuals; and
  - c. determined that access to the minimum required information by any competent authority in Bermuda can be facilitated within a reasonable time upon request.
4. Any risk assessment undertaken should include consideration of the following objectives of Bermuda as a jurisdiction to:
  - a. enhance transparency in the ownership of registered entities;

- b. discourage the misuse of Bermuda entities for money laundering or terrorist financing; and
  - c. ensure that there is adequate, accurate and timely information on the beneficial ownership and control of Bermuda entities that can be accessed by competent authorities as needed.
5. At a minimum, the risk assessment should consider factors such as:
  - a. country of citizenship/residence of the BO;
  - b. history of dealings/overall relationship with the company;
  - c. level of detail already known or otherwise confirmed by the company in relation to the BO; and
  - d. ease of communication and ability to obtain information within a reasonable time from the BO.
6. Duplicate registers are not required. To the extent that a register which has BO information is already being kept by the company pursuant to any other applicable law, the company may elect to use one register to meet the requirements provided that the minimum required information with respect to the BOs is included in the register.

### **Requirement for filing of BO info with BMA**

1. Upon initial registration or entry in Bermuda, up to 100% of BO information may be required to be filed with the BMA. The BMA will request the necessary information via the forms used for filing. Where a CSP with an unlimited license is used for the initial registration or entry into Bermuda, the requisite filing may be completed as soon as reasonably practicable, but not later than 14 days following the initial registration or other entry into Bermuda.
2. For any subsequent change in BO of at least 10% of the shares or LLC interests or voting rights in the company, general requirements for BMA consent pursuant to any applicable law or regulation will continue to apply. In cases where BMA consent is not otherwise required and a change occurs which triggers the filing requirement, information related to the change must be filed within 14 days following:
  - a. a change of direct ownership or control; or

- b. notification to the company of any change of BO of any relevant legal entity within the chain of ownership or control of the Bermuda company.
3. For purposes of determining whether the 10% filing threshold applies to any individual who qualifies as a BO as a result of an interest in a relevant entity, consideration must be given to the actual BO percentage at the Bermuda company level.
4. Duplicate filing is not required. The amendments to the Exchange Control Regulations 1973 will ensure that there are similar requirements for filing information pertaining to beneficial ownership as those to be adopted under the Companies Act 1981 and avoid duplication. As such, if any filing under the Exchange Control regime has been completed (whether initial or pursuant to any change or update in BO info) and the filing otherwise complies with the new requirements as relates to any particular BO (or all of the BOs for which a filing is required), no further filing in relation to such person is required.
5. As this section includes a change from the current policy of requiring notification to the BMA of any change “forthwith” and prior to the change becoming effective, we will take the necessary steps to amend the partnership Acts and applicable regulations which include this standard.

## **Offences**

Both civil and criminal penalties will be applicable. Please note that we are still considering fines to be imposed by these amendments.

A BILL

entitled

BENEFICIAL OWNERSHIP AMENDMENTS ACT 2017

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WHEREAS it is expedient to amend the Companies Act 1981 and the Limited Liability Company Act 2016 to make further provision regarding beneficial ownership of certain legal entities and for connected purposes;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

1 This Act may be cited as the Beneficial Ownership Amendments Act 2017.

Amendment of Companies Act 1981

2 (1) Section 2 of the Companies Act 1981 is amended in the definition of "prescribed", by inserting after the words "prescribed by" the words "regulations under section 287A or".

(2) The Companies Act 1981 is amended by inserting at the end of Part VI under section 98B the following—

“PART VIA  
BENEFICIAL OWNERSHIP

Interpretation of this Part

98C In this Part—

“beneficial owner” has the meaning given in section 98E;

“beneficial ownership register” means the register referred to in section 98H;

“Bermuda Monetary Authority” means the Bermuda Monetary Authority established under the Bermuda Monetary Authority Act 1969;

“closed-ended investment vehicle” means an investment fund that satisfies the requirements in section 3 of the Investment Funds Act 2006, save subsection (2)(b) of that section;

“company” means a company to which this Part applies;

“corporate service provider” has the meaning given in the Corporate Service Provider Business Act 2012;

“individual” means a natural person;

“investment fund” has the meaning given in section 3 of the Investment Funds Act 2006;

“legal entity” means a company, limited liability company or other body that is a legal person under the law by which it is governed;

“minimum required information” means the information referred to in section 98H;

“registrable person” in relation to a company means—

- (a) an individual whom the company identifies pursuant to section 98F as a beneficial owner of the company;
- (b) a relevant legal entity identified by the company pursuant to section 98F—
  - (i) that holds shares in the company directly in respect of that company; and
  - (ii) through which any beneficial owner or relevant legal entity indirectly owns shares in the company;
- (c) any other person who may be required to be included on the beneficial ownership register for the purposes of this Part;

“relevant legal entity” in relation to a company means—

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- (a) any legal entity that is incorporated, formed or registered (including by way of continuation) in Bermuda or elsewhere; and
- (b) any legal arrangement,

which would be a beneficial owner of the company if it were an individual;

“ultimate effective control” refers to situations in which ownership or control is exercised through a chain of ownership or by means of control other than direct control.

### Application of this Part

98D (1) This Part applies with respect to all companies to which this Act applies except those that are exempted under or pursuant to subsection (2).

(2) The following companies or entities are exempted from the application of this Act—

- (a) a company that is listed on the Bermuda Stock Exchange, an appointed stock exchange or a designated stock exchange and any wholly-owned subsidiary of such company;
- (b) an investment fund, except where such information can be obtained without giving rise to disproportionate difficulties;
- (c) closed-ended investment vehicles which engage a Bermuda licensed corporate service provider;
- (d) any other company or entity that is exempted by the Minister by order made by him.

(3) An order made under subsection (2)(d) shall be subject to the affirmative resolution procedure and may contain such consequential or transitional provisions as the Minister considers necessary or expedient.

### *Company to identify beneficial owners*

#### Beneficial owner

98E (1) In this Part—

“beneficial owner” means the individual or individuals who own or control a company through direct or indirect ownership of shares or voting rights in the company or through control by other means and includes any individual who exercises ultimate effective control over a legal person or arrangement or who is a beneficiary under a life or other investment linked insurance policy; and “beneficial ownership” shall be construed accordingly;

“control by other means” includes the right to appoint or remove a majority of the board of directors of a company.

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(2) Shares or voting rights held by an individual or individuals shall be an indication of direct ownership.

(3) Shares or voting rights held—

- (a) by a body corporate, which is under the control of an individual or individuals; or
- (b) by multiple corporate bodies, which are under the control of the same individual or individuals,

shall be an indication of indirect ownership by such individual or individuals.

Companies to obtain information regarding beneficial owners

98F (1) A company to which this Part applies shall take reasonable steps to identify any individual who is a beneficial owner of the company and all relevant legal entities that exist in relation to the company.

(2) Reasonable steps by a company include, but are not limited to, the following—

- (a) ensuring that appropriate provisions are included in the company's byelaws for the purposes of this Part;
- (b) in relation to a relevant legal entity, reviewing the legal entity's corporate charter documents (memorandum of association or articles of incorporation), register of members, and other such documents relating to the legal entity;
- (c) issuing a notice in writing in accordance with section 98G or 98I; or
- (d) any other steps determined by the company to be reasonable under the particular circumstances.

(3) If, after having taken reasonable steps to identify the beneficial owners of the company, the company is satisfied that—

- (a) no individuals who are beneficial owners are identified; and
- (b) if there is no reasonable suspicion that the individuals identified by it are the beneficial owners,

the company shall keep a record of the actions taken to identify the beneficial owners thereof.

Company to issue notice to beneficial owners

98G (1) For the purposes of section 98F and without limiting that section, a company to which this Part applies shall give notice in writing to—

- (a) beneficial owners and relevant legal entities identified by the company pursuant to section 98F; and

(b) any person that the company knows or has reasonable cause to believe to be a registrable person.

(2) The notice shall require any person to whom it is addressed, within one month of the date of receipt of the notice—

(a) to state whether or not the person is a beneficial owner or a relevant legal entity in relation to the company; and if so

(b) to confirm or correct any minimum required information that is included in the notice and supply any required information that is missing from the notice.

(3) A company is not required to give a notice to an individual or a legal entity if the company knows that the individual or legal entity is not a registrable person or the company has already been informed of the individual's or legal entity's status as a registrable person in relation to it, and has received all the minimum required information.

(4) For the purpose of identifying individuals or relevant legal entities, the company shall be entitled to rely, without further enquiry, on the response of a person to whom a notice in writing has been sent in good faith by the company, unless the company has reasonable cause to believe that a response is misleading or false.

(5) A person to whom a notice under this section is given is not required by that notice to disclose any information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

*Beneficial ownership register*

Duty to keep beneficial ownership register

98H (1) Every company to which this Part applies shall establish and maintain in accordance with this Part a beneficial ownership register and shall enter in its beneficial ownership register the minimum required information referred to in subsection (2) in respect of every registrable person.

(2) The minimum required information referred to in subsection (1) that the company shall enter in its beneficial ownership register is as follows—

(a) the registrable person's full name including, if applicable, any secondary or other name;

(b) where the registrable person is an individual—

(i) his residential address and, if different from his residential address, an address for service;

(ii) his nationality;

(iii) his date of birth;

(c) where the registrable person is a relevant legal entity—

- (i) the address of the person's registered office or principal office;
- (ii) the date and place of registration;
- (iii) the form of legal entity;
- (d) the effective date on which each person was entered into the register as a beneficial owner of the company;
- (e) a statement of the nature and extent of the interest held by each such beneficial owner;
- (f) in respect of a class of beneficial owners of such a size that it is not reasonably practicable to identify each beneficial owner, details sufficient to identify and describe the class of persons who are beneficial owners;
- (g) where applicable, the date on which each person who has ceased to be a beneficial owner of it ceased to be such an owner.

(3) Subject to section 98F, if no individual is identified as the beneficial owner of a company, there shall be entered in the beneficial ownership register the minimum required information with respect to the individual or individuals who exercise ultimate effective control of the company or who are its senior managers.

(4) The beneficial ownership register shall be kept at the registered office of the company or after giving written notice to the Registrar of the place at such other place in Bermuda convenient for inspection by the Registrar.

(5) Where the beneficial ownership register is not made available for inspection by the Registrar, the Registrar may exercise the powers conferred on him by Part 3 of the Registrar of Companies (Compliance Measures) Act 2017 in respect of the company and may seek an order from the Court that the company make the beneficial ownership register immediately available for inspection .

Company to keep beneficial ownership register up-to-date and current

98I (1) Where a company to which this Part applies becomes aware of a relevant change to the minimum required information that is set forth in its beneficial ownership register in relation to a registrable person, then the company shall give notice in writing to that person requesting confirmation, within the period of one month from the date of the notice, of the matters set out in subsection (5).

(2) The notice by the company under subsection (1) shall be given as soon as practicable after the company becomes aware of the change and shall request confirmation as to any such change and the details thereof.

(3) If the person to whom a notice is sent under subsection (1) confirms the relevant change, details of the change shall be entered in the company's beneficial ownership register in the prescribed form and manner as follows—

- (a) the details of the relevant change confirmed by the company;
- (b) the date on which the change was made.

- (4) For the purposes of this section, a relevant change occurs if—
- (a) a beneficial owner or a relevant legal entity ceases to be a registrable person; or
  - (b) any other change occurs as a result of which the accuracy of the minimum required information stated respecting the registrable person in the company's beneficial ownership register becomes incorrect or incomplete.
- (5) A relevant change with respect to a registrable person is considered to have been confirmed if—
- (a) the company has given notice in writing to the person requesting confirmation of—
    - (i) the relevant change;
    - (ii) the date of the change; and
    - (iii) the minimum required information included in the notice; and
  - (b) the details, date and particulars of the change have been supplied or confirmed to the company by the beneficial owner or relevant legal entity, or by another person with the knowledge of the beneficial owner or relevant legal entity.
- (6) The beneficial ownership register shall be updated—
- (a) on or before the effective date of any transfer or change of direct ownership or control of the company which impacts an entry in the beneficial ownership register;
  - (b) with respect to a change of indirect ownership or control, as soon as practicable after the company is notified of such change.
- (7) In the event that the beneficial ownership register is updated prior to the effective date, a notation of the effective date shall be included in the beneficial ownership register.

Power of Court to rectify beneficial ownership register

98J (1) Any person who is aggrieved by his inclusion, or lack thereof, on the beneficial ownership register for any reason may apply to the Court for rectification of the beneficial ownership register.

(2) Subsections (2) and (3) of section 67 apply with any necessary modifications with respect to rectification of the beneficial ownership register as those subsections apply in relation to rectification of the register of members.

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### *Beneficial ownership information to be filed with Bermuda Monetary Authority; compliance measures*

Filing of beneficial ownership information with Bermuda Monetary Authority  
98K (1) Subject to subsection (2) and section 289(3), a company to which this Part applies shall (in such form as the Bermuda Monetary Authority may require) at the time of its registration, continuation in Bermuda or conversion, as the case may be, file with the Bermuda Monetary Authority the minimum required information that is to be entered in its beneficial ownership register.

(2) Where a company engages a corporate service provider which holds an unlimited licence, the filing required under subsection (1) shall occur as soon as practicable but not later than 14 days following such registration, continuation in Bermuda or conversion, as the case may be.

(3) Notification of a change in direct ownership or control of the company which results in a change of beneficial ownership of 10% or more of the shares or voting rights in the company shall be filed with the Bermuda Monetary Authority as soon as practicable, but not later than 14 days, following the change.

(4) Where there is a change in indirect ownership or control of a company resulting in a change of beneficial ownership of 10% or more of the shares or voting rights of the company, the company shall notify the Bermuda Monetary Authority of the change and file the information relating to the change with the Bermuda Monetary Authority as soon as practicable after the company is notified of the change, but not later than 14 days thereafter.

(5) Where there is a change in respect of any information for the time being filed with the Bermuda Monetary Authority relating to a beneficial owner of a company which would render that information inaccurate, the company shall, in such form as the Bermuda Monetary Authority may require, file with the Bermuda Monetary Authority updated, accurate and current information regarding such change in information as soon as practicable after the company is notified of the change, but not later than 14 days thereafter.

### *Compliance measures*

Notice by company imposing restrictions

98L (1) This section applies where—

- (a) a notice under section 98G or 98I is served by a company on a beneficial owner; and
- (b) that person fails, without reasonable excuse, to give the company the information required by the notice within the time specified in it.

(2) Where subsection (1) applies, the company may—

- (a) if its byelaws so provide, issue a warning notice to a person advising of its intention to impose restrictions on that person's shares;
- (b) if its byelaws so provide, issue a decision notice to a person advising of the imposition of restrictions on that person's shares; or
- (c) if its byelaws do not so provide, apply to the Court for an order directing that the shares in question be subject to restrictions.

(3) In deciding whether, pursuant to a warning notice, to issue a decision notice or apply to the Court under subsection (2), the company, after giving the person the right to make representations, shall have regard to the effect of the decision notice or order on the rights of persons in respect of the relevant interest, including—

- (a) third parties;
- (b) persons with a security interest over the relevant interest;
- (c) shareholders; and
- (d) other beneficial owners.

(4) If the Court is satisfied that such an order issued pursuant to subsection (2)(c) may unfairly affect the rights of third parties in respect of the shares, the Court may, for the purpose of protecting those rights and subject to such terms as it thinks fit, direct that such acts by such persons or descriptions of persons and for such purposes as may be set out in the order shall not constitute a breach of the restrictions.

(5) On an application under this section the Court may make an interim order and any such order may be made unconditionally or on such terms as the Court thinks fit.

(6) The effect of a decision notice issued by the company or an order made by the Court under this section is that the shares in question may be subject to restrictions as follows—

- (a) any transfer of the shares is void;
- (b) no voting rights are exercisable in respect of the shares;
- (c) no further shares may be issued in right of the shares or in pursuance of an offer made to their holder;
- (d) no payment may be made of sums due from the company on the shares, whether in respect of capital or otherwise.

(7) Where shares are subject to the restriction in subsection (6)(c) or (d), an agreement to transfer any right to be issued with other shares in right of those shares, or to receive any payment on them (otherwise than in a liquidation), is void.

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(8) The provisions of this section are subject to any directions for protection of third parties or otherwise given by the Court.

(9) The Court on the application of—

- (a) any person aggrieved by any action taken by the company pursuant to this section; or
- (b) any person aggrieved in so far as protecting the rights of third parties, persons with a security interest over the relevant interest, shareholders or other beneficial owners in respect of the relevant interest in respect of which a decision notice has been issued,

may set aside or affirm a notice in whole or in part and give such directions as the Court thinks fit if the Court is satisfied that the decision notice unfairly affects the protection of the rights of third parties.

(10) Section 62 of the Supreme Court Act 1905 shall be deemed to extend to the making of rules under that section to regulate the practice and procedure on an application or an appeal to the Court under this section.

### Power to obtain information and reports

98M (1) The Registrar may by notice in writing served on a company or a beneficial owner or relevant legal entity thereof require the company or beneficial owner or relevant legal entity—

- (a) to provide the Registrar (or such person acting on behalf of Registrar as may be specified in the notice), at such time or times or at such intervals or in respect of such period or periods as may be so specified, with such information as the Registrar may reasonably require for the performance of his functions;
- (b) to provide the Registrar with a report, in such form as may be specified in the notice, of any matter about which the Registrar has required or could require that company, beneficial owner or person to provide information pursuant to this Part.

(2) The person to whom a notice is served shall within 30 days of receipt of a notice under subsection (1) provide the information requested by the Registrar and any information relating to any fact or matter of which he becomes aware which is likely to be of material significance under or pursuant to this Part.

(3) Without prejudice to section 287A(1), regulations made under that section shall prescribe the facts or matters which are likely to be of material significance for the discharge of the Registrar's functions under or pursuant to this Part.

### Offences

98N (1) Where a person—

- (a) contravenes or fails without reasonable excuse to comply with any provision of this Part or wilfully neglects to comply or defaults in complying with any provision of this Part, the person shall be liable on summary conviction to a fine not exceeding \$5,000;
  - (b) knowingly provides false information to the Registrar or the Bermuda Monetary Authority, the person shall be liable on summary conviction to a fine not exceeding \$50,000.
- (2) Where an offence to which subsection (1) applies is committed by the company or a body corporate is proved—
- (a) to have been committed with the consent or connivance of an officer of the company or body corporate; or
  - (b) to be attributable to any neglect on his part,
- the officer as well as the company or body corporate commits the offence and shall be liable to be proceeded against and punished accordingly.
- (3) It shall be a defence for the company, relevant legal entity or other person to show that he or it took reasonable steps to identify beneficial owners for the purposes of this Part.
- (4) In this section, “officer”, in relation to a body corporate, means any director, member of the committee of management, Chief Executive, manager, secretary or other similar officer of the body corporate and includes any person purporting to act in any such capacity.

*Miscellaneous*

**Confidentiality**

- 980 (1) Subject to section 98P, a requirement imposed by or under this Part has effect despite any obligation as to confidentiality or other restriction on the disclosure of beneficial ownership information imposed by statute, contract or otherwise.
- (2) Accordingly, a disclosure made or the sharing of beneficial ownership information in accordance with this Part does not breach—
- (a) any obligation of confidence in relation to the beneficial ownership information so disclosed; or
  - (b) any other restriction on access to or disclosure of the beneficial ownership information so accessed (however imposed).
- (3) Compliance by a person with any requirement under this Part to disclose or provide information is an absolute defence to any claim brought against that person in respect of any act done or any omission made by him in good faith in compliance with this Part.

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(4) For the avoidance of doubt, nothing in this section shall be construed as restricting the exercise of power by the Registrar under section 18(3) of the Registrar of Companies (Compliance Measures) Act 2017.

### Privileged information

98P A person shall not be required under this Part to provide or produce information or to answer questions which the person would be entitled to refuse to provide, produce or answer on grounds of legal professional privilege in proceedings in the Court.

Other provisions concerning beneficial ownership or registers etc. not affected

98Q (1) This Part does not limit or otherwise restrict any other statutory provision concerning beneficial ownership.

(2) Nothing in this Part shall be construed as affecting any provisions relating to the use of licensed corporate service providers or Bermuda Monetary Authority consent requirements regarding the transfer of interests or otherwise.

(3) Nothing in this Part affects the requirement under this Act or any other enactment for a company to which this Act applies to keep any other register.”.

(3) Section 255(A1) of the Companies Act 1981 is amended by inserting after paragraph (a) the following—

“(aa) keep the beneficial ownership register referred to in section 98H which is in existence at the commencement of the winding up, and has been provided to the liquidator, for five years from the date of the dissolution of the company;”.

(4) Section 261(5A) of the Companies Act 1981 is amended by inserting after paragraph (a) the following—

“(aa) the beneficial ownership register of the company referred to in section 98H that is in existence on that date is kept for a minimum of five years from the date on which the company is struck off the register;”.

(5) The Companies Act 1981 is amended by inserting after section 287 the following—

### “Regulations

287A (1) The Minister may make such regulations as are expedient to give effect to the provisions of this Act.

(2) Regulations made by the Minister under this section shall be subject to the affirmative resolution procedure.

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(3) Regulations may be made by the Minister of Finance under the Government Fees Act 1965 or the Stamp Duties Act 1976 to fix fees for any function performed under this Act, unless such fees are otherwise prescribed.”.

(6) The Companies Act 1981 is amended in section 289 by renumbering that provision as subsection (1) and inserting after subsection (1) the following—

“(2) Nothing in Part VIA shall be construed as requiring a company to establish a new and additional beneficial ownership register pursuant to section 98H, if the minimum required information is already being kept with respect to the company in a register under, or pursuant to, any other applicable statutory provision.

(3) Nothing in Part VIA shall be construed as requiring a company to file beneficial ownership information pursuant to section 98K, if the minimum required information with respect to the company is being, or has already been, filed under, or pursuant to, the Exchange Control Regulations 1973.

(4) For the avoidance of doubt, the company shall otherwise comply with the provisions of Part VIA with respect to its beneficial ownership register.”.

### Amendment of the Limited Liability Company Act 2016

3 (1) Section 2 of the Limited Liability Company Act 2016 is amended in the definition of “book and paper”, by inserting after the words “records of account” the words “, beneficial ownership register,”.

(2) The Limited Liability Company Act 2016 is amended by inserting at the end of Part 7 under section 65 the following—

#### “PART 7A

#### BENEFICIAL OWNERSHIP

##### Interpretation of this Part

65A In this Part—

“beneficial owner” has the meaning given in section 65C;

“beneficial ownership register” means the register referred to in section 65F;

“closed-ended investment vehicle” means an investment fund that satisfies the requirements in section 3 of the Investment Funds Act 2006, save subsection (2)(b) of that section;

“corporate service provider” has the meaning given in the Corporate Service Provider Business Act 2012;

“individual” means a natural person;

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“investment fund” has the meaning given in section 3 of the Investment Funds Act 2006;

“legal entity” means a company, limited liability company or other body that is a legal person under the law by which it is governed;

“limited liability company” means a limited liability company to which this Part applies;

“minimum required information” means the information referred to in section 65F;

“registrable person” in relation to a limited liability company means—

- (a) an individual whom the limited liability company identifies pursuant to section 65D as a beneficial owner of the limited liability company;
- (b) a relevant legal entity identified by the limited liability company pursuant to section 65D—
  - (i) that holds an LLC interest in the limited liability company directly in respect of that limited liability company; and
  - (ii) through which any beneficial owner or relevant legal entity indirectly owns an LLC interest in the limited liability company
- (c) any other person who may be required to be included on the beneficial ownership register for the purposes of this Part;

“relevant legal entity” in relation to a limited liability company means—

- (a) any legal entity that is incorporated or formed or registered (including by way of continuation) in Bermuda or elsewhere; and
- (b) any legal arrangement,

which would be a beneficial owner of the limited liability company if it were an individual;

“ultimate effective control” refers to situations in which ownership or control is exercised through a chain of ownership or by means of control other than direct control.

Application of this Part

65B (1) This Part applies with respect to all limited liability companies to which this Act applies except those that are exempted under or pursuant to subsection (2).

(2) The following limited liability companies or entities are exempted from the application of this Act—

- (a) a limited liability company that is listed on the Bermuda Stock Exchange or an appointed stock exchange or a designated stock

exchange and any wholly-owned subsidiary of such limited liability company;

- (b) an investment fund, except where such information can be obtained without giving rise to disproportionate difficulties;
- (c) a closed-ended investment vehicle which engages a Bermuda licensed corporate service provider;
- (d) any other limited liability company or entity that is exempted by the Minister by order made by him.

(3) An order made under subsection (2)(d) shall be subject to the affirmative resolution procedure and may contain such consequential or transitional provisions as the Minister considers necessary or expedient.

*Limited liability company to identify beneficial owners*

Beneficial owner

65C (1) In this Part—

“beneficial owner” means the individual or individuals who own or control a limited liability company through direct or indirect ownership of LLC interests or voting rights in the limited liability company or through control by other means and includes any individual who exercises ultimate effective control over a legal person or arrangement or who is a beneficiary under a life or other investment linked insurance policy; and “beneficial ownership” shall be construed accordingly;

“control by other means” includes the right, directly or indirectly, to appoint or remove a majority of the managers of a limited liability company.

(2) LLC interests or voting rights held by an individual or individuals shall be an indication of direct ownership.

(3) LLC interests or voting rights held—

- (a) by a body corporate, which is under the control of an individual or individuals; or
- (b) by multiple corporate bodies, which are under the control of the same individual or individuals

shall be an indication of indirect ownership by such individual or individuals.

Limited liability companies to obtain information regarding beneficial owners

65D (1) A limited liability company to which this Part applies shall take reasonable steps to identify any individual who is a beneficial owner of the limited liability company and all relevant legal entities that exist in relation to the limited liability company.

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(2) Reasonable steps by a limited liability company include, but are not limited to, the following—

- (a) ensuring that appropriate provisions are included in the LLC Agreement for the purposes of this Part;
- (b) in relation to a relevant legal entity, reviewing the legal entity's corporate charter documents (memorandum of association or articles of incorporation), register of members, and other such documents relating to the legal entity;
- (c) issuing a notice in writing to a beneficial owner in accordance with section 65E or 65G;
- (d) any other steps determined by the limited liability company to be reasonable under the particular circumstances.

(3) If, after having taken reasonable steps to identify the beneficial owners of the limited liability company, the limited liability company is satisfied that—

- (a) no individuals who are beneficial owners are identified; and
- (b) if there is no reasonable suspicion that the individuals identified by it are the beneficial owners,

the limited liability company shall keep a record of the actions taken to identify the beneficial owners thereof.

### Limited liability company to issue notice to beneficial owners

65E (1) For the purposes of section 65D and without limiting that section, a limited liability company to which this Part applies shall give notice in writing to—

- (a) beneficial owners and relevant legal entities identified by the limited liability company pursuant to section 65D; and
- (b) any person that the limited liability company knows or has reasonable cause to believe is a registrable person.

(2) The notice shall require any person to whom it is addressed, within one month of the date of receipt of the notice—

- (a) to state whether or not the person is a beneficial owner (within the meaning of section 65C(1)) or a relevant legal entity; and if so
- (b) to confirm or correct any minimum required information that is included in the notice and supply any required information that is missing from the notice.

(3) A limited liability company is not required to give a notice to an individual or a legal entity if the limited liability company knows that the individual or legal entity is not a registrable person or the limited liability company has already been informed of the individual's or legal entity's status as a registrable person in relation to it, and has received all the minimum required information.

(4) For the purpose of identifying individuals or relevant legal entities, the limited liability company shall be entitled to rely, without further enquiry, on the response of a person to whom a notice in writing has been sent in good faith by the limited liability company, unless the limited liability company has reasonable cause to believe that a response is misleading or false.

(5) A person to whom a notice under this section is given is not required by that notice to disclose any information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

*Beneficial ownership register*

Duty to keep beneficial ownership register

65F (1) Every limited liability company to which this Part applies shall establish and maintain in accordance with this Part a beneficial ownership register and shall enter in its beneficial ownership register the minimum required information referred to in subsection (2) in respect of every registrable person.

(2) The minimum required information referred to in subsection (1) that the limited liability company shall enter in its beneficial ownership register is as follows—

- (a) the registrable person's full name including, if applicable, any secondary or other name;
- (b) where the beneficial owner is an individual—
  - (i) his residential address and, if different from his residential address, an address for service;
  - (ii) his nationality;
  - (iii) his date of birth;
- (c) where the registrable person is a relevant legal entity—
  - (i) the address of the person's registered office or principal office;
  - (ii) the date and place of registration;
  - (iii) the form of legal entity;
  - (iv) if publicly listed, the name of the exchange on which it is listed;
- (d) the effective date on which each person was entered into the register as a beneficial owner of it;
- (e) a statement of the nature and extent of the interest held by each such beneficial owner;
- (f) in respect of a class of beneficial owners of such a size that it is not reasonably practicable to identify each beneficial owner, details sufficient to identify and describe the class of persons who are beneficial owners;

## BENEFICIAL OWNERSHIP AMENDMENTS ACT 2017

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(g) where applicable, the date on which each person who has ceased to be a beneficial owner of it ceased to be such an owner.

(3) Subject to section 65D, if no individual is identified as the beneficial owner of a limited liability company, there shall be entered in the beneficial ownership register the minimum required information with respect to the individual or individuals who exercise ultimate effective control of the limited liability company or who are its senior managers.

(4) The beneficial ownership register shall be kept at the registered office of the limited liability company or after giving written notice to the Registrar at such other place in Bermuda convenient for inspection by the Registrar.

(5) Where the beneficial ownership register is not made available for inspection by the Registrar, the Registrar may exercise the powers conferred on him by Part 3 of the Registrar of Companies (Compliance Measures) Act 2017 in respect of the limited liability company and may seek an order from the Court that the limited liability company make the beneficial ownership register immediately available for inspection .

Limited liability company to keep beneficial ownership register up-to-date and current

65G (1) Where a limited liability company to which this Part applies becomes aware of a relevant change to any minimum required information that is set forth in its beneficial ownership register in relation to a beneficial owner or a relevant legal entity, then the limited liability company shall give notice in writing to that person requesting confirmation, within the period of one month from the date of the notice, of the matters set out in subsection (5).

(2) The notice by the limited liability company under subsection (1) shall be given as soon as practicable after the limited liability company becomes aware of the change and shall request confirmation as to any such change and the details thereof.

(3) If the person to whom a notice is sent under subsection (1) confirms the relevant change, details of the change shall be entered in the limited liability company's beneficial ownership register in the prescribed form and manner as follows—

(a) the details of the relevant change confirmed by the limited liability company;

(b) the date on which the change was made.

(4) For the purposes of this section, a relevant change occurs if—

(a) a beneficial owner or a legal entity ceases to be a registrable person; or

(b) any other change occurs as a result of which the accuracy of the minimum required information stated respecting the registrable

person in the limited liability company's beneficial ownership register becomes incorrect or incomplete.

(5) A relevant change with respect to a beneficial owner or legal entity is considered to have been confirmed if—

- (a) the limited liability company has given notice in writing to the person requesting confirmation of—
  - (i) the relevant change;
  - (ii) the date of the change; and
  - (iii) the minimum required information included in the notice; and
- (b) the details, date and particulars of the change have been supplied or confirmed to the limited liability company by the beneficial owner of a relevant legal entity, or by another person, with the knowledge of the beneficial owner or relevant legal entity.

(6) The beneficial ownership register shall be updated—

- (a) on or before the effective date of any transfer or change of direct ownership or control of the limited liability company which impacts any entry in the beneficial ownership register;
- (b) with respect to a change of indirect ownership or control, as soon as practicable after the limited liability company is notified of such change.

(7) In the event that the beneficial ownership register is updated prior to the effective date, a notation of the effective date shall be included in the beneficial ownership register.

#### Power of Court to rectify beneficial ownership register

65H (1) Any person who is aggrieved by his inclusion, or lack thereof, on the beneficial ownership register for any reason may apply to the Court for rectification of the beneficial ownership register.

(2) Subsections (2) and (3) of section 57 apply with any necessary modifications with respect to rectification of the beneficial ownership register as those subsections apply in relation to rectification of the register of members.

#### *Beneficial ownership information to be filed with Authority; compliance measures*

#### Filing of beneficial ownership information with the Authority

65I (1) Subject to subsection (2) and section 257(3), a limited liability company to which this Part applies shall (in such form as the Authority may require) at the time of its formation, continuation in Bermuda or conversion, as the

case may be, file with the Authority the minimum required information that is to be entered in its beneficial ownership register.

(2) Where a limited liability company engages a corporate service provider which holds an unlimited licence, the filing required under subsection (1) shall occur as soon as practicable but not later than 14 days following such formation, continuation in Bermuda or conversion, as the case may be.

(3) Notification of a change in direct ownership or control of the limited liability company which results in a change of beneficial ownership of 10% or more of the LLC interests or voting rights in the limited liability company shall be filed with the Authority as soon as practicable, but not later than 14 days, following the change.

(4) Where there is a change in indirect ownership or control of a limited liability company which results in a change of beneficial ownership of 10% or more of the LLC interests or voting rights, the limited liability company shall notify the Authority of the change and file the information relating to the change with the Authority as soon as practicable after the limited liability company is notified of the change, but not later than 14 days thereafter.

(5) Where there is a change in respect of any information for the time being filed with the Authority relating to a beneficial owner of a limited liability company which would render that information inaccurate, the limited liability company shall, in such form as the Authority may require, file with the Authority updated, accurate and current information regarding such change in information as soon as practicable after the limited liability company is notified of the change, but not later than 14 days thereafter.

#### *Compliance measures*

##### Notice by limited liability company imposing restrictions

65J (1) This section applies where—

- (a) a notice under section 65E or 65G is served by a limited liability company on a beneficial owner; and
  - (b) that person fails to give the limited liability company the information required by the notice within the time specified in it.
- (2) Where subsection (1) applies, the limited liability company may—
- (a) if the limited liability company's LLC Agreement so provides, issue a warning notice to that person advising of its intention to impose restrictions on that person's LLC interest;
  - (b) if its LLC agreement so provides, issue a decision notice to a person advising of the imposition of restrictions on that person's LLC interests; or

(c) if the limited liability company's LLC Agreement does not so provide, apply to the Court for an order directing that the LLC interest in question be subject to restrictions.

(3) In deciding whether, pursuant to a warning notice, to issue a decision notice or apply to the Court under subsection (2), and after first giving the person the opportunity to make representations, the limited liability company shall have regard to the effect of the decision notice or order on the rights of persons in respect of the relevant interest, including—

- (a) third parties;
- (b) persons with a security interest over the relevant LLC interest;
- (c) members; and
- (d) other beneficial owners.

(4) If the Court is satisfied that such an order issued by the court under subsection (2)(c) may unfairly affect the rights of third parties in respect of the LLC interest, the Court may, for the purpose of protecting those rights and subject to such terms as it thinks fit, direct that such acts by such persons or descriptions of persons and for such purposes as may be set out in the order shall not constitute a breach of the restrictions.

(5) On an application under this section, the Court may make an interim order and any such order may be made unconditionally or on such terms as the Court thinks fit.

(6) The effect of a decision notice issued by a limited liability company or an order made by the Court under this section is that the LLC interest in question may be subject to restrictions as follows—

- (a) any transfer of the LLC interest is void;
- (b) no voting rights are exercisable in respect of the LLC interest;
- (c) no further LLC interest may be issued in right of the LLC interest or in pursuance of an offer made to its holder;
- (d) no payment may be made of sums due from the limited liability company on the LLC interest, whether in respect of capital or otherwise.

(7) Where an LLC interest is subject to the restriction in subsection (6)(c) or (d), an agreement to transfer any right to be issued with other LLC interests in right of that LLC interest, or to receive any payment on it (otherwise than in a liquidation), is void.

(8) The provisions of this section are subject to any directions for protection of third parties or otherwise given by the Court.

(9) The Court on the application of—

- (a) any person aggrieved by any action taken by the limited liability company pursuant to this section; or
- (b) any person aggrieved in so far as protecting the rights of third parties, persons with a security interest over the relevant interest, shareholders or other beneficial owners in respect of the relevant interest in respect of which a decision notice has been issued,

may set aside or affirm a notice in whole or in part and give such directions as the Court thinks fit if the Court is satisfied that the decision notice unfairly affects the protection of the rights of third parties.

(10) Section 62 of the Supreme Court Act 1905 shall be deemed to extend to the making of rules under that section to regulate the practice and procedure on an application or an appeal to the Court under this section.

#### Power to obtain information and reports

65K (1) The Registrar may by notice in writing served on a limited liability company or a beneficial owner or relevant legal entity thereof require the limited liability company or beneficial owner or legal entity—

- (a) to provide the Registrar (or such person acting on behalf of the Registrar as may be specified in the notice), at such time or times or at such intervals or in respect of such period or periods as may be so specified, with such information as the Registrar may reasonably require for the performance of his functions;
- (b) to provide the Registrar with a report, in such form as may be specified in the notice, of any matter about which the Registrar has required or could require that limited liability company, beneficial owner or person to provide information pursuant to this Part.

(2) The person to whom a notice is served shall within 30 days of receipt of a notice under subsection (1) respond to the notice and provide the information requested by the Registrar and any information relating to any fact or matter of which he becomes aware which is likely to be of material significance under or pursuant to this Part.

(3) Without prejudice to section 255(1), regulations made under that section shall prescribe the facts or matters which are likely to be of material significance for the discharge of the Registrar's functions under or pursuant to this Part.

#### Offences

65L (1) In this Part, where a person—

- (a) contravenes or fails without reasonable excuse to comply with any provision of this Part or wilfully neglects to comply or defaults in complying with any provision of this Part, the person shall be liable on summary conviction to a fine not exceeding \$5,000;

(b) knowingly provides false information to the Registrar or the Authority, the person shall be liable on summary conviction to a fine not exceeding \$50,000.

(2) Where an offence to which subsection (1) applies is committed by the limited liability company or a body corporate is proved—

(a) to have been committed with the consent or connivance of an officer of the limited liability company or body corporate; or

(b) to be attributable to any neglect on his part,

the officer as well as the limited liability company or body corporate commits the offence and shall be liable to be proceeded against and punished accordingly.

(3) It shall be a defence for the limited liability company, relevant legal entity or other person to show that he or it took reasonable steps to identify beneficial owners for the purposes of this Part

(4) In this section, “officer”, in relation to a body corporate, means any director, member of the committee of management, Chief Executive, manager, secretary or other similar officer of the body corporate and includes any person purporting to act in any such capacity.

*Miscellaneous*

*Confidentiality*

65M (1) Subject to section 65N, a requirement imposed by or under this Part has effect despite any obligation as to confidentiality or other restriction on the disclosure of beneficial ownership information imposed by statute, contract or otherwise.

(2) Accordingly, a disclosure made or the sharing of beneficial ownership information in accordance with this Part does not breach—

(a) any obligation of confidence in relation to the beneficial ownership information so disclosed; or

(b) any other restriction on access to or disclosure of the beneficial ownership information so accessed (however imposed).

(3) Compliance by a person with any requirement under this Part to disclose or provide information is an absolute defence to any claim brought against that person in respect of any act done or any omission made by him in good faith in compliance with this Part.

(4) For the avoidance of doubt, nothing in this section shall be construed as restricting the exercise of power by the Registrar under section 18(3) of the Registrar of Companies (Compliance Measures) Act 2017.

## BENEFICIAL OWNERSHIP AMENDMENTS ACT 2017

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### Privileged information

65N A person shall not be required under this Part to provide or produce information or to answer questions which the person would be entitled to refuse to provide, produce or answer on grounds of legal professional privilege in proceedings in the Court.

### Other provisions concerning beneficial ownership or registers etc. not affected

65O (1) This Part does not limit or otherwise restrict any other statutory provision concerning beneficial ownership.

(2) Nothing in this Part shall be construed as affecting any provisions relating to the use of licensed corporate service providers or Authority consent requirements regarding the transfer of LLC interests or otherwise.

(3) Nothing in this Part affects the requirement under this Act or any other enactment for a limited liability company to which this Act applies to keep any other register.”

(3) Section 204(A1) of the Limited Liability Company Act 2016 is amended by inserting after paragraph (a) the following—

“(aa) keep the beneficial ownership register referred to in section 65F which is in existence at the commencement of the winding up, and has been provided to the liquidator for five years from the date of the dissolution of the limited liability limited liability company;”.

(4) Section 210(5A) of the Limited Liability Company Act 2016 is amended by inserting after paragraph (a) the following—

“(aa) the beneficial ownership register of the limited liability company referred to in section 65F that is in existence on that date is kept for a minimum of five years from the date when the limited liability company is struck off the register;”.

(5) Section 257 of the Limited Liability Company Act 2016 is amended —

(a) by deleting the heading, and substituting “Savings”;

(b) by renumbering that provision as subsection (1) and inserting after subsection (1) the following—

“(2) Nothing in Part 7A shall be construed as requiring a limited liability company to establish a new and additional beneficial ownership register pursuant to section 65F, if the minimum required information is already being kept with respect to the limited liability company in a register under, or pursuant to, any other applicable statutory provision.

(3) Nothing in Part 7A shall be construed as requiring a limited liability company to file beneficial ownership information pursuant to section 65I, if the

## BENEFICIAL OWNERSHIP AMENDMENTS ACT 2017

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minimum required information with respect to the limited liability company is being, or has already been, filed under, or pursuant to, the Exchange Control Regulations 1973.

(4) For the avoidance of doubt, the limited liability company shall otherwise comply with the provisions of Part 7A with respect to its beneficial ownership register.”.

### Consequential amendments

- 4 (1) The consequential amendments set out in the Schedule have effect.
- (2) The Minister may by order subject to the negative resolution procedure repeal or amend any provision—
- (a) in any law that is passed before this Act; or
  - (b) in any other instrument made under an Act before the passing of this Act,
- where it appears to him that that provision is inconsistent with, or requires amendment consequentially upon, or has become unnecessary in consequence of, the provisions of this Act or regulations made under any provision hereunder.

### Transitional

- 5 (1) In this section—
- “existing” in relation to a company or a limited liability company to which this Act applies, means a company or limited liability company which exists on the date of the coming into operation of this Beneficial Ownership Amendments Act 2017;
- “this Act” means the Beneficial Ownership Amendments Act 2017.
- (2) An existing company or a limited liability company to which this Act applies shall update or verify as the case may be (in such form as the Bermuda Monetary Authority may direct) current minimum required information relating to beneficial owners thereof not later than 60 days after the date of coming into operation of this Act (or such other period as the Minister may direct).

### Commencement

- 6 (1) This Act shall come into operation on such day as the Minister responsible for the Registrar of Companies may by notice in the Gazette appoint.
- (2) The Minister may appoint different days for different provisions of this Act.

## BENEFICIAL OWNERSHIP AMENDMENTS BILL 2017

### EXPLANATORY MEMORANDUM

This Bill seeks to amend the Companies Act 1981 and the Limited Liability Company Act 2016 with respect to beneficial ownership and control of entities in line with certain international standards.

Clause 1 provides a title for this Bill.

Clause 2 amends certain provisions of, and inserts a new Part VIA in, the Companies Act 1981 (the “Companies Act”) as follows:

(1) Subsection (1) of clause 2 amends section 2 in the definition of “prescribed”.

(2) Subsection (2) of clause 2 inserts a new Part VIA in the Companies Act as follows:

- Section 98C inserts definitions for the interpretation of Part VIA of the Companies Act.
- Section 98D applies the provisions of the new Part VIA to all companies save a company that is listed on the Bermuda Stock Exchange, an appointed stock exchange or a designated stock exchange and certain investment funds; and a company or entity exempted by order of the Minister.
- Section 98E defines the term “beneficial owner”.
- Section 98F requires companies (in this Explanatory Memorandum “companies” refers to companies to which Part VIA applies) to take reasonable steps to identify their beneficial owners.
- Section 98G requires a company to issue a notice in writing to beneficial owners or any person that the company believes to be a beneficial owner.
- Section 98H requires a company to maintain a beneficial ownership register.
- Section 98I requires companies to keep their beneficial ownership register up to date.
- Section 98J makes provision for rectification of the beneficial ownership register.
- Section 98K requires a company to file beneficial ownership information with the Bermuda Monetary Authority at the time of its registration, continuation in Bermuda or conversion.
- Section 98L permits the imposition of restrictions on the shares of a company if its byelaws so provide.
- Section 98M empowers the Registrar to obtain information and reports for the purposes of this Part.
- Section 98N provides for offences.
- Section 98O deals with confidentiality.

## BENEFICIAL OWNERSHIP AMENDMENTS BILL 2017

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- Section 98P preserves legal professional privilege.
- Section 98Q provides for the effect of this Part in relation to other statutory provisions concerning beneficial ownership.

(3) Subsection (3) of clause 2 amends section 255 of the Companies Act to require the liquidator of a company to keep its beneficial ownership information for five years after the dissolution of the company.

(4) Subsection (4) of clause 2 amends section 261 of the Companies Act to require a company to keep its beneficial ownership information for five years after the company is struck off the Register.

(5) Subsection (5) of clause 2 amends the Companies Act to insert a new section 287A to make general provision for regulations.

(6) Subsection (6) of clause 2 amends section 289 to provide that a new register for the purposes of this Part is not required if a company already has a register in which it keeps updated and current beneficial ownership information.

Clause 3 inserts a new Part 7A in the Limited Liability Company Act 2016 (the “LLC Act”) as follows:

(1) Subsection (1) of clause 3 amends section 2 of the LLC Act by amending the definition of “book and paper”.

(2) Subsection (2) of clause 3 inserts a new Part 7A in the LLC Act as follows:

- Section 65A inserts definitions for the interpretation of Part 7A of the LLC Act.
- Section 65B applies the provisions of the new Part 7A to all limited liability companies save a limited liability company that is listed on the Bermuda Stock Exchange, an appointed stock exchange or a designated stock exchange and certain investment funds; and a limited liability company or entity exempted by order of the Minister.
- Section 65C defines the term “beneficial owner”.
- Section 65D requires limited liability companies to take reasonable steps to identify their beneficial owners.
- Section 65E requires a limited liability company to issue a notice to beneficial owners or any person it believes to be a beneficial owner.
- Section 65F requires every limited liability company to maintain a beneficial ownership register.
- Section 65G requires limited liability companies to keep their beneficial ownership register up to date.
- Section 65H makes provision for rectification of the beneficial ownership register.
- Section 65I requires a limited liability company to file beneficial ownership information with Bermuda Monetary Authority at the time of its formation, continuation in Bermuda or conversion.

## BENEFICIAL OWNERSHIP AMENDMENTS BILL 2017

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- Section 65J permits a limited liability company to impose restrictions on LLC interests if its LLC Agreement so provides.
- Section 65K gives the Registrar power to obtain information and reports for the purposes of this Part.
- Section 65L provides for offences.
- Section 65M deals with confidentiality.
- Section 65N preserves legal professional privilege.
- Section 65O provides that other statutory provisions concerning beneficial ownership or registers are not affected.

(3) Subsection (3) of clause 3 amends section 204 of the LLC Act to require that a liquidator keep beneficial ownership information for five years after the dissolution of the limited liability company.

(4) Subsection (4) of clause 3 amends section 210 of the LLC Act to require a limited liability company to keep its beneficial ownership information for five years after the limited liability company is struck off the Register.

(5) Subsection (5) of clause 3 amends section 257 of the LLC Act to provide that a new register for the purposes of this Part is not required if a limited liability company already has a register in which it keeps updated and current beneficial ownership information.

Clause 4 provides for consequential amendments.

Clause 5 provides for transitional matters.

Clause 6 provides for commencement of this Act.

A BILL

entitled

BENEFICIAL OWNERSHIP AMENDMENTS (NO 2) ACT 2017

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WHEREAS it is expedient to amend the Exchange Control Act 1972 in relation to beneficial ownership and for connected purposes;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

1 This Act, which amends the Exchange Control Act 1972 (the "principal Act"), may be cited as the Beneficial Ownership Amendments (No 2) Act 2017.

2 The Exchange Control Act 1972 is amended in section 1 by inserting in the appropriate alphabetical order the following—

“prescribed” means prescribed by regulations under section 2.”.

Amends section 2 of principal Act

3 The Exchange Control Act 1972 is amended in section 2—

(a) in subsection (1)—

(i) in paragraph (n), by inserting after the word “directions” the words “or notices”;

(ii) by inserting after paragraph (n) the following—

BENEFICIAL OWNERSHIP AMENDMENTS (NO 2) ACT 2017

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- “(na) respecting the Controller’s power to obtain information from any person to which this Act applies including, but not limited to, information relating to beneficial owners;
- (nb) prescribing civil penalties;
- (nc) providing for savings, transitional matters and appeals;”;
- (b) by inserting after paragraph (o) the following—
  - “(oa) prescribing fees for the purposes of this Act and regulations made hereunder and different fees may be prescribed as the Minister considers appropriate;”
- (c) in subsection (2), by deleting the word “and” at the end of paragraph (b) and by inserting after paragraph (b) the following—
  - “(c) that a contravention or breach thereof shall be subject to the imposition of such civil penalty not exceeding \$25,000 as may be prescribed;”;
- (d) in subsection (4), by inserting after the word “section” the words “, except that regulations prescribing or amending or otherwise varying fees shall be subject to the affirmative resolution procedure.

Commencement

- 3
- (1) This Act shall come into operation on such day as the Minister of Finance may by notice in the Gazette appoint.
  - (2) The Minister may appoint different days for different provisions of this Act.

BERMUDA

EXCHANGE CONTROL AMENDMENT (NO. 2) REGULATIONS 2017

BR / 2017

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The Minister of Finance, in exercise of the powers conferred by section 2 of the Exchange Control Act 1972, makes the following Regulations:

Citation

1 These Regulations, which amend the Exchange Control Regulations 1973 (the “principal Regulations”), may be cited as the Exchange Control Amendment (No. 2) Regulations 2017.

Amends regulation 2

2 (1) The principal Regulations are amended in regulation 2 by inserting in the appropriate alphabetical order the following—

“beneficial owner” has the meaning given in section 98E of the Companies Act 1981;

“control by other means” has the meaning given in section 98E of the Companies Act 1981;

EXCHANGE CONTROL AMENDMENT (NO. 2) REGULATIONS 2017

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“individual” means a natural person;

“minimum required information” has the meaning given in section 98C of the Companies Act 1981;”.

Amends regulation 12

3 The principal Regulations are amended in regulation 12 by inserting after paragraph (1) the following—

“(1A) For the avoidance of doubt, a request for permission of the Controller under paragraph (1) shall be made in such form as the Controller may direct and include the minimum required information relating to beneficial owners of the company.”.

Amends regulation 13

4 The principal Regulations are amended in regulation 13 by inserting after paragraph (1) the following—

“(1A) For the avoidance of doubt, a request for permission of the Controller under paragraph (1) shall be made in such form as the Controller may direct and include the minimum required information relating to beneficial owners of the company.”.

Inserts regulation 13B

5 The principal Regulations are amended by inserting after regulation 13A the following—

“Duty to update beneficial ownership information

13B Where there is a change in indirect ownership or control of a company in respect of which regulation 12 or 13 applies resulting in a change of beneficial ownership of 10% or more of such ownership or control thereof, the company shall notify the Controller of the change and file the information relating to the change with the Controller as soon as practicable after the person or entity knows of such a change, but not later than 14 days thereafter.”.

Amends regulation 25A

6 The principal Regulations are amended in regulation 25A—

(a) by revoking paragraph (3) and substituting the following—

“(3) Where a company under paragraphs (1) and (2)—

(a) issues, at the time of its formation, securities, the company shall (in such form as the Controller may direct) file with the Controller the minimum required information relating to the beneficial owners of such securities as soon as practicable but not later than 14 days after such issue of securities;

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(b) issues or transfers securities at any time following the time referred to in subparagraph (a), the company shall (in such form as the Controller may direct) notify the Controller of the issue or transfer of the securities made by it which results in a change of beneficial ownership of 10% or more of the securities as soon as practicable but not later than 14 days after such issue or transfer.”;

(b) by inserting after paragraph (3) the following—

“(4) Notification of a change in indirect ownership or control of the company which results in a change of beneficial ownership of 10% or more of the shares or voting rights in the company shall be filed with the Controller as soon as practicable after the company is notified of the change, but not later than 14 days thereafter.

(5) Nothing in this regulation shall be construed as limiting or otherwise restricting any other general permission granted by the Controller pursuant to regulation 41 in relation to the company.”.

Amends regulation 42A

7 The principal Regulations are amended in regulation 42A by numbering that provision paragraph (1) and by inserting after paragraph (1) the following—

“(2) Where notification by such person is required pursuant to these Regulations, the person shall notify the Controller (in such form as the Controller may direct) as soon as practicable and not later than 14 days after any such issue or transfer of the securities or transfer of coupons made by the company. ”.

Inserts regulation 46A

8 The principal Regulations are amended by inserting after regulation 46 the following—

“Request for information

46A (1) Notwithstanding regulations 47, 47A and 47B, the Controller may by notice in writing served on any person in respect of whom these Regulations apply require the person—

- (a) to provide the Controller (or such person acting on behalf of the Controller as may be specified in the notice), at such time or times or at such intervals or in respect of such period or periods as may be so specified, with such information as the Controller may reasonably require for the performance of his functions under these Regulations;
- (b) to provide the Controller with a report, in such form as may be specified in the notice, of any matter about which the Controller has required or could require that person to provide information under these Regulations.

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(2) A person shall forthwith on receipt of notice under paragraph (1) give written notice to the Controller of any fact or matter of which the person becomes aware which is likely to be of material significance for the discharge, in relation to the company, of the Controller's functions in relation to beneficial ownership.

(3) The Controller may issue guidance which prescribes the facts or matters which are likely to be of material significance for the discharge of the Controller's functions in relation to beneficial ownership under these Regulations.”.

Inserts regulations 49A and 49B

9 The principal Regulations are amended by inserting after regulation 49 the following—

“Power to impose civil penalties

49A (1) A person who fails to comply with any requirement relating to filing or updating of information or notification with respect to its beneficial owners by or under these Regulations shall, subject to paragraph (3), be liable to a penalty not exceeding \$10,000, as the Controller considers appropriate, for each such failure or contravention.

(2) For the purposes of paragraph (1), “appropriate” means effective, proportionate and dissuasive.

(3) Where a person is convicted of an offence under these Regulations, he is not liable to a civil penalty under these Regulations or any other statutory provision in relation to the same matter.

Appeals

49B Any person aggrieved by a decision of the Controller to issue a civil penalty may appeal to the Supreme Court against that decision and on such an appeal the Court may—

- (a) set aside or affirm the civil penalty in whole or in part; and
- (b) give such directions as the Court thinks fit including, if the Court is satisfied that the civil penalty unfairly affects the protection of the rights of third parties, such directions regarding the rights of third parties or persons with a security interest over the relevant interest as the Court considers just.”.

Amends regulation 50

10 The principal Regulations are amended in regulation 50—

- (a) in paragraph (2), by deleting the words “two thousand dollars” and substituting “\$5,000”;
- (b) in paragraph (3), by deleting the words “ten thousand dollars” and substituting “\$25,000”;

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### Savings

11 (1) Nothing in these Regulations shall be construed as requiring a company to file in duplicate the minimum required information relating to its beneficial owners, if the company's updated and current relevant minimum required beneficial ownership information in question is at the relevant time already filed with the Bermuda Monetary Authority under, or pursuant to, any other applicable statutory provision.

(2) For the avoidance of doubt, the company shall otherwise comply with the provisions of these Regulations with respect to filing of updated and current minimum required information relating to its beneficial owners with the Controller.

### Transitional

12 (1) In this regulation—

“existing” in relation to a company to which these Regulations applies, means a company which exists on the date of the coming into operation of the Exchange Control Amendment (No 2) Regulations 2017;

“these Regulations” means the Exchange Control Amendment (No 2) Regulations 2017.

(2) An existing company shall update or verify as the case may be (in such form as the Controller may direct) the current minimum required information relating to beneficial owners of the company not later than 60 days after the date of coming into operation of these Regulations (or such other period as the Minister may direct).

(3) Regulation 49A shall apply with any necessary modifications for the purposes of this regulation.

### Commencement

13 (1) These Regulations shall come into operation on such day as the Minister of Finance may by notice in the Gazette appoint.

(2) The Minister of Finance may appoint different days for different provisions of these Regulations.

Made this            day of            2017

Premier and Minister of Finance