



*EXTRAORDINARY*  
**OFFICIAL GAZETTE**  
**THE BAHAMAS**  
PUBLISHED BY AUTHORITY

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NASSAU

31<sup>st</sup> December, 2018

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# REGISTER OF BENEFICIAL OWNERSHIP ACT, 2018

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(No. 38 of 2018)

## **REGISTER OF BENEFICIAL OWNERSHIP ACT, 2018**

### **AN ACT TO PROVIDE FOR A REGISTER OF BENEFICIAL OWNERSHIP**

[Date of Assent - 20<sup>th</sup> December, 2018]

**Enacted by the Parliament of The Bahamas**

#### **1. Short title.**

This Act may be cited as the Register of Beneficial Ownership Act, 2018.

#### **2. Interpretation.**

In this Act —

“**affiliate**” in relation to a licensee means a legal entity or foreign regulated person that is under common control with such licensee and hence is considered to be a member of the same group of companies;

“**beneficial owner**” has the meaning specified in section 5;

“**competent authority**” means the Attorney-General;

“**database**” means an electronic register established and maintained by a registered agent, to hold the required particulars for each relevant legal entity for which it acts as registered agent or office in accordance with this Act;

“**designated person**” means the person specified in section 12;

“**exempt person**” means a person specified in section 7;

“**foreign regulated person**” means a person —

- (a) that is incorporated, registered, licensed or formed, or if it is not a body corporate, has its principal place of business, in a jurisdiction outside The Bahamas;

- (b) that carries on business outside The Bahamas that, if carried on within The Bahamas, would be a financial institution or designated non-financial business or profession for the purposes of any laws governing reporting of financial transactions; and
- (c) in respect of a business referred to in paragraph (b),
  - (i) is subject to legal requirements in its jurisdiction for the detection and prevention of money laundering that are consistent with the requirements of the Caribbean Financial Action Task Force Recommendations or Financial Action Task Force Recommendations in relation to that business; and
  - (ii) is properly and adequately supervised for compliance with those legal requirements by a foreign regulatory authority;

**“Identified Risk Framework”** has the meaning assigned to it in section 2 of the Proceeds of Crime Act, 2018;

**“legal entity”** means an entity incorporated, registered, continued or otherwise established in accordance with —

- (a) the Companies Act (*Ch. 308*); or
- (b) the International Business Companies Act (*Ch. 309*);

**“licensee”** includes a licensee or registrant under —

- (a) the Banks and Trust Companies Regulations Act (*Ch. 316*);
  - (b) the Investment Funds Act (*Ch. 369A*);
  - (c) the Securities Industry Act, 2011 (*No. 10 of 2011*);
  - (d) the Insurance Act (*Ch. 347*);
  - (e) the External Insurance Act (*Ch. 348*);
  - (f) the Financial and Corporate Service Providers Act (*Ch. 363*),
- and shall include its affiliates and wholly owned subsidiaries;

**“Minister”** means the Minister responsible for legal affairs;

**“registered agent”** includes —

- (a) a counsel and attorney as defined under section 2 of the Legal Profession Act (*Ch. 64*) who provides incorporation, maintenance of registered office or other company management services;
- (b) a person who holds a licence issued in accordance with the Financial and Corporate Service Providers Act (*Ch. 369*);
- (c) a company licensed under the Bank and Trust Companies Regulation Act (*Ch. 316*);

**“registrable legal entity”** has the meaning specified in section 6;

**“secure search system”** means the Secure Search system, an electronic platform or system to be established and maintained by the competent authority under this Act to provide access to prescribed information contained in database maintained by a registered agent or office;

**“securities exchange”** means —

- (a) The Bahamas International Securities Exchange; or
- (b) any other regulated securities exchange recognized pursuant to the Securities Industry Act, 2011 (*No. 10 of 2011*).

### **3. Application of Act.**

This Act applies to a legal entity as defined in section 2.

### **4. Establishment of a secure search system.**

- (1) The competent authority shall establish a secure search system for the purpose of enabling every registered agent to maintain a database of the required particulars on the beneficial ownership of a legal entity for which it has responsibility.
- (2) The secure search system shall —
  - (a) be accessible only by a designated person from a designated secured location within The Bahamas;
  - (b) be subject to search either by the name of an individual or the name of a legal entity; and
  - (c) prevent communication to any person of the fact that a search is being made or has taken place except where the designated person expressly discloses such communication.

### **5. Beneficial owners.**

- (1) For the purposes of this Act, a **“beneficial owner”** is a natural person who ultimately owns or controls a legal entity and includes, though not restricted to —
  - (a) in the case of a legal person other than a legal entity whose securities are listed on a securities exchange, a natural person who ultimately owns or controls, whether directly or indirectly, ten or more per cent of the shares or voting rights of the legal entity;
  - (b) in the case of a legal person, a natural person who otherwise exercises control over the management of the legal person other than solely in the capacity of a director, advisor or professional manager;

- (c) in the case of a legal entity which is in insolvent liquidation, administration or receivership proceedings in accordance with any law providing for the same, the natural person or entity who is appointed as a liquidator, administrator or receiver of the legal entity;
  - (d) in the case of a receiver being appointed over twenty-five or more per cent of the shares or voting rights in a legal entity, the creditor who appoints the receiver; or
  - (e) in the case of a shareholder in the legal entity who would otherwise be a beneficial owner under this subsection but is deceased, the natural person acting as an executor or a personal representative of the deceased's estate.
- (2) Where there is a *bona fide* legal dispute as to the beneficial ownership of any interest in a legal entity which is in the process of being adjudicated by a court or tribunal, no change should be recorded with respect to the beneficial ownership of that interest in a database, prior to the determination of that matter, unless the court or tribunal so orders.
- (3) A person shall not be treated as a beneficial owner only by reason of —
- (a) having the benefit of a security interest over shares or voting rights in a legal entity; or
  - (b) having a commercial exposure to the financial performance of a legal entity pursuant to financial derivatives or similar contractual arrangements.
- (4) Where two or more persons hold any interest jointly, whether as joint owners or tenants in common, then each such joint owner shall be a beneficial owner.
- (5) The Minister may make regulations with respect to the factors to be considered for the determination of who is a beneficial owner of a legal entity.
- (6) A legal entity is a subsidiary of another legal entity if the parent entity —
- (a) holds, directly or indirectly, a beneficial interest in seventy-five per cent or more of the shares in the subsidiary;
  - (b) holds, directly or indirectly, more than seventy-five percent of the voting rights in the subsidiary; or
  - (c) irrespective of the per centum of direct or indirect interests or rights, exercises control over the other legal entity.

## 6. Registrable legal entities.

For the purposes of this Act, a “**registrable legal entity**” is a legal person, its affiliates or wholly owned subsidiaries which —

- (a) would be a beneficial owner of the legal entity if it were a natural person; and
- (b) which is either —
  - (i) a legal entity which is an exempt person;
  - (ii) a legal entity the securities of which are listed on a regulated securities exchange;
  - (iii) a licensee or a foreign regulated person; or
  - (iv) a foreign state or a wholly owned subsidiary of a foreign state.

## **7. Exempt persons.**

- (1) For the purposes of this Act, an “**exempt person**” is a person who meets one or more of the following conditions —
  - (a) a legal entity the securities of which are listed on a regulated securities exchange;
  - (b) a licensee as defined under section 2 of this Act;
  - (c) a legal entity which is a wholly owned subsidiary of a legal entity that falls within paragraph (b); or
  - (d) any other legal entity that the Minister may exempt by regulations.
- (2) The provisions of sections 8(1) and (2) and 9(2)(b) and (c) shall not apply to an exempt person.

## **8. Duty to identify and verify beneficial owners.**

- (1) A legal entity shall, within fifteen days of identifying any person as a beneficial owner or a registrable legal entity of that legal entity, notify its registered agent or the Registrar General of those persons identified as beneficial owners and registrable legal entities.
- (2) Every registered agent shall take reasonable steps to —
  - (a) verify the identity of the beneficial owners and registrable legal entities of each legal entity for which it acts as registered agent; and
  - (b) collect and maintain the particulars specified in section 9(2)(a) to (c), with respect to each legal entity for which it acts as registered agent.
- (3) A registered agent is not required to verify the identity of any beneficial owner of a legal entity under subsection (2) who holds its interest, directly or indirectly, in the legal entity through a registrable legal entity if the registered agent verifies the identity of that registrable legal entity for that purpose.

- (4) For the purposes of this section, a registered agent who takes steps to identify and verify the identity of the beneficial owners of a legal entity in accordance with its obligations under the Identified Risk Framework shall be considered to have taken all reasonable steps in accordance with this section.
- (5) Nothing in this section limits or affects the separate obligation of each registered agent to obtain and verify beneficial ownership information under the Identified Risk Framework.
- (6) Where a legal entity fails to comply with a requirement of this section without reasonable cause, that legal entity commits an offence.
- (7) Where a registered agent fails to comply with a requirement of this section without reasonable cause, that registered agent commits an offence.
- (8) No legal or professional privilege may be asserted by any registered agent in respect of the duty to verify the identity of beneficial owners and maintain a database.

## **9. Duty to maintain database.**

- (1) Every registered agent shall —
  - (a) establish and maintain a database that is accessible by the secure search system in accordance with this section; and
  - (b) enter into the database, the required particulars obtained by it in accordance with this Act.
- (2) The required particulars —
  - (a) with respect to each legal entity are —
    - (i) the full legal name, including any alternative names;
    - (ii) the incorporation number or its equivalent;
    - (iii) the date of incorporation;
    - (iv) status;
    - (v) the registered address; and
    - (vi) any other particulars as the Minister may by Order specify;
  - (b) with respect to each beneficial owner of the legal entity are —
    - (i) the full legal name;
    - (ii) the residential address and, if different, an address for service of notices under this Act;
    - (iii) the country of ordinary residence or domicile;
    - (iv) the date of birth; and
    - (v) the nationality information identifying the person from their passport, driver's licence or other government-issued document including —



- (aa) the identifying number;
    - (bb) the country of issue; and
    - (cc) the date of issue and expiry;
  - (c) with respect to each registrable legal entity of the legal entity are —
    - (i) the details of the registrable legal entity as outlined in subsection (2)(a);
    - (ii) the jurisdiction in which the registrable legal entity is formed;
    - (iii) the basis upon which the legal entity is designated as a registrable legal entity;
    - (iv) where the registrable legal entity is a foreign regulated person, the name of the jurisdiction of regulation and the name of the foreign regulator; or
    - (v) where the registrable legal entity is a foreign state or a wholly owned subsidiary of a foreign state, the name of that foreign state and, if applicable, wholly owned subsidiary;
  - (d) with respect to an exempt person are —
    - (i) the details of the exempt person as outlined in subsection (2)(a); and
    - (ii) the basis upon which the exempt person is designated as an exempt person.
- (3) Where a registered agent fails to comply with a requirement of this section without reasonable cause, that registered agent commits an offence.

## **10. Retention period.**

- (1) Where a legal entity is dissolved, information maintained in a database in respect of that legal entity shall be maintained by the administrator, liquidator or other person involved in the dissolution of that legal entity —
  - (a) for five years after the dissolution of the legal entity;
  - (b) for five years after the legal entity ceases to be a legal entity; or
  - (c) for five years after the registered agent ceases to be the registered agent of that legal entity.
- (2) Where, for the purposes of this section, information to be maintained by a registered agent in a database relates to a legal entity that has ceased to be a legal entity, or has been struck off the Register of Companies before the commencement of this Act, the registered agent shall not be required to maintain information in relation to that legal entity.

**11. Duty to keep beneficial ownership information up to date.**

- (1) A legal entity shall within fifteen days of becoming aware of a change of any of the required particulars relating to beneficial owners or registrable legal entities notify its registered agent of changes in beneficial ownership information and the date such changes took place.
- (2) A registered agent shall, immediately —
  - (a) on being notified by a legal entity of a change pursuant to subsection (1); or
  - (b) otherwise becoming aware of a change of any of the required particulars relating to beneficial owners or registrable legal entities, cause the updated information provided in subsection (1) to be included in the database.
- (3) Where a legal entity fails to comply with a requirement of this section without reasonable cause, that legal entity commits an offence.
- (4) Where a registered agent fails to comply with the requirements of this section without reasonable cause, that registered agent commits an offence.

**12. Designated person to use secure search system.**

- (1) No person other than a designated person shall have access to the secure search system.
- (2) The Minister shall designate in writing, one or more persons, within the competent authority, who shall have access to the secure search system from physically secure premises and a secure search and utilizing a secure information technology system.
- (3) A designated person shall —
  - (a) have passed security vetting tests;
  - (b) be a fit and proper person; and
  - (c) subscribe to the Oath of Confidentiality set out in the *Schedule*.
- (4) The Minister shall keep or cause to be kept a record of all Oaths of Confidentiality taken pursuant to this section.
- (5) A designated person shall provide the results of any search requested under this Act within fifteen days of the submission of a request for information unless it is notified that the request is urgent, in which case it will provide the information sought of it within one hour, or such other time period to be agreed between, the requesting law enforcement authority or an authority named in subsection (6) and the designated person in accordance with the circumstances of the request.

- (6) A designated person shall execute a search of the secure system if formally requested to do so by a designated officer of any of the following authorities —
  - (a) the Office of the Attorney-General;
  - (b) the Financial Intelligence Unit established under the Financial Intelligence Unit Act (*Ch. 367*);
  - (c) the Central Bank of The Bahamas established under the Central Bank of The Bahamas Act (*Ch. 351*);
  - (d) the Compliance Commission established under the Financial Transactions Reporting Act (*No. 5 of 2018*);
  - (e) the Securities Commission continued under section 10 of the Securities Industry Act (*No. 10 of 2011*); or
  - (f) the Insurance Commission established under the Insurance Act (*Ch. 347*).
- (7) The authorities listed in paragraphs (a) to (f) of subsection (6) shall designate an officer of that authority for the purpose of instructing the designated person.
- (8) A search conducted under subsection (6) shall not be executed without certification that the request for the search is proper and lawful and in compliance with the legislation governing the affairs of the authority making the request and any international agreement administered by it.
- (9) A record shall be maintained of all searches conducted by a designated person under this Act.
- (10) A designated person who fails to comply with a requirement of this section commits an offence.

### **13. Confidentiality.**

- (1) The particulars of and all matters relating to a request made under this Act shall be treated as confidential, and no designated person who is notified of a request, or is required to take any action, or supply any information in response to or in relation to any matters to which a request relates or in any way becomes aware of a request, shall disclose the fact of the receipt of such request or any of the particulars required or information supplied to any other person except in accordance with this Act.
- (2) All information maintained on each database is confidential, and shall not be accessible by any person except —
  - (a) a designated person through the secure search system; and
  - (b) the registered agent to whom the database relates.
- (3) A person who discloses information or produces documents as required by this Act is not in breach of any enactment, rule of law, agreement or

professional code of conduct to which that person is subject only by reason of complying with the requirements of this Act, and no civil, criminal or disciplinary proceedings shall lie against that person in respect thereof.

**14. Protection for registered agents.**

Where a registered agent has collected the required particulars in accordance with the laws of The Bahamas or includes information in a database not specified in this Act, the collection of and inclusion of such information by the registered agent shall be treated as done in accordance with this Act and the registered agent is not in breach of any agreement, professional code of conduct or rule of law to which they are subject.

**15. Giving false or misleading information.**

- (1) A registered agent who intentionally provides false information relating to a legal entity in its database commits an offence.
- (2) A legal entity which intentionally provides false information under section 8(2) or 11(1) commits an offence.

**16. Offences and penalties.**

- (1) A person who commits an offence under section 8(6) is liable —
  - (a) on summary conviction, to a fine not exceeding forty thousand dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment; or
  - (b) on conviction on indictment, to a fine not exceeding two hundred and fifty thousand dollars or to imprisonment for a term not exceeding five years, or to both such fine and imprisonment.
- (2) A person who commits an offence under sections 8(7), 9(4), and 11(4) is liable —
  - (a) on summary conviction, to a fine not exceeding twenty thousand dollars; or
  - (b) on conviction on indictment, to a fine not exceeding forty thousand dollars.
- (3) A person who commits an offence under section 11(3) is liable —
  - (a) on summary conviction, to a fine not exceeding five thousand dollars; or
  - (b) on conviction on indictment, to a fine not exceeding ten thousand dollars.

- (4) A person who commits an offence under section 12(10) is liable to a fine not exceeding seventy five thousand dollars or to imprisonment for a term not exceeding two years or both.
- (5) A person who contravenes section 13(1) commits an offence and is liable —
  - (a) on summary conviction, to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment; or
  - (b) on conviction on indictment, to a fine not exceeding seventy thousand dollars or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.
- (6) Any person who accesses data in a database except as authorised by this Act commits an offence and is liable —
  - (a) on summary conviction, to a fine not exceeding twenty thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment; or
  - (b) on conviction on indictment, to a fine not exceeding seventy thousand dollars or to imprisonment for a term not exceeding five years, or to both such fine and imprisonment.
- (7) A person who commits an offence under section 15 is liable —
  - (a) on summary conviction, to a fine not exceeding forty thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment; or
  - (b) on conviction on indictment, to a fine not exceeding seventy five thousand dollars or to imprisonment for a term not exceeding five years, or to both such fine and imprisonment.
- (8) Where any legal entity is convicted of an offence in this section, every director and every officer concerned in the management of the body corporate is guilty of the offence where it is proved that the act or omission that constituted the offence took place with that person's knowledge, authority, permission or consent, express or implied.

## **17. Regulations.**

The Minister may make regulations with respect to anything required to be carried out in this Act or anything required to be prescribed with respect to this Act, including —

- (a) the manner or form in which a registered agent must maintain a database;
- (b) the terms, conditions and fees in relation to the establishment and maintenance of the secure search system;

- (c) the specifications for software design of the database and the secure search system; and
- (d) the specifications for the accessibility of the secure search system.

**18. Transitional.**

Notwithstanding the provision of any other law —

- (a) a legal entity incorporated or registered before the commencement of this Act; and
- (b) a registered agent,

shall, within a one year period from the date of commencement of this Act, meet the requirements under this Act.

**SCHEDULE**

(section 12(2))

**OATH OF CONFIDENTIALITY**

I, \_\_\_\_\_ being a (*insert post of the employee*) of (*insert name of agency*) solemnly swear / affirm\* that I shall keep confidential all information which comes to my knowledge in my capacity as a designated person and I shall not divulge such information except as authorised by and in accordance with law.

So help me God! (omit if affirming)

Sworn / Affirmed before me,  
 a Magistrate/Notary Public\*  
 this day of , 2018.

\_\_\_\_\_  
 (Name of person swearing / affirming)

\_\_\_\_\_  
 (Magistrate / Notary Public\*)

\* Delete as appropriate