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REGISTER OF BENEFICIAL OWNERSHIP (AMENDMENT) ACT, 2022

Arrangement of Sections

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No. 5 of 2022

REGISTER OF BENEFICIAL OWNERSHIP (AMENDMENT) ACT, 2022

AN ACT TO AMEND THE REGISTER OF BENEFICIAL OWNERSHIP ACT, 2018

[Date of Assent - 21st April, 2022]

Enacted by the Parliament of The Bahamas

1. Short title.

This Act, which amends the Register of Beneficial Ownership Act, 2018 (No. 38 of 2018), may be cited as the Register of Beneficial Ownership (Amendment Act, 2022.

2. Amendment of section 2 of the principal Act.

Section 2 of the principal Act is amended by the insertion in the appropriate alphabetical order of the definitions—

““law enforcement authority” includes the Royal Bahamas Police Force, the Royal Bahamas Defence Force, the Bahamas Customs Department or the Bahamas Immigration Department;

“Supervisory Authority” means, in relation to a registered agent or company without a registered agent, the Competent Authority, the Central Bank of The Bahamas, the Securities Commission of The Bahamas, the Inspector of Financial and Corporate Service Providers, the Compliance Commission, the Insurance Commission of The Bahamas, the Gaming Board or the Registrar General;”.

3. Amendment of section 11 of the principal Act.

Section 11 of the principal Act is amended—

(a) in the headnote by the insertion immediately after the word “date” of the words “and accurate”; and

(b) by the insertion of new subsections (2A) and (2B) as follows —

"(2A) A legal entity shall ensure that any information provided under subsection (1) is accurate.

(2B) A registered agent or the Registrar General as the case may be, shall ensure that any information recorded under subsection (2) is accurate."

4. Amendment of section 12 of the principal Act.

Section 12 of the principal Act is amended–

(a) in subsection (6) —

(i) by the deletion of the word "or" in paragraph (e) ;

(ii) by the deletion of the full stop and the substitution of a semi-colon in paragraph (f); and

(iii) by the insertion immediately after paragraph (f) the following–

"(g) the Ministry responsible for Finance; "

(h) the Gaming Board; or

(i) Inspector of Financial and Corporate Service Providers".

(b) by the insertion immediately after subsection (6) of the following new subsection—

"(6A) The Ministry responsible for Finance shall only utilize the register in accordance with subsection (6) in exercising its functions under the International Tax Cooperation Act (No. 18 of 2010) and the Automatic Exchange of Financial Account Information Act (No. 37 of 2016)."

(c) in subsection (7) by the deletion of the words"(a) to (f)" and the substitution of the words "(a) to (h)".

(d) by the insertion immediately after subsection (10) of the following —

"(11) The Attorney-General may, by order, designate an authority to request a search of the secure system under subsection (6)."

5. Amendment of section 16 of the principal Act.

Subsection (2) of section 16 of the principal Act is amended by the deletion of the words "9(4)" and the substitution of the words "9(3)".

6. Insertion of a new section 17A to the principal Act.

The principal Act is amended by the insertion immediately after section 17 of the following new section—

"Section 17A. Administrative penalties.

(1) Notwithstanding any penalties that may be imposed under this Act, —

(a) a legal entity that fails to comply with any provision of this Act;

(b) a registered agent that fails to comply with any provision of this Act;

(c) employee, director or senior manager of a registered agent or a legal entity, who knowingly concurs in a failure to comply with any provision of this Act,

may be subject to an administrative penalty imposed by the Supervisory Authority with responsibility for regulating that registered agent or that legal entity and —

(i) in the case of a registered agent or legal entity to a maximum penalty of two hundred and fifty thousand dollars;

(ii) in the case of an employee, director or a senior manager of a registered agent or a legal entity,

to a maximum penalty of fifty thousand dollars.

(2) A Supervisory Authority may not impose an administrative penalty on a person specified in subsection (1) for contravention of any provision of this Act if the Supervisory Authority is satisfied that the person took all reasonable steps to comply with obligation stated in the Act.

(3) In deciding whether a person has contravened a provision of this Act, a Supervisory Authority must consider whether at the time, the person followed any relevant guidance, rules or codes of practice issued by the Supervisory Authority.

(4) When determining the amount of any administrative penalty to be imposed on a person under subsection (1), a Supervisory Authority must take into account all relevant circumstances, including where appropriate —

(a) the gravity and the duration of the contravention or failure;

(b) the degree of responsibility of the person on whom the Supervisory Authority proposes to impose the administrative penalty;

(c) the financial strength of the person;

(d) the level of cooperation of the person with the Supervisory Authority;
(e) any previous contraventions or failures of the person; and
(f) any potential systemic consequences of the contravention or failure.

(5) Where a Supervisory Authority proposes to impose an administrative penalty on a person under subsection (1), the Supervisory Authority must issue a written warning notice to the person specifying —
(a) the nature of the contravention which the person is believed to have committed;
(b) the amount of the proposed administrative penalty;
(c) a reasonable period, which may not be less than twenty-eight days from the date of the notice, within which the person to whom the warning notice is issued may make representations to the Supervisory Authority.

(6) The Supervisory Authority may extend the period specified in the warning notice.

(7) The Supervisory Authority must determine, within a reasonable period, whether to give the person concerned a notice of its decision.

(8) A notice of decision given pursuant to subsection (7), must —
(a) be in writing;
(b) state the Supervisory Authority's reason for the decision to take the action to which the notice relates;
(c) state —
(i) any right to have the matter appealed under any other law governing that registered agent or legal entity; and
(ii) the procedure for the appeal.

(9) If a Supervisory Authority decides not to take —
(a) the action proposed in a warning notice issued; or
(b) the action referred to in its notice of decision,
the Supervisory Authority must give a notice of discontinuance to the person to whom the warning notice or decision notice was given.

(10) A notice of discontinuance must identify the proceedings which are being discontinued.".

7. Amendment of the Schedule to the principal Act.

The Schedule of the principal Act is amended —

(a) by the insertion immediately after the heading "SCHEDULE" of the subheading "Form l";

(b) by the insertion immediately after Form 1 of the following—

"

Form 2

(section 12 (8))

CERTIFICATE

I _____ hereby certify that the request by the _____ (designated authority) for the search of the Secure Search System is proper and lawful and in compliance with the _____, legislation governing the affairs of the _____ (designated authority) and/or _____ (international agreement) administered by it.".