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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 with respect to certain international standards 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:

PRELIMINARY

Citation
1 This Act may be cited as the Companies and Limited Liability Company (Beneficial Ownership) Amendment Act 2017.

AMENDMENT OF COMPANIES ACT 1981

Amends section 2
2 Section 2 of the Companies Act 1981 is amended—
(a) in the definition of “book and paper”, by inserting after the words “records of account” the words “, beneficial ownership register,”;
(b) by inserting in the appropriate alphabetical order the following—

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

Amends section 86
3 Section 86(1) of the Companies Act 1981 is amended by inserting after the words “of this Act” the words “except in Part VIA.”.

Inserts Part VIA
4 The Companies Act 1981 is amended by inserting at the end of Part VI after section 98B the following—
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;

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

"corporate service provider" means a person licensed to provide corporate service provider business under the Corporate Service Provider Business Act 2012;

"individual" means a natural person;

"legal arrangement" includes a trust, partnership or other similar arrangement;

"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" means a beneficial owner or relevant legal entity;

"relevant legal entity" in relation to a company means—

(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.

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, entities or vehicles, and any subsidiary thereof, are exempted from the application of this Part—

(a) a company whose shares are listed on the Bermuda Stock Exchange or an appointed stock exchange:
(b) a closed-ended investment vehicle managed or administered by a person licensed under the Investment Business Act 2003 or the Investment Funds Act 2006 or registered, authorised or licensed by a foreign regulator recognised by the Bermuda Monetary Authority;

(c) a permit company;

(d) a financial institution as defined in the Third Schedule to the Bermuda Monetary Authority Act 1969;

(e) any other type of company or entity that is exempted by the Minister by order made by him.

(3) For the purposes of this section, a company ("company S") is a subsidiary of one or more companies, entities or vehicles described in subsection (2) if—

(a) such companies, entities or vehicles, separately or collectively, hold more than 75% of the shares or voting rights in company S;

(b) each such company, entity or vehicle is a member of company S and, separately or collectively, has the right to appoint or remove a majority of its board of directors or other governing body; or

(c) it is a subsidiary of one or more companies, entities or vehicles each of which is itself a subsidiary of one or more companies, entities or vehicles described in subsection (2).

(4) An order made under subsection (2)(e) 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

Meaning of beneficial owner

98E (1) In this Part—

“beneficial owner” means—

(a) any individual or individuals who own or control more than 25% of the shares, voting rights or interests in the company through direct or indirect ownership thereof;

(b) if no such individual or individuals referred to in paragraph (a) exist or can be identified, any individual or individuals who control a company by other means;

(c) if no such individual or individuals referred to in paragraphs (a) and (b) exist or can be identified, the individual who holds the position of senior manager of the company,

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 and the exercise of control over a company by any means other than control by ownership of any interest;

“senior manager” means the chief executive, managing or executive director or president of a company or other person holding such senior position in the company by whatever title known.

(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 relevant legal entity, which is under the control of an individual or individuals; or

(b) by multiple relevant legal entities, 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) If, after having taken reasonable steps to identify the beneficial owners of the company and all relevant legal entities, the company is satisfied that—

(a) no individuals who are beneficial owners are identified; or

(b) if the company was not able to confirm 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.

(3) For the avoidance of doubt, reasonable steps include the issue of a notice under section 98G.

Company to issue notice to beneficial owners

98G (1) 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 is a registrable person.

(2) The notice shall require any person to whom it is addressed, within 30 days of the date of receipt thereof—
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.

(3) A company is not required to give a notice under subsection (1) if the company knows that the person is not a registrable person or the company has already been informed of the person’s status as a registrable person in relation to it, and has received all the minimum required information.

(4) For the purposes of subsection (1), 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

(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;
   (iv) where applicable, 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 registrable person of the company;

(e) a statement of the nature and extent of the interest held by each such registrable person;

(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; and

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

(3) 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.

(4) 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**

(1) The beneficial ownership register shall be updated with respect to a change of beneficial ownership which impacts an entry in the register, as soon as practicable after the company is notified of such change but not later than 14 days thereafter.

(2) Where a company to which this Part applies—

(a) 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; or

(b) has reason to believe that such a relevant change has occurred, the company shall give notice in writing to that person requesting confirmation, within 30 days from the date of receipt of the notice, of the matters set out in subsection (6).

(3) The notice by the company under subsection (2) shall be given as soon as practicable after the company becomes aware of the relevant change or has reason to believe that such a change has occurred, and shall require confirmation as to any such change and the details thereof.

(4) If the person to whom a notice is sent under subsection (2) confirms the relevant change, the company's beneficial ownership register shall be updated accordingly.
(5) A company is not required to give a notice under subsection (2) if the minimum required information relating to the change has already been provided to the company by the beneficial owner or another person with knowledge of the minimum required information.

(6) For the purposes of this section, a relevant change occurs where—

(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 with respect to the registrable person in the company’s beneficial ownership register becomes incorrect or incomplete.

(7) A relevant change with respect to a registrable person is considered to have been confirmed if the details, date and particulars of the change have been supplied or confirmed to the company by the registrable person, or by another person with knowledge of the registrable person.

(8) The beneficial ownership register shall not be updated until the relevant change has been confirmed.

**Disputes regarding beneficial ownership**

Where there is a bona fide legal dispute as to the beneficial owner of any shares, voting or other rights or interest in any company to which this Part applies and which is in the process of being adjudicated by a court—

(a) no change shall be recorded in the beneficial ownership register with respect to the beneficial owner of that share, voting right or interest; and

(b) no filing with respect to that change shall be made with the Bermuda Monetary Authority, prior to the determination of that matter unless the court so orders.

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

(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.
Beneficial ownership information to be filed with Bermuda Monetary Authority; compliance measures

Filing of beneficial ownership information with Bermuda Monetary Authority

98L (1) Subject to subsection (2) and section 289(3) and (4), 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 regarding its beneficial owners.

(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 any change of beneficial ownership of a company shall be filed with the Bermuda Monetary Authority as soon as practicable, but not later than 14 days after the company becomes aware of or is notified of the change, and has confirmed the minimum required information with respect to the change.

(4) 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, but not later than 14 days after the company becomes aware of or is notified of the change, and has confirmed the minimum required information with respect to the change.

Compliance measures

Notice by company imposing restrictions

98M (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 bye-laws so provide, issue a warning notice to a person advising of its intention to impose restrictions on that person’s shares;

(b) if its bye-laws so provide, issue a decision notice to a person advising of the imposition of restrictions on that person’s shares,
provided that such decision notice shall not take effect until at least 30 days following the date of receipt of the decision notice; or

(c) 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 opportunity 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 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.

(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—
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 or other persons.

(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

98N (1) The Registrar may by notice in writing served on a company or any registrable person require the company or registrable person—

(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 or registrable person to provide information pursuant to this Part.

(2) The person to whom a notice is served under subsection (1) shall within 30 days of receipt of such notice provide the information requested by the Registrar.

Offences

98O (1) In this Part, where any person—

(a) contravenes or fails without reasonable excuse to comply with any provision thereof 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) It shall be a defence for the person to show that he took reasonable steps to identify beneficial owners for the purposes of this Part.

(3) Where an offence under subsection (1) committed by a body corporate is proved to have been committed with the consent or connivance of an officer of
the body corporate, the officer as well as the body corporate commits the offence and shall be liable to be proceeded against and punished accordingly.

Miscellaneous

Confidentiality

98P (1) Subject to section 98Q, 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.

Privileged information

98Q 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.

Application of Public Access to Information Act 2010

98R (1) Notwithstanding any provision of the Public Access to Information Act 2010, this section shall have effect.

(2) For the purposes of this Part, no person who—

(a) obtains information relating to beneficial ownership directly or indirectly for the purposes of, or pursuant to, this Part; and

(b) receives a request under the Public Access to Information Act 2010 for such information relating to beneficial ownership information, shall disclose the request or such beneficial ownership information so requested.
Application of Personal Information Protection Act 2016
98S Nothing in this Part authorises a disclosure in contravention of any provision of the Personal Information Protection Act 2016 of personal information (as defined by that Act).

Other provisions concerning beneficial ownership or registers etc. not affected
98T (1) This Part does not, unless it is otherwise expressly provided to the contrary, limit or otherwise restrict any other statutory provision concerning any requirement for any person with an interest in a company to provide information relating to beneficial ownership.

(2) Nothing in this Part, unless it is otherwise expressly provided to the contrary, shall be construed as affecting any provisions relating to the use of licensed corporate service providers or Bermuda Monetary Authority consent requirements regarding the issue or transfer of securities or interests.

(3) Nothing in this Part, unless it is otherwise expressly provided to the contrary, affects the requirement under this Act or any other enactment for a company to which this Act applies to keep any other register.

Notices
98U (1) For the purposes of this Part, any notice, direction or other document (hereinafter referred to in this section as "document") required or authorised by or under this Part to be given or sent to or served on any person shall be set out in a document in writing which may be served either—

(a) by delivering it to that person;
(b) by leaving it at his proper address;
(c) by sending it by post to that address;
(d) by sending it to him by facsimile or electronic mail or other similar means which are capable of producing a document containing the text of the communication, in which case the document shall be regarded as sent or served when it is received by him in a legible form; or
(e) by any other method that provides proof of delivery or service,

and where the person is a body corporate the document may be delivered, by any of those means, to the Secretary or other appropriate person in respect of that body corporate.

(2) For the purposes of this section the proper address of any person shall, in the case of a body corporate, be the registered or principal office of that body corporate, and in any other case, shall be the last known address of the person.
(3) No document required by this Part to be given or sent to the Registrar or the Bermuda Monetary Authority or any other person shall be regarded as given or served until it is received.

(4) For the purposes of this Part, a document shall be taken to have been received by the person in relation to whom it was sent—

(a) where it was delivered to him personally, on the day of delivery;

(b) where it was sent to him by post at his address on the day on which he acknowledges receipt or, if no such acknowledgement was received from him, it shall, unless it is shown to the contrary, be deemed to have been received by him—

(i) seven working days after despatch if posted to an address within Bermuda; and

(ii) fifteen working days after despatch if posted to an address outside of Bermuda;

(c) by sending it to him by facsimile or electronic mail or similar means which are capable of producing a document containing the text of the communication, on the second day after the day on which it was transmitted.

(5) If the making of the transmission for purposes of subsection (4)(c) has been recorded in the computer or information processing system of the company or its representative it shall be presumed, unless the contrary is proved, that the transmission—

(a) was made to the person recorded in that system as receiving it;

(b) was made at the time recorded in that system at the time of delivery;

(c) contained the information recorded on that system in respect of it.

(6) For the avoidance of doubt, notices, directions or documents that are delivered under this Part are not statutory instruments for the purposes of the Statutory Instruments Act 1977.”

Amends section 255

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;”
COMPANIES AND LIMITED LIABILITY COMPANY (BENEFICIAL OWNERSHIP) AMENDMENT ACT 2017

Amends section 261
6 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;”

Inserts section 287A
7 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.

(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.”

Amends section 289
8 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 information relating to beneficial ownership pursuant to section 98L, if the minimum required information with respect to the beneficial owners of the company is being, or has already been, filed under, or pursuant to, any other applicable statutory provision.

(4) Nothing in this Part shall be construed as affecting requirements relating to the provision of information (including information relating to beneficial ownership) by a company to the Bermuda Monetary Authority at the time of its application for registration or continuation in Bermuda.

(5) For the avoidance of doubt, the company shall otherwise comply with the provisions of Part VIA with respect to its beneficial ownership register.”
COMPANIES AND LIMITED LIABILITY COMPANY (BENEFICIAL OWNERSHIP) AMENDMENT ACT 2017

AMENDMENT OF LIMITED LIABILITY COMPANY ACT 2016

Amends section 2
9 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.”.

Amends section 3
10 Section 3(1) of the Limited Liability Company Act 2016 is amended by inserting after the words “of this Act” the words “except in Part 7A.”.

Amends section 45
11 Section 45 of the Limited Liability Company Act 2016 is amended by repealing subsection (7) and substituting the following—

“(7) Subject to subsection (8), no LLC interest shall be issued or transferred without the consent of the Authority if, as a result of such issuance or transfer any person holding an LLC interest carrying between 10 percent and 50 percent of the voting rights of the limited liability company would acquire an LLC interest carrying more than 50 percent of the voting rights of the limited liability company.”

Inserts Part 7A
12 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 a fund that satisfies the requirements in section 3 of the Investment Funds Act 2006, save subsection (2)(b) of that section;

“corporate service provider” means a person licensed to provide corporate service provider business under the Corporate Service Provider Business Act 2012;

“individual” means a natural person;

“legal arrangement” includes a trust, partnership or other similar arrangement;
“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 65F;

“registrable person” in relation to a limited liability company means a beneficial owner or relevant legal entity.

“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.

**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, entities or vehicles, and any subsidiary thereof, are exempted from the application of this Part—

(a) a limited liability company whose LLC interests are listed on the Bermuda Stock Exchange or an appointed stock exchange;

(b) a closed-ended investment vehicle managed or administered by a person licensed under the Investment Business Act 2003 or the Investment Funds Act 2006 or registered, authorised or licensed by a foreign regulator recognised by the Authority;

(c) a financial institution as defined in the Third Schedule to the Bermuda Monetary Authority Act 1969;

(d) any other type of limited liability company or entity that is exempted by the Minister by order made by him.

(3) For the purposes of this section, a limited liability company ("limited liability company S") is a subsidiary of one or more limited liability companies, entities or vehicles described in subsection (2) if—

(a) such limited liability companies, entities or vehicles, separately or collectively, hold in excess of 75% of the interests or voting rights in limited liability company S;

(b) each such limited liability company, entity or vehicle is a member of limited liability company S and, separately or collectively, they have the right to appoint or remove a majority of its managers or other governing body; or

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(c) it is a subsidiary of one or more limited liability companies, entities or vehicles each of which is itself a subsidiary of one or more limited liability companies, entities or vehicles described in subsection (1).

(4) 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**

**Meaning of beneficial owner**

65C  (1) In this Part—

“beneficial owner” means—

(a) any individual or individuals who own or control more than 25% of the LLC interests or voting rights or interests in the limited liability company through direct or indirect ownership thereof;

(b) if no such individual or individuals referred to in paragraph (a) exist or can be identified, any individual or individuals who control a limited liability company by other means;

(c) if no such individual or individuals referred to in paragraphs (a) and (b) exist or can be identified, the individual who holds the position of senior manager of the limited liability company, and “beneficial ownership” shall be construed accordingly;

“control by other means” includes the right to appoint or remove a majority of the managers of a limited liability company and the exercise of control over the limited liability company by any means other than by control by ownership of any LLC interest;

“senior manager” means the chief executive, managing or executive director or president of a limited liability company or other person holding such senior position in the limited liability company by whatever title known.

(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 relevant legal entity, which is under the control of an individual or individuals; or

(b) by multiple relevant legal entities, which are under the control of the same individual or individuals,

shall be an indication of indirect ownership by such individual or individuals.
COMPANIES AND LIMITED LIABILITY COMPANY (BENEFICIAL OWNERSHIP) AMENDMENT ACT 2017

**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.

(2) If, after having taken reasonable steps to identify the beneficial owners of the limited liability company and all relevant legal entities, the limited liability company is satisfied that—

(a) no individuals who are beneficial owners are identified; or
(b) if the limited liability company was not able to confirm 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.

(3) For the avoidance of doubt, reasonable steps include the issue of a notice under section 65E.

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

65E (1) 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 30 days 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) 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 under subsection (1) if the limited liability company knows that the person is not a registrable person or the limited liability company has already been informed of the person’s status as a registrable person in relation to it, and has received all the minimum required information.

(4) For the purpose of subsection (1), 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 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;

(iv) where applicable, 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 registrable person;

(e) a statement of the nature and extent of the interest held by each such registrable person;

(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; and

(g) where applicable, the date on which each person who has ceased to be a registrable person in respect of it ceased to be such an owner.
(3) 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.

(4) 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) The beneficial ownership register shall be updated with respect to a change in beneficial ownership of a limited liability company which impacts an entry in the beneficial ownership register as soon as practicable after the limited liability company is notified of such change, but not later than 14 days thereafter.

(2) Where a limited liability company to which this Part applies—

(a) 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; or

(b) has reason to believe that such a relevant change has occurred,

the limited liability company shall give notice in writing to that person requesting confirmation, within 30 days from the date of receipt of the notice, of the matters set out in subsection (6).

(3) 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 relevant change or has reason to believe that such a change has occurred, and shall require confirmation as to any such change and the details thereof.

(4) If the person to whom a notice is sent under subsection (2) confirms the relevant change, the limited liability company’s beneficial ownership register shall be updated accordingly.

(5) A limited liability company is not required to give a notice under subsection (2) if the minimum required information relating to the relevant change has already been provided to the limited liability company by the beneficial owner or another person with knowledge of the minimum required information.

(6) For the purposes of this section, a relevant change occurs where—

(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 with respect to the
registrable person in the limited liability company’s beneficial ownership register becomes incorrect or incomplete.

(7) A relevant change with respect to a registrable person is considered to have been confirmed if the details, date and particulars of the change have been supplied or confirmed to the limited liability company by the registrable person, or by another person, with knowledge of the registrable person.

(8) The beneficial ownership register shall not be updated until the relevant change has been confirmed.

Disputes regarding beneficial ownership
65H Where there is a bona fide legal dispute as to the beneficial owner of any LLC interest, voting right or any other right or interest in any limited liability company to which this Part applies and which is in the process of being adjudicated by a court—

(a) no change shall be recorded in the beneficial ownership register with respect to the beneficial owner of that LLC interest, right or interest; and

(b) no filing with respect to that change shall be made with the Authority.

prior to the determination of that matter unless the court so orders.

Power of Court to rectify beneficial ownership register
65I (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
65J (1) Subject to subsection (2) and section 257(3) and (4), 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 regarding its beneficial owners.

(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 any change of beneficial ownership of a limited liability company and information relating to such a change shall be filed with the Authority as soon as practicable, but not later than 14 days after the limited liability company becomes aware of or is notified of the change, and has confirmed the minimum required information with respect to the change.

(4) 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, but not later than 14 days after the limited liability company becomes aware of or is notified of the change, and has confirmed the minimum required information with respect to the change.

Compliance measures

Notice by limited liability company imposing restrictions

65K (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 its 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, provided that such decision notice shall not take effect until at least 30 days following the date of receipt of any such decision notice; or

(c) 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)(c), 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 LLC 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 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 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

65L (1) The Registrar may by notice in writing served on a limited liability company or any registrable person require the limited liability company or registrable person—

(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, or beneficial owner to provide information pursuant to this Part.

(2) The person to whom a notice is served under subsection (1) shall within 30 days of receipt of such notice respond to the notice and provide the information requested by the Registrar.

Offences

65M (1) In this Part, where a person—

(a) contravenes or fails without reasonable excuse to comply 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) It shall be a defence for the person to show that he took reasonable steps to identify beneficial owners for the purposes of this Part.

(3) Where an offence under subsection (1) committed by a body corporate is proved to have been committed with the consent or connivance of an officer of the body corporate, the officer as well as the body corporate commits the offence and shall be liable to be proceeded against and punished accordingly.

Confidentiality

65N (1) Subject to section 65O, 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.

Privileged information
65O 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.

Application of Public Access to Information Act 2010
65P (1) Notwithstanding any provision of the Public Access to Information Act 2010, this section shall have effect.

(2) For the purposes of this Part, no person who—

(a) obtains information relating to beneficial ownership directly or indirectly for the purposes of, or pursuant to, this Part; and

(b) receives a request under the Public Access to Information Act 2010 for such information relating to beneficial ownership,

shall disclose the request or beneficial ownership information so requested.

Application of Personal Information Protection Act 2016
65Q Nothing in this Part authorises a disclosure, in contravention of any provision of the Personal Information Protection Act 2016, of personal information (as defined by that Act).

Other provisions concerning beneficial ownership or registers etc. not affected
65R (1) This Part does not, unless it is otherwise expressly provided to the contrary, limit or otherwise restrict any other statutory provision concerning any requirement for a person with an LLC interest to provide information relating to beneficial ownership.

(2) Nothing in this Part, unless it is otherwise expressly provided to the contrary, shall be construed as affecting any provisions relating to the use of
licensed corporate service providers or Bermuda Monetary Authority consent requirements regarding the issue or transfer of securities or interests.

(3) Nothing in this Part, unless it is otherwise expressly provided to the contrary, 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.

Notices

65S (1) For the purposes of this Part, any notice, direction or other document (hereinafter referred to in this section as "document") required or authorised by or under this Part to be given or sent to any person shall be set out in a document in writing which may be served either—

(a) by delivering it to that person;
(b) by leaving it at his proper address;
(c) by sending it by post to that address;
(d) by sending it to him by facsimile or electronic mail or other similar means which are capable of producing a document containing the text of the communication, in which case the document shall be regarded as sent when it is received by him in a legible form; or
(e) by any other method that provides proof of delivery or service,

and where the person is a body corporate the document may be delivered, by any of those means, to the Secretary or other appropriate person in respect of that body corporate.

(2) For the purposes of this section the proper address of any person shall, in the case of a body corporate, be the registered or principal office of that body corporate, and in any other case, shall be the last known address of the person.

(3) No document required by this Part to be given or sent to the Registrar or the Bermuda Monetary Authority or any other person shall be regarded as given or sent until it is received.

(4) For the purposes of this Part, a document shall be taken to have been received by the person in relation to whom it was sent—

(a) where it was delivered to him personally, on the day of delivery;
(b) where it was sent to him by post at his address on the day on which it he acknowledges receipt or, if no such acknowledgement was received from him, it shall, unless it is shown to the contrary, be deemed to have been received by him—

(i) seven working days after despatch if posted to an address within Bermuda; and
(ii) fifteen working days after despatch if posted to an address outside of Bermuda;
(c) by sending it to him by facsimile or electronic mail or similar means which are capable of producing a document containing the text of the communication, on the second day after the day on which it was transmitted.

(5) If the making of the transmission for purposes of subsection (4)(c) has been recorded in the computer or information processing system of the limited liability company or its representative it shall be presumed, unless the contrary is proved, that the transmission—

(a) was made to the person recorded in that system as receiving it;
(b) was made at the time recorded in that system at the time of delivery;
(c) contained the information recorded on that system in respect of it.

(6) For the avoidance of doubt, notices, directions or documents that are delivered under this Part are not statutory instruments for the purposes of the Statutory Instruments Act 1977."

Amends section 204
13 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 company;"

Amends section 210
14 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;"

Amends section 257
15 Section 257 of the Limited Liability Company Act 2016 is amended as follows—

(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 information relating to beneficial ownership pursuant to section 65J, if the minimum required information with respect to the limited liability company is being, or has already been, filed under, or pursuant to, any other applicable statutory provision.

(4) Nothing in this Part shall be construed as affecting requirements relating to the provision of information (including information relating to beneficial ownership) by a limited liability company to the Bermuda Monetary Authority at the time of its application for formation or continuation in Bermuda.

(5) 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.”.

AMENDMENT OF EXEMPTED PARTNERSHIPS ACT 1992
AND LIMITED PARTNERSHIP ACT 1883

Amends Exempted Partnerships Act 1992

The Exempted Partnerships Act 1992 is amended as follows—

(a) in section 8(1B)—

(i) by inserting after the words “the exempted partnership”, the words “, the partners shall notify the Authority of the appointment (in such form as the Authority may direct) as soon as practicable, but not later than 14 days after such appointment”;

(ii) by deleting the em dash;

(iii) by repealing paragraphs (a) and (b);

(b) in section 13(1B), by deleting the words “within thirty days” and substituting the words “as soon as practicable, but not later than 14 days”;

(c) in section 13(1C)—

(i) by inserting after the words “the exempted partnership” the words “, the partners shall notify the Authority of the change (in such form as the Authority may direct) as soon as practicable, but not later than 14 days after such change”;

(ii) by deleting the em dash;

(iii) by repealing paragraphs (a) and (b).”

Amends Limited Partnership Act 1883

The Limited Partnership Act 1883 is amended as follows—
COMPANIES AND LIMITED LIABILITY COMPANY (BENEFICIAL OWNERSHIP) AMENDMENT ACT 2017

(a) (a) in section 5(1B)—
   (i) by inserting after the words “the limited partnership” the words “, the partners shall notify the Authority of the appointment (in such form as the Authority may direct) as soon as practicable, but not later than 14 days after such appointment”;
   (ii) by deleting the em dash;
   (iii) by repealing paragraphs (a) and (b);
(b) in section 8B(3C), by deleting the words “within thirty days” and substituting the words “as soon as practicable, but not later than 14 days”;
(c) in section 8B(3D)—
   (i) by inserting after the words “the limited partnership” the words “, the partners shall notify the Authority of the change (in such form as the Authority may direct) as soon as practicable, but not later than 14 days after such change”;
   (ii) by deleting the em dash;
   (iii) by repealing paragraphs (a) and (b)."

AMENDMENT OF CERTAIN REGULATIONS AND RULES

Amends Corporate Service Provider Business (Beneficial Ownership) Regulations 2017
The Corporate Service Provider Business (Beneficial Ownership) Regulations 2017 are revoked.

Amends Exchange Control Amendment Regulations 2017
The Exchange Control Amendment Regulations 2017 are revoked.

Amends Companies (Forms) Rules 1982
The Companies (Forms) Rules 1982 are amended in paragraph 11 of Form No. 1 of the Schedule, by deleting the words “ultimate beneficial owner(s)” and substituting the words “beneficial owner(s)”.

FINAL PROVISIONS

Consequential amendments: general
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.
if 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 the Companies and Limited Liability Company (Beneficial Ownership) Act 2017.

Transitional

22 (1) In this section—

"Authority" means the Bermuda Monetary Authority;

"company" means a company to which Part VIA of the Companies Act 1981 applies;

"existing" in relation to a company or a limited liability company, means a company or limited liability company which exists on the date of the coming into operation of sections 4 and 12 of the Companies and Limited Liability Company (Beneficial Ownership) Amendment Act 2017;

"limited liability company" means a limited liability company to which Part 7A of the Limited Liability Company Act 2016 applies;

"minimum required information" means the information referred to in section 98H of the Companies Act 1981 with respect to a company and in section 65F of the Limited Liability Company Act 2016 with respect to a limited liability company;

"Registrar of Companies" has the meaning given in section 3 of the Companies Act 1981;

"the Act" means the Companies and Limited Liability Company (Beneficial Ownership) Amendment Act 2017.

(2) An existing company or a limited liability company shall update or verify as the case may be (in such form and manner as the Bermuda Monetary Authority may direct) the minimum required information relating to beneficial owners thereof within the period of six months from the date of the coming into operation of this section.

(3) The Minister responsible for the Registrar of Companies may by order subject to the negative resolution procedure extend the period set forth in subsection (2).

[See BR 145 / 2018 para. 2 for date extension of section 22(2) from 15 December 2018 to 28 February 2019]

Commencement

23 (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.

[Assent Date: 28 November 2017]

[Operative Date: 23 March 2018]