

CAYMAN ISLANDS



Companies Law
(2020 Revision)

BENEFICIAL OWNERSHIP (COMPANIES) (AMENDMENT) REGULATIONS, 2020

(SL 106 of 2020)

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Companies Law
(2020 Revision)**BENEFICIAL OWNERSHIP (COMPANIES)
(AMENDMENT) REGULATIONS, 2020**
(SL 106 of 2020)

In exercise of the powers conferred by sections 280 and 281H of the Companies Law (2020 Revision), the Cabinet makes the following Regulations —

Citation

1. These Regulations may be cited as the Beneficial Ownership (Companies) (Amendment) Regulations, 2020.

Amendment of regulation 2 of the Beneficial Ownership (Companies) Regulations (2019 Revision) - definitions

2. The *Beneficial Ownership (Companies) Regulations (2019 Revision)*, in these Regulations referred to as the “principal Regulations”, are amended in regulation 2 in the definition of “**withdrawal notice**” by deleting the word “company” and substituting the words “corporate services provider”.

Amendment of regulation 6 - additional matters where a company’s investigations are ongoing

3. The principal Regulations are amended in regulation 6 as follows —
 - (a) in paragraph (1), by inserting after subparagraph (a) the following subparagraph —



“(aa) is not exempt under section 245(1) of the Law;” and

- (b) by inserting after paragraph (2) the following paragraph —

“(3) If at any time between the date of a company’s incorporation or registration by way of continuation under the Law and the date of the company’s dissolution and removal from the register under the Law, the company’s beneficial ownership register contains the note “enquiries pending” for an uninterrupted period of not less than three calendar months, the fact that the note remains in the register for that period shall be *prima facie* evidence that a breach of section 253(1) of the Law has occurred.”.

Amendment of regulation 7 - additional matters where a company has issued a restrictions notice

4. The principal Regulations are amended in regulation 7 as follows —

- (a) in the regulation heading, by deleting the word “company” and substituting the words “corporate services provider”;
- (b) in paragraph (1), by deleting the word “company” and substituting the words “corporate services provider”;
- (c) in paragraph (2), by deleting the words “company shall note in its” and substituting the words “corporate services provider shall note in the company’s”;
- (d) in paragraph (3) as follows —
 - (i) by deleting the word “company” wherever it appears and substituting the words “corporate services provider”; and
 - (ii) by deleting the word “its beneficial ownership register” and substituting the words “the company’s beneficial ownership register”; and
- (e) in paragraph (4) as follows —
 - (i) by deleting the word “company” in the second place it occurs and substituting the words “corporate services provider”; and
 - (ii) by deleting the word “its beneficial ownership register” and substituting the words “the company’s beneficial ownership register”.

Amendment of regulation 8 - content of a restrictions notice

5. The principal Regulations are amended in regulation 8 by repealing paragraph (b) and substituting the following paragraph —

“(b) identify the interest in the company that is relevant to the restrictions notice by reference to the shares or right in question;”.



Amendment of regulation 9 - withdrawal of a restrictions notice

6. The principal Regulations are amended in regulation 9 as follows —

- (a) by deleting the word “company” where it first occurs and substituting the words “corporate services provider”;
- (b) in paragraph (a), by deleting the word “company” and substituting the words “corporate service provider”; and
- (c) by repealing paragraph (c) and substituting the following paragraph —

“(c) identify the interest in the company that is relevant to the restrictions notice by reference to the shares or right in question; and”.

Insertion of Part 3A – administrative fines

7. The principal Regulations are amended by inserting after Part 3, the following Part —

“Part 3A – Administrative Fines**Definitions in this Part**

9A. In this Part —

“**administrative fine notice**” means an administrative fine notice issued by the Registrar under regulation 9B in accordance with section 281A of the Law to a person who breaches a provision of Part XVIIIA of the Law that is specified in Schedule 7 of the Law;

“**applicant**” means a person who appeals against the decision of the Registrar to impose an administrative fine in accordance with section 281A of the Law;

“**original decision**” means the decision of the Registrar to impose the administrative fine specified in an administrative fine notice, in accordance with section 281A of the Law; and

“**review committee**” means a committee appointed by the competent authority under regulation 9C(3).

Administrative fine notice

- 9B. (1) The Registrar may impose an administrative fine, which is set out in Schedule 7 of the Law, in accordance with Part XVIIIB of the Law for a breach of a provision under Part XVIIIA of the Law, by issuing to a person, an administrative fine notice in accordance with paragraphs (2) and (3).
- (2) An administrative fine notice referred to in paragraph (1) shall specify —

- (a) the date on which the notice was issued;
 - (b) the breach for which the fine is imposed and the provision under the Law;
 - (c) details of the breach;
 - (d) the amount of the fine;
 - (e) how payment should be made;
 - (f) the date by which the administrative fine should be paid;
 - (g) the effects of non-payment; and
 - (h) the process for appealing against the decision of the Registrar to impose the administrative fine.
- (3) The Registrar may issue an administrative fine notice under paragraph (2) —
- (a) to an individual, by sending the notice to the most recent email address provided by the individual to the Registrar; or
 - (b) to a body corporate, by sending the notice to the most recent email address provided to the Registrar of —
 - (i) a director or officer of the body corporate; or
 - (ii) its corporate services provider.

Appeal to the competent authority

- 9C.** (1) A person who receives an administrative fine notice may, by application, appeal against the decision of the Registrar to impose the administrative fine to the competent authority.
- (2) An application under paragraph (1) shall be made in the form set out in the Schedule, within thirty days from the date of receipt of the administrative fine notice.
- (3) The competent authority shall, on receipt of an application under paragraph (1), appoint a review committee to conduct an inquiry concerning the matters raised in the application under paragraph (1).

Review committee

- 9D.** (1) The review committee shall comprise the following officers of the ministry with responsibility for financial services —
- (a) two persons with knowledge and experience in accounting, financial services, banking or compliance; and
 - (b) an attorney-at-law.



- (2) The competent authority shall not appoint to the review committee, any officer who assisted the Registrar in decision making regarding the fine.
- (3) Subject to any directions that may be given by the competent authority, the review committee may regulate its own procedure.
- (4) The review committee shall notify the Registrar of an application submitted under regulation 9C(1) and the grounds on which the applicant relies and the Registrar may make written representations to the review committee concerning the application, but shall not otherwise participate in any discussion, decision, debate or vote of the review committee concerning the application.
- (5) The competent authority may by notice in writing, require an applicant to provide such documents, statements or any other information as it may reasonably require in the exercise of its functions.
- (6) An applicant who receives a notice under paragraph (5), shall comply with that notice within the period and in the manner specified in the notice.
- (7) The review committee shall upon completing the inquiry, report its findings and recommendations to the competent authority.

Decision by the competent authority

- 9E.** (1) The competent authority shall, upon receipt of the report of the review committee, consider and determine the application under regulation 9C(1) and may affirm or set aside the original decision .
- (2) The competent authority shall have regard to, but is not bound by, the findings and recommendations of the review committee.
 - (3) The competent authority shall, within fifteen working days of receipt of an application under regulation 9C(1), give the applicant notice of its decision.
 - (4) Where the competent authority affirms the original decision, the notice of the decision on the application shall also state —
 - (a) the reasons for the decision; and
 - (b) that the applicant may apply to the Grand Court for judicial review of the decision.
 - (5) Where the competent authority sets aside the original decision, the original decision is deemed never to have been made.

No stay of original decision

- 9F.** An appeal under regulation 9C does not stay the operation of the original decision by the Registrar to impose an administrative fine as specified in the administrative fine notice.

Evidentiary provisions

- 9G.** (1) The date stated on an administrative fine notice is the date on which the administrative fine is considered imposed for the purpose of section 156A of the Law.
- (2) For the purpose of regulation 9C(2), where the administrative fine notice is sent to a person by email, the date the email is sent is considered the date of receipt.”.

Amendment of regulation 16 - calculating shareholdings

- 8.** The principal Regulations are amended in regulation 16 as follows —
- (a) in paragraph (1) as follows —
- (i) by deleting the words “more than 25%” and substituting the words “25% or more”; and
- (ii) by deleting the words “exceeding (in aggregate) 25%” and substituting the words “which is (in aggregate) 25% or more”; and
- (b) in paragraph (2)(b), by deleting the words “more than 25%” wherever they appear and substituting the words “25% or more”.

Insertion of Schedule - application for an appeal to the competent authority

- 9.** The principal Regulations are amended by inserting after regulation 24 the following Schedule —

“SCHEDULE

(regulation 9C(2))

**APPLICATION FOR AN APPEAL TO THE COMPETENT
AUTHORITY**

To: The competent authority

At: _____

(The physical address of the competent authority)

OR



If the competent authority accepts the sending of an application under regulation 9C at a particular email address:

(The email address of the competent authority)

TAKE NOTICE that, under regulation 9C, the following person applies to the competent authority to appeal against the decision of the Registrar to impose the administrative fine by administrative fine notice received by the person on:

(Here insert date the notice was received and, if two or more administrative fine notices were given on that day. Identify the fine(s) in the administrative fine notice(s) which are the subject of the appeal.)

Applicant's full name: _____

The applicant's physical address is: _____

The applicant's email address for notices from the competent authority to the person is:

Particulars about the application are as follows:

The relevant prescribed provision set out in the administrative fine notice is:

The grounds of appeal on which the person relies are:

The facts and circumstances that the person relies on for the grounds are:

(Here insert the facts and circumstances relied on, including those contended to be different from those set out in the relevant administrative fine notice and any relevant surrounding circumstances.)

Dated _____, 20_____.

Signed on behalf of the applicant

Position with the applicant (If the applicant is not an individual)".

Made in Cabinet the 21st day of July, 2020.

Davina Wilson
Acting Clerk of the Cabinet

