

CAYMAN ISLANDS



Supplement No.3 published with Extraordinary
Gazette No. 79 dated 20th September, 2017.

**A BILL FOR A LAW TO AMEND THE COMPANIES LAW (2016
REVISION) TO ADD A DEFINITION OF “REGULATORY LAW” FOR
THE PURPOSES OF PART XVIIIA; TO REQUIRE CORPORATE
SERVICES PROVIDERS TO UPDATE BENEFICIAL OWNERSHIP
REGISTERS REGULARLY AND TO FILE DECLARATIONS OF
EXEMPTION FOR COMPANIES THAT ARE EXEMPT FROM PART
XVIIIA; TO CLARIFY EXCLUSIONS OF LEGAL ENTITIES AND
SUBSIDIARIES OF LEGAL ENTITIES FROM THE SCOPE OF PART
XVIIA AND ADD OTHER EXCLUSIONS; TO ADD THE ANTI-
CORRUPTION COMMISSION AS A BODY THAT MAY REQUIRE
SEARCHES TO BE MADE OF BENEFICIAL OWNERSHIP REGISTERS;
AND FOR INCIDENTAL AND CONNECTED PURPOSES**

THE COMPANIES (AMENDMENT) (NO. 2) BILL, 2017

MEMORANDUM OF OBJECTS AND REASONS

This Bill amends the Companies Law (2016 Revision) to fine-tune the provisions of Part XVIIA respecting Beneficial Ownership Registers.

Clause 1 of the Bill provides for the short title and commencement of the legislation.

Clause 2 amends section 244 of the Law to add a new definition of “regulatory law” for the purposes of Part XVIIA.

Clause 3 amends section 245 of the Law to clarify which special purpose vehicles, private equity funds, collective investment schemes and investment funds are exempt from the application of Part XVIIA and in relation to which of these vehicles, funds and schemes the general partner of the vehicle, fund or scheme is exempt. The clause also makes it clear that the Part applies to companies registered as excluded persons under section 5(4) of the Securities Investment Business Law (2015 Revision) and clarifies the circumstances in which a legal entity is considered to be operated, managed, arranged, administered or promoted by an approved person.

The clause adds new exemptions for legal entities regulated in jurisdictions listed in Schedule 3 of the Money Laundering Regulations (2015 Revision), for legal entities holding shares or interests in legal entities licensed under certain Cayman Islands Laws and for companies with a director or directors who are solely corporate directors licensed under a regulatory law.

Finally, the clause makes changes to section 245 in consequence of the addition of the definition “regulatory law” by clause 2.

Clause 4 amends section 253 of the Law to require a company that claims an exemption under section 245 to file a declaration with the competent authority, indicating the grounds for the exemption.

Clause 5 amends section 256(3)(a) of the Law to make it clear that the issuance of a restrictions notice under that section is subject to the limitations in section 265.

Clause 6 amends section 261 of the Law to require corporate services providers to regularly deposit beneficial ownership information received from companies, as

directed by the competent authority. The clause imposes penalties for default by a corporate services provider or any of its officers in complying with this obligation.

Clause 7 amends section 262 of the Law to name the Anti-Corruption Commission as a body, the designated senior officers of which may request the competent authority to search a company's beneficial ownership register.

Clause 8 amends section 263 in consequence of the addition of the definition "regulatory law" by clause 2.

Clause 9 amends section 280 in consequence of the renumbering of section 245(1) by clause 3.

THE COMPANIES (AMENDMENT) (NO. 2) BILL, 2017

ARRANGEMENT OF CLAUSES

1. Short title and commencement
2. Amendment of section 244 of the Companies Law (2016 Revision) - interpretation
3. Amendment of section 245 - application
4. Amendment of section 253 - role of corporate services provider and Registrar
5. Amendment of section 256 - consequences of failure to disclose beneficial ownership
6. Amendment of section 261 - duties of Registrar and corporate services providers
7. Amendment of section 262 - limits on searches that may be executed
8. Amendment of section 263 - disclosure of beneficial ownership information by the Cayman Islands Monetary Authority
9. Amendment of section 280 - regulations

CAYMAN ISLANDS

A BILL FOR A LAW TO AMEND THE COMPANIES LAW (2016 REVISION) TO ADD A DEFINITION OF “REGULATORY LAW” FOR THE PURPOSES OF PART XVIIA; TO REQUIRE CORPORATE SERVICES PROVIDERS TO UPDATE BENEFICIAL OWNERSHIP REGISTERS REGULARLY AND TO FILE DECLARATIONS OF EXEMPTION FOR COMPANIES THAT ARE EXEMPT FROM PART XVIIA; TO CLARIFY EXCLUSIONS OF LEGAL ENTITIES AND SUBSIDIARIES OF LEGAL ENTITIES FROM THE SCOPE OF PART XVIIA AND ADD OTHER EXCLUSIONS; TO ADD THE ANTI-CORRUPTION COMMISSION AS A BODY THAT MAY REQUIRE SEARCHES TO BE MADE OF BENEFICIAL OWNERSHIP REGISTERS; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

1. (1) This Law may be cited as the Companies (Amendment) (No. 2) Law, 2017.

Short title and
commencement

(2) This Law shall come into force on such date as may be appointed by the Cabinet and different dates may be appointed for different provisions.

2. The Companies Law (2016 Revision), in this Law referred to as “the principal Law”, is amended in section 244 -

Amendment of section
244 of the Companies
Law (2016 Revision) -
interpretation

(a) in the definition of “corporate services provider” by deleting the words “ “regulatory law” as defined in section 2 of the Monetary

- Authority Law (2016 Revision)” and substituting the words “regulatory law”; and
- (b) by inserting the following definition in the appropriate alphabetical sequence -

(2016
Revision)
(Law 10
of 2014) “ “regulatory law” means a law defined as such in section 2 of the Monetary Authority Law (2016 Revision), other than the Directors Registration and Licensing Law, 2014;”.

Amendment of section
245 - application

3. The principal Law is amended in section 245 -

- (a) by repealing subsection (1) and substituting the following subsection -

(1) This Part applies in respect of companies incorporated or registered by way of continuation under this Law, except a legal entity or subsidiary of one or more legal entities, any of which is -

Schedule
4

(2015
Revision)

(2015
Revision)

- (a) listed on the Cayman Islands Stock Exchange or an approved stock exchange in Schedule 4;
- (b) registered or holding a licence under a regulatory law (other than a company registered as an excluded person under section 5(4) of the Securities Investment Business Law (2015 Revision));
- (c) a company, the director or directors of which are solely corporate directors licensed under a regulatory law;
- (d) managed, arranged, administered, operated or promoted by an approved person as a special purpose vehicle, private equity fund, collective investment scheme or investment fund, including where the vehicle, fund or scheme is a Cayman Islands exempted limited partnership;
- (e) regulated in a jurisdiction listed in Schedule 3 of the Money Laundering Regulations (2015 Revision);

- (f) a general partner of a vehicle, fund or scheme referred to in paragraph (d) which vehicle, fund or scheme -
 - (i) is registered or holds a licence under a regulatory law; or
 - (ii) is managed, arranged, administered, operated or promoted by an approved person;
 - (g) holding directly a legal or beneficial interest in the shares of a legal entity which holds a licence under the Banks and Trust Companies Law (2013 Revision), the Companies Management Law (2003 Revision), the Insurance Law (2010 Revision), Part III of the Mutual Funds Law (2015 Revision) or the Securities Investment Business Law (2015 Revision); or
 - (h) exempted by the Regulations.”;
- (b) in subsection (2)(a) by deleting the words “regulatory law” as defined in section 2 of the Monetary Authority Law (2016 Revision)” and substituting the words “regulatory law (other than a company registered as an excluded person under section 5(4) of the Securities Investment Business Law (2015 Revision))”;
- (c) by inserting after subsection (2) the following subsection -

“(2A) For the avoidance of doubt, a legal entity shall not be considered -

 - (a) to be operated or managed by an approved person solely as a consequence of the entity having appointed an individual who is an employee of a legal entity which holds a licence under a regulatory law as a director; or
 - (b) to be managed, arranged, administered, operated or promoted by an approved person solely as a consequence of the entity having appointed an approved person to provide its registered office in the Cayman Islands.”.

- Amendment of section 253 - role of corporate services provider and Registrar
4. The principal Law is amended in section 253 -
- (a) by inserting after subsection (1) the following subsection -
- “(1A) A company which is exempt from the application of this Part shall provide the corporate services provider or the Registrar, as the case may be, with a declaration of exemption, indicating the grounds for the exemption under section 245, together with instructions to file the declaration with the competent authority.”; and
- (b) in subsection (2) by inserting before the word “shall” the words “referred to in subsection (1)”.
- Amendment of section 256 - consequences of failure to disclose beneficial ownership
5. The principal Law is amended in section 256(3)(a) by inserting before the word “issue” the words “subject to section 265,”.
- Amendment of section 261 - duties of Registrar and corporate services providers
6. The principal Law is amended in section 261 -
- (a) by renumbering the section as section 261(1); and
- (b) by inserting after subsection (1) the following subsections -
- “(2) The corporate services provider shall regularly deposit beneficial ownership information received from the companies that have engaged the provider, in such place, in such manner and at such intervals as directed by the competent authority.
- (3) If default is made in complying with subsection (2), the corporate services provider and any officer of the corporate services provider who is in default -
- (a) shall incur a penalty of five hundred dollars; and
- (b) if the competent authority is satisfied that the default was knowingly or willfully authorized or permitted, shall incur an additional penalty of one thousand dollars and a further penalty of one hundred dollars for every day during which the default continues.”.
- Amendment of section 262 - limits on searches that may be executed
7. Section 262 of the principal Law is amended by inserting after subsection (1)(c) the following paragraph -
- “(2016 Revision) (ca) the Anti-Corruption Commission established under section 3 of the Anti-Corruption Law (2016 Revision);”.

8. Section 263 of the principal Law is amended by deleting the words ““regulatory law” as defined in section 2 of the Monetary Authority Law (2016 Revision)” and substituting the words “regulatory law”.

Amendment of section
263 - disclosure of
beneficial ownership
information by the
Cayman Islands
Monetary Authority

9. Section 280(3) of the principal Law is amended by deleting the words “section 245(1)(e)” and substituting the words “section 245(1)(h)”.

Amendment of section
280 - regulations

Passed by the Legislative Assembly the day of , 2017.

Speaker.

Clerk of the Legislative Assembly.