

Changes to Bermuda's Companies Act 1981 in 2018

There have been a number of changes to Bermuda's Companies Act 1981 in the first half of 2018 and chief among them are the requirement for each company having share capital to file with the Registrar of Companies certain information relating to its Bye-laws and for each company to maintain a beneficial ownership register.

With effect from 21 March 2018, every company limited by shares, or other company having share capital, must file with the Registrar of Companies information that the company is required to include in its Bye-laws (or Articles of Association) relating to the transfer of shares (including the registration of estate representatives of deceased shareholders), the duties of the secretary to the company and the number of members required to constitute a quorum at any general meeting of the company. Every affected company has a six-month window from 21 March 2018 (that is until 20 September 2018) to file the required information with the Registrar of Companies. As at 28 May 2018 there is no prescribed form for making the filing of the required information. It is anticipated that the Registrar of Companies will prescribe a form within the next several months for the filing of such information.

The other major change relates to companies keeping a register of beneficial ownership. A new part 6A(VIA), consisting of sections 98C through 98U, has been inserted into the Companies Act 1981 with effect 23 March 2018. Part 6A is a self-contained code relating to beneficial ownership and the beneficial owner of a company is now said to mean any individual or individuals who are said to control more than 25% of the shares or voting rights in a company through direct or indirect ownership, and if no such persons or persons can be found then the senior manager of the company is considered to be the beneficial owner. Part 6A of the Companies Act 1981 applies to all companies governed by that Act except for companies whose shares are listed on the Bermuda Stock Exchange or an appointed Stock Exchange, or other select types of business specifically licenced in Bermuda.

There is a positive obligation on every company to which Part 6A of the Companies Act 1981 applies to establish and maintain a beneficial ownership register which includes specified minimum required information.

The minimum required information that a company must keep in its beneficial ownership register is the full name of the beneficial owner and, if applicable, a secondary or other name by which the beneficial owner is known; the residential address of the beneficial owner (if a natural person) or the registered address or principal office of the beneficial owner if not; the nationality of the beneficial owner (if an individual) or the date and place of registration of the beneficial owner, if not; the date of birth of the beneficial owner (if natural person) or the form of legal entity, if not; the effective date on which each beneficial owner was entered into the register as beneficial owner of the Company; a statement of the nature and extent of the interest held by each beneficial owner; the date on which each beneficial owner ceased to be required to be registered (where applicable). Special provisions exist for circumstances where a class of beneficial owners may be of such size that it is not reasonably practicable to identify each individually.

The beneficial ownership register is required to be kept at the registered office of each affected company or some other place in Bermuda where it is convenient for inspection by the Registrar of Companies.

The Registrar of Companies has power under the Registrar of Companies Compliance Measures Act 2017 to require a company to make the beneficial ownership register immediately available to him for inspection, and that may include an application to the Supreme Court.

The beneficial owner register is required to be updated within 14 days of a change of beneficial ownership being notified to the affected company, and where an affected company becomes aware of the relevant change to the minimum required information to be maintained in the beneficial ownership register, it has an obligation to give notice to the affected beneficial owner seeking confirmation of any such change.

As with the register of (legal) shareholders, the Supreme Court of Bermuda has power to order rectification of the beneficial ownership register on the application of any person who is aggrieved by his inclusion on or omission from the beneficial ownership register.

Part 6A of the Companies Act 1981 preserves any proper claim to legal professional privilege, but otherwise is expressed to override any duty of confidentiality relating to beneficial ownership information, whether arising by statute, contract or otherwise. It also provides an absolute defence to any person

making a disclosure required by Part 6A to any claim brought against him in respect of any act or omission made in good faith in compliance with Part 6A of the Companies Act 1981.

The provisions of the Public Access to Information Act 2010 are ousted in relation to beneficial ownership information. Part 6A of the Companies Act 1981 specifically provides that no person who obtains information relating to the beneficial ownership of the company shall disclose such beneficial ownership information.

This article addresses general principles only and is not intended to be a comprehensive exposition of the subject. Specific legal advice should be obtained in respect of any particular matter.

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