



BERMUDA

EXCHANGE CONTROL AMENDMENT REGULATIONS 2018

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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 Regulations 2018.

Amends regulation 2

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

“beneficial owner” means any individual who ultimately owns 10% or more of the shares, voting rights or interests in the company through direct or indirect ownership thereof;

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“individual” means a natural person;”.

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 and include such information as the Controller may direct.”.

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 and include such information as the Controller may direct.”.

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 any information relating to the beneficial owners of a company the shares of which are registered in Bermuda or a change to any information that has been provided to the Controller in accordance with regulation 12(1A) or regulation 13(1A), the company shall in such form as the Controller may direct—

- (a) notify the Controller of the change; and
- (b) file updated, accurate and current details of such change with the Controller,

as soon as practicable after the company becomes aware of or is notified thereof, but not later than 14 days thereafter.”.

Revokes regulation 25A

6 The principal Regulations are amended by revoking regulation 25A.

Inserts regulation 46A

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

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### “Request for information

46A Notwithstanding regulations 47, 47A and 47B, the Controller may by notice in writing served on any person who has information about the ownership of securities registered in Bermuda, including beneficial owners, 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.”.

Inserts regulations 49A, 49B and 49C

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

### “Power to impose civil penalties

49A (1) The Controller may impose a civil penalty on a company which fails to comply with any filing or notification requirement of Part IV, or fails to provide the information in accordance with regulation 46A of these Regulations.

(2) The amount of the civil penalty that may be imposed under paragraph (1) is such amount not exceeding \$25,000 as the Controller considers appropriate.

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

(4) The Controller shall not impose a civil penalty where there are reasonable grounds for him to be satisfied that the company took all reasonable steps and exercised all due diligence to ensure that the requirement would be complied with.

(5) In deciding whether a company has failed to comply with a requirement, the Controller shall consider whether the company followed any relevant guidance which was at the time issued and published in the Gazette.

(6) For the purposes of paragraphs (4) and (5), “requirement” means a filing and notification requirement under Part IV.

### Procedure for imposing civil penalties

49B (1) Where the Controller proposes to impose a civil penalty, he shall give the company notice (a “warning notice”) of—

- (a) his proposal to impose the penalty and the proposed amount;

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- (b) the reasons for imposing the penalty; and
  - (c) the company's right to make representations to the Controller within a specified period which may not be less than 28 days.
- (2) After considering any representations made by the company, the Controller shall decide, within three months from the end of the period specified in paragraph (1)(c), whether to impose a civil penalty.
- (3) The Controller shall give the company notice (a "decision notice") of—
- (a) his decision not to impose a penalty; or
  - (b) his decision to impose a penalty and—
    - (i) the amount of the penalty;
    - (ii) the reasons for his decision; and
    - (iii) the right to appeal the decision.

Appeals: penalties

49C (1) Any person aggrieved by a decision of the Controller to impose 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.
- (2) A decision of the Controller under regulation 49B shall not have effect—
- (a) until the end of the period within which the appeal can be brought; and
  - (b) if such an appeal is brought, until it is determined or withdrawn.”.

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”.

Transitional

11 (1) In this regulation—

“commencement date” means the date on which these Regulations are published in the Gazette;

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“existing company” means a company which exists on the commencement date.

(2) An existing company shall update or verify as the case may be (in such form as the Controller may direct) information that has been provided to the Controller relating to beneficial owners thereof within the period of six months from the commencement date.

(3) The Minister (as that term is defined in section 1 of the Exchange Control Act 1972) may by order subject to the negative resolution procedure extend the period set forth in paragraph (2).

(4) Regulations 49A, 49B and 49C shall apply with any necessary modifications for the purposes of this regulation.

Made this 19th day of July 2018

Minister of Finance

[Operative Date: 25 July 2018]