

TURKS AND CAICOS ISLANDS

BENEFICIAL OWNERSHIP REGULATIONS 2017

ARRANGEMENT OF REGULATIONS

REGULATION

PART I

PRELIMINARY

1. Citation and commencement
2. Interpretation
3. Meaning of “foreign limited partner”

PART II

RULES FOR INTERPRETING THE ORDINANCE

4. Application of this Part
5. Joint interests and arrangements
6. Calculating shareholdings
7. Voting rights
8. Rights to appoint or remove directors
9. Holding a share or right in a company indirectly through a legal entity
10. Shares held by nominees
11. Rights treated as held by person who controls their exercise
12. Rights exercisable only in certain circumstances
13. Rights attached to shares held by way of security
14. Significant influence or control
15. Persons considered not to exercise significant influence or control
16. Limited partnerships
17. Protected cell companies

PART III

BENEFICIAL OWNERSHIP INFORMATION AND ITS REGISTRATION

18. Prescribed beneficial ownership information

19. Additional information to be registered
20. Removal of entries from the register
21. Notice in relation to change in beneficial ownership information
22. Provision of information to the Commission
23. Retention of information on Register of Beneficial Owners of Companies

PART IV

EXEMPTIONS AND MISCELLANEOUS PROVISIONS

24. Persons who are not registrable persons
25. Request for disclosure of beneficial ownership information

TURKS AND CAICOS ISLANDS

BENEFICIAL OWNERSHIP REGULATIONS 2017

(Legal Notice 81 of 2017)

MADE by the Governor under section 160 of the Companies Ordinance 2017.

PART I

PRELIMINARY

Citation and commencement

1. These Regulations may be cited as the Beneficial Ownership Regulations 2017 and come into force on 31st December 2017.

Interpretation

2. (1) In these Regulations—

“arrangement” shall be construed in accordance with subregulation (2);

“beneficial ownership criteria” means the criteria specified in paragraphs (a) to (e) of section 146 of the Ordinance;

“company” means a company to which Part IX of the Ordinance applies;

“company authorised to issue shares” means a company limited by guarantee or an unlimited company that, in either case, is authorised to issue shares;

“constitution” means—

(a) in the case of a company, its articles; and

(b) in the case of any other legal entity, the documents that constitute and govern the legal entity;

“joint arrangement” means an arrangement between the holders of shares or rights in a company that they will exercise all or substantially all the rights conferred by their respective shares or rights jointly in a way that is pre-determined by the arrangement;

“legal entity” means a body corporate or a firm that is a legal person under the law by which it is governed and includes a company;

“limited partner” means—

- (a) a limited partner in a limited partnership registered under the Limited Partnerships Ordinance (Cap. 16.15), other than a limited partner who takes part in the management of the business of the limited partnership; or
- (b) a foreign limited partner, within the meaning of regulation 3;

“Ordinance” means the Companies Ordinance 2017; and

“voting rights” is to be construed in accordance with regulation 7.

(2) Subject to subregulation (3), an arrangement includes—

- (a) any scheme, agreement or understanding, whether or not it is legally enforceable; and
- (b) any convention, custom or practice of any kind;

(3) A scheme, agreement, understanding, convention, custom or practice is not considered to be an arrangement unless there is at least some degree of stability about it, whether by its nature or terms, the time it has been in existence or otherwise.

(4) Any word or phrase defined in the Ordinance has, unless the context otherwise requires, the same meaning in these Regulations.

Meaning of “foreign limited partner”

3. (1) A foreign limited partner is an individual who—

- (a) participates in a foreign limited partnership as a limited liability participant; or
- (b) directly or indirectly holds shares or a right in, or in relation to, a legal entity which participates in a foreign limited partnership as a limited liability participant.

(2) In this regulation—

- (a) a “foreign limited partnership” is an arrangement which is established under the law of a country outside the Islands and which consists of—

- (i) at least one person who has unlimited liability for the debts and obligations of the arrangement; and
 - (iii) at least one person who has no, or limited, liability for the debts and obligations of the arrangement for so long as that person does not take part in the management of the arrangement's business; and
- (b) a "limited liability participant" is a person who—
- (i) has no, or limited, liability for the debts and obligations of the foreign limited partnership for so long as that person does not take part in the management of the foreign limited partnership's business; and
 - (ii) does not take part in the management of the foreign limited partnership's business.

PART II

RULES FOR INTERPRETING THE ORDINANCE

Application of this Part

4. This Part specifies rules for determining—
- (a) whether, as provided in Part IX of the Ordinance, a person is a beneficial owner of a company;
 - (b) the circumstances in which a person holds an interest in a company indirectly through a legal entity; and
 - (c) the application of Part IX of the Ordinance to protected cell companies.

Joint interests and arrangements

5. (1) If two or more persons each hold a share or right jointly, each of them is treated as holding that share or right.

(2) If shares or rights held by a person, and shares or rights held by another person, are the subject of a joint arrangement between those persons, each of them is treated as holding the combined shares or rights of both of them.

Calculating shareholdings

6. (1) This regulation specifies the rules for determining whether a person's holding in the issued shares of a company limited by shares or of a company authorised to issue shares, exceeds 25%.

(2) If all the shares in a company are issued with a par value, a person holds shares exceeding 25% of the issued shares in the company if the nominal value of the shares that the person holds exceeds, in aggregate, 25% of the nominal value of all issued shares.

(3) If all the shares in a company are issued without a par value, a person holds shares exceeding 25% of the issued shares in the company if the number of shares that the person holds exceeds, in aggregate, 25% of the total number of shares issued by the company.

(4) If some of the issued shares in a company have a par value and the other issued shares do not have a par value, a person holds shares exceeding 25% of the issued shares in the company if—

- (a) the nominal value of the shares with a par value that the person holds exceeds, in aggregate, 25% of the nominal value of all shares issued by the company with a par value; or
- (b) the number of shares without a par value that the person holds exceeds, in aggregate, 25% of the total number of shares issued by the company without a par value.

Voting rights

7. (1) A reference to the voting rights in a legal entity is to the rights, including rights that arise only in certain circumstances, conferred on a shareholder or other member of the legal entity to vote on members' resolutions on all, or substantially all, matters.

(2) In relation to a legal entity where matters are not decided by members' resolution—

- (a) a reference to exercising voting rights in the legal entity is to be read as a reference to exercising rights in relation to the legal entity that are equivalent to those of a member entitled to vote on a members' resolution; and
- (b) a reference to exercising more than 25% of the voting rights in the legal entity is to be read as a

reference to exercising the right under the constitution of the legal entity, or a members' agreement, to block changes to the overall policy of the legal entity or to the terms of its constitution.

(3) In applying these Regulations, the voting rights in a legal entity are to be reduced by any rights held by the legal entity itself.

Rights to appoint or remove directors

8. A reference to the right to appoint or remove a majority of the directors of a legal entity is to the right to appoint or remove directors holding a majority of the voting rights in respect of directors' resolutions on all or substantially all matters.

Holding a share or right in a company indirectly through a legal entity

9. (1) This regulation applies in determining whether a person holds a share or right in a company indirectly through a legal entity.

(2) A person holds a share in a company indirectly if the person has a majority stake in a legal entity, and the legal entity—

- (a) holds the share in question; or
- (b) is part of a chain of legal entities—
 - (i) each of which (other than the last) has a majority stake in the legal entity immediately below it in the chain; and
 - (ii) the last of which holds the share.

(3) A person holds a right in a company "indirectly" if the person has a majority stake in a legal entity and that legal entity—

- (a) holds that right, or
- (b) is part of a chain of legal entities—
 - (i) each of which (other than the last) has a majority stake in the company immediately below it in the chain, and
 - (ii) the last of which holds that right.

(4) In the application of this paragraph to the right to appoint or remove a majority of the directors, a legal entity is to be treated as having the right to appoint a director if—

(a) a person's appointment as director follows necessarily from that person's appointment as director of the legal entity; or

(b) the directorship is held by the legal entity itself.

(5) For the purposes of this regulation, a person "X" has a "majority stake" in a legal entity "Y" if—

(a) X holds a majority of the voting rights in Y;

(b) X is a member of Y and has the right to appoint or remove a majority of the directors of Y;

(c) X is a member of Y and controls alone, pursuant to a joint agreement with other members, a majority of the voting rights in Y; or

(d) X has the right to exercise, or actually exercises, dominant influence or control over Y.

(6) Where this regulation applies, a person holds an interest in a company—

(a) through the legal entity concerned; and

(b) through each other legal entity in the chain mentioned in subregulation (2)(b) or (3)(b).

Shares held by nominees

10. A share held by a person as nominee for another person is to be treated for the purposes of these Regulations as held by the other person, and not by the nominee.

Rights treated as held by person who controls their exercise

11. (1) Where a person controls a right, the right is to be treated for the purposes of these Regulations as held by that person, and not by the person who in fact holds the right, unless that person also controls it.

(2) A person controls a right if, by virtue of any arrangement between that person and others, the right is exercisable only—

(a) by that person;

(b) in accordance with that person's directions or instructions; or

(c) with that person's consent or concurrence.

Rights exercisable only in certain circumstances

12. (1) Rights that are exercisable only in certain circumstances are to be taken into account only—

- (a) when the circumstances have arisen, and for so long as they continue to subsist; or
- (b) when the circumstances are within the control of the person having the rights.

(2) Despite subregulation (1), rights that are exercisable by an administrator or by creditors while a legal entity is in relevant insolvency proceedings shall not be taken into account, even while the company is in those proceedings.

(3) Rights that are normally exercisable but are temporarily incapable of exercise are to continue to be taken into account.

(4) In this regulation, “relevant insolvency proceedings” means—

- (a) administration within the meaning of the Insolvency Ordinance 2017; or
- (b) proceedings under the insolvency law of any country outside the Islands during which a legal entity’s assets and affairs are subject to the control or supervision of a third party or creditor.

Rights attached to shares held by way of security

13. Rights attached to shares held by way of security provided by a person are to be treated for the purposes of these Regulations as held by that person—

- (a) where, apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in accordance with that person's instructions; and
- (b) where the shares are held in connection with the granting of loans as part of normal business activities and, apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in that person's interests.

Significant influence or control

14. (1) Without limiting section 146(d) of the Ordinance, a person is considered to have the legal right to exercise significant influence or control over a company if the person is a member of

the company, but not a shareholder, and the person holds a right to share in more than 25% of the capital or, as the case may be, profits of the company.

(2) The Commission may issue guidance under section 302 of the Ordinance concerning the meaning of “significant influence or control” for the purposes of section 146 of the Ordinance.

(3) Regard must be had to any guidance issued in accordance with subregulation (1) in interpreting references in the Ordinance or these Regulations to “significant influence or control”.

Persons considered not to exercise significant influence or control

15. (1) A person does not exercise significant influence or control over a company merely because the person—

- (a) provides advice or direction in a professional capacity, including by acting as—
 - (i) a lawyer;
 - (ii) an accountant;
 - (iii) a financial or tax advisor;
 - (iv) an investment manager;
- (b) deals with the company under a third party commercial or financial agreement;
- (c) has the benefit of a security interest over shares or voting rights in a company;
- (d) has commercial exposure to the financial performance of a company through a financial derivative or other similar contractual arrangement;
- (e) is an employee acting in the course of his employment and as nominee for his employer, including an employee, director or chief executive officer of a third party which has significant influence or control over the company;
- (f) is a director of the company, including a managing director, a sole director and a non-executive director; or
- (g) exercises a function under an enactment, including as the liquidator or receiver of a company.

(2) Subregulation (1) shall not be construed as setting out an exhaustive list of circumstances in which a person does not exercise significant influence or control over a company.

Limited partnerships

16. (1) An individual does not meet the conditions for being a beneficial owner of a company specified in section 146(a), (b) or (c) of the Ordinance merely because the person is a limited partner.

(2) An individual does not meet the conditions for being a beneficial owner of a company specified in section 146(a), (b) or (c) of the Ordinance in relation to a company merely because the person, directly or indirectly—

(a) holds shares; or

(b) holds a right,

in or in relation to a limited partner which, in its capacity as such, would meet the condition if it were an individual.

(3) Subregulation (1) and (2) do not apply for the purposes of determining whether the requirement specified in section 146(e) of the Ordinance is met.

Protected cell companies

17. A person is a beneficial owner of a protected cell company if—

(a) paragraph (a), (b), (c), (d) or (e) of section 146 of the Ordinance apply to the person with respect to an individual cell of the protected cell company; or

(b) paragraph (a), (b), (c), (d) or (e) of section 146 of the Ordinance apply to the person with respect to the protected cell company, excluding its cells.

PART III

BENEFICIAL OWNERSHIP INFORMATION AND ITS REGISTRATION

Prescribed beneficial ownership information

18. (1) The prescribed beneficial ownership information with respect to a natural person who is a registrable person comprises—

(a) the person's—

- (i) full legal name and any former names;
 - (ii) date of birth;
 - (iii) nationality;
 - (iv) usual residential address and, if different, an address for service of notices under the Ordinance or these Regulations;
- (b) information identifying the person from his passport, driver's licence or other government-issued document, including—
- (i) identifying number;
 - (ii) country of issue; and
 - (iii) date of issue and of expiry;
- (c) the date on which the person became or ceased to be a registrable person in relation to the company in question; and
- (d) the beneficial ownership criteria that apply to the person.

(2) The prescribed beneficial ownership information with respect to a person specified in section 148(b)(ii), (iii), (iv) or (v) of the Ordinance comprises—

- (a) the person's name and any former names;
- (b) the address of the person's principal office;
- (c) the legal form of the person and the law by which the person is governed;
- (d) the country—
 - (i) in which a corporation sole is incorporated, formed or otherwise constituted;
 - (ii) of a government, government department, local authority or local government body; or
 - (iii) in which the principal office is constituted;
- (e) the date on which the person became or ceased to be a registrable person in relation to the company in question; and
- (f) the beneficial ownership criteria that apply to the person.

(3) The prescribed beneficial ownership information with respect to a company comprises—

- (a) the company's full name and its company number;

- (b) the company's registered office;
- (c) the date on which the company became or ceased to be a registrable person in relation to the company in question; and
- (e) the beneficial ownership criteria that apply to the company.

(4) A person who was a registrable person in relation to a company on the company's incorporation or continuation under the Ordinance is considered to have become a registrable person on the date that the company was incorporated or continued, as the case may be.

Additional information to be registered

19. (1) A company shall record in its register of beneficial owners the information specified in subregulation (2), in addition to the information required under Part VI of the Ordinance.

(2) If the company knows, or has reasonable cause to believe, that there is no registrable person in relation to the company, the company shall state this in its register of beneficial owners.

Removal of entries from the register

20. An entry relating to a person who used to be a registrable person may be removed from the company's beneficial ownership register after the expiration of twenty years from the date on which the person ceased to be a registrable person in relation to the company.

Notice in relation to change in beneficial ownership information

21. (1) A notice given by a company under section 153 of the Ordinance shall require the addressee—

- (a) to confirm whether or not the change specified in the notice has occurred; and
- (b) if so—
 - (i) to state the date of the change; and
 - (ii) to confirm or correct the information included in the notice, and supply any beneficial ownership information that is missing from the notice.

(2) A notice under subregulation (1) shall state that the addressee must comply with the notice by no later than the end of the period of four weeks of receipt of the notice.

Provision of information to the Commission

22. (1) A notice provided by a company to the Commission under section 157(1) of the Ordinance shall specify the prescribed beneficial ownership information in respect of each person who is a registrable person in relation to the company.

(2) A notice under section 157(1) or (2) of the Ordinance may only be delivered to the Commission by the registered agent of the company.

Retention of information on Register of Beneficial Owners of Companies

23. The Commission shall retain information recorded on the Register of Beneficial Owners of Companies in relation to a company for a period of twenty years after the dissolution of the company.

PART IV

EXEMPTIONS AND MISCELLANEOUS PROVISIONS

Persons who are not registrable persons

24. A person who falls within section 148 is not a registrable person in relation to company Y, if the person—

(a) is an individual or a company; and

(b) is a beneficial owner of company Y solely by reason that the person has a beneficial interest in one or more other companies, each of which is a registrable person in relation to company Y.

Request for disclosure of beneficial ownership information

25. A request by the Royal Turks and Caicos Islands Police Force under section 159(1) of the Ordinance for the disclosure of beneficial ownership information in relation to a company is made in accordance with these Regulations if made in the approved form.

MADE this 24th day of December 2017.



Dr. John Freeman
GOVERNOR

15



EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide the rules for interpreting beneficial ownership under the Ordinance; the process for establishing and registering beneficial ownership information and provides for exemptions.