

COMPANIES ORDINANCE 2017

**COMPANIES ORDINANCE (AMENDMENT OF
SCHEDULES) (NO. 2) ORDER 2017**

(Legal Notice 82 of 2017)

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

1. Citation and commencement
2. Schedule 1 amended
3. Schedule 2 amended

COMPANIES ORDINANCE 2017
COMPANIES ORDINANCE (AMENDMENT OF
SCHEDULES) (NO. 2) ORDER 2017

(Legal Notice 82 of 2017)

MADE by the Governor under section 308(1) of the Companies Ordinance 2017.

Citation and commencement

1. This Order may be cited as the Companies Ordinance (Amendment of Schedules) (No. 2) Order 2017 and comes into force on 31 December 2017.

Schedule 1 amended

2. Schedule 1 of the Companies Ordinance 2017 (referred to in this Order as “the Ordinance”) is amended—

(a) in paragraph 2—

- (i) in the definition of “automatic registration date”, by deleting “30 June 2018” and substituting “31 October 2018”;
- (ii) in the definition of “transition commencement date”, by deleting “31 December 2017” and substituting “1 February 2018”; and
- (iii) in the definition of “transition period”, by deleting “29 June 2018” and substituting “31 October 2018”;

(b) in paragraph 3—

- (i) in subparagraph (1), by deleting “An existing company that, at the date of the application, is on the former Ordinance” and substituting “Subject to subparagraph (7), an existing company that, at the date of the application, is on the former Companies Register”;
- (ii) in subparagraph (2)(b), by designating sub-subparagraph (iii) as sub-subparagraph (v) and inserting the following after sub-subparagraph (ii)—

“(iii) a notice of its directors in the approved form;

- (iv) a notice of its members in the approved form; and”
- (iii) in subparagraph (4)(b), by inserting after “continued”, the words “or registered”;
- (iv) by deleting subparagraph (5);
- (v) in subparagraph (6), by deleting “Subject to subparagraph (7), an application” and substituting “An application”; and
- (vi) by inserting after subparagraph (6), the following subparagraph—
 - “(7)An existing company may only be registered under this Ordinance—
 - (a) as a protected cell company if, immediately before its registration, it is a protected cell company under the former Ordinance; or
 - (b) as a non-profit company if, immediately before its registration, it is a non-profit company under the former Ordinance.”;
- (c) in paragraph 4(5), delete “and paragraphs 5 to 7” where the words first appear;
- (d) in paragraph 6(1)(d), delete “that is authorised to issue” and substitute “that is not authorised to issue”;
- (e) in paragraph 7(2)—
 - (i) in paragraph (b), delete “incorporation or continuation” and substitute “incorporation, continuation or registration”; and
 - (ii) in paragraph (c), insert “the” before the word “existing”;
- (f) in paragraph 8(4)(b), by deleting “165, 166, 167 and 169” and substituting “165, 166, 167, 169 and 170”;
- (g) in paragraph 9, by deleting subparagraphs (2) and (3) and substituting the following paragraphs—
 - “(2) If the person who, at the time of the automatic registration of an existing company, is a person eligible to act as registered agent under section 43, that person is its registered agent on the company’s automatic registration.

- (3) An existing company that falls within subparagraph (2) shall, within fourteen days of its automatic registration, file a notice specifying the name and address of its registered agent in the approved form.
- (4) An existing company that is automatically registered and that does not fall within subparagraph (2) shall, within one month of its automatic registration—
 - (a) appoint a person eligible to act as registered agent under section 43 as its registered agent; and
 - (b) file a notice of appointment of its registered agent in the approved form.
- (5) On the registration of a company under paragraph 4—
 - (a) its registered office is the address specified as its registered office, and
 - (b) its registered agent is the person specified as its registered agentin the application to register filed under paragraph 3.”;
- (h) by inserting after paragraph 9, the following paragraphs—

“Notices to be filed after registration

9A.(1) An existing company which is automatically registered under paragraph 5(1) shall—

- (a) within four weeks of its registration, file—
 - (i) a notice of its directors in the approved form; and
 - (ii) a notice of its members in the approved form; and
- (b) within six weeks of its registration, file with the Commission a notice in the approved form specifying the prescribed beneficial ownership information for each person who is a registrable person in relation to the company.

(2) An existing company that contravenes subparagraph (1)(b) commits an offence and is liable on summary conviction to a fine of \$50,000.”;

(i) in paragraph 10, by deleting “articles continue” and substituting “memorandum and articles continue”;

(j) in paragraph 12—

(i) by deleting subparagraph (1) and substituting the following subparagraph—

“(1) Subject to subparagraph (8), an application may be made under section 261 to reinstate an existing company that has been struck off the former Companies Register under section 206 of the former Ordinance as if the company had been struck off the Register maintained under this Ordinance and dissolved.”; and

(ii) by inserting after subparagraph (4) the following subparagraphs—

“(5) Subparagraphs (6) and (7) apply to an existing company reinstated under this paragraph in place of section 265(2) and (3).

(6) If property of an existing company reinstated under this paragraph has vested in the Governor under section 209 of the former Ordinance, the Court may order that any property, other than money, that was vested in Governor and that has not been disposed of shall be returned to and re-vested in the company on its reinstatement on such terms and conditions as the Court considers just, which may include a requirement that the company pay a sum of money to the Governor for the benefit of the Consolidated Fund.

(7) An existing company reinstated under this paragraph shall not be entitled to—

(a) the return of—

(i) any money that vested in the Governor under section 209 of the former Ordinance; or

(ii) any property that has vested in the Governor

under section 209 of the former Ordinance and which has been disposed of; or

- (b) any payment or compensation for money or property specified in paragraph (a).

(8) During the period of twelve months commencing with the date that an existing company was struck off the former Companies Register under section 206 of the former Ordinance, application may be made to the Registrar under section 260 of this Ordinance to reinstate the company as if the company had been struck off the Register maintained under this Ordinance.

(9) Section 260 of this Ordinance applies to an application under subparagraph (8) subject to such modifications as are necessary.”;

- (k) in paragraph 14, by deleting subparagraph (2) and substituting the following subparagraph—

“(2) Section 266 applies to any property of an existing company that has vested in the Governor under section 209 of the former Ordinance, with such modifications as are appropriate.

(3) Without limiting subparagraph (2), for the purposes of section 266(4), the Governor is deemed not to have notice of any property that vested in the Governor under section 209 of the former Ordinance prior to the transition commencement date.”;

- (l) by inserting after paragraph 20, the following paragraph—

“Foreign companies

20A. A foreign company registered under Part XVI of the former Ordinance at midnight on the last day of the transition period is deemed to be registered under this Part, with immediate effect.”; and

- (m) by inserting after paragraph 23, the following paragraphs—

“Suspension of registration of companies and foreign companies

24. The Registrar shall not, on or after the transition commencement date—

- (a) issue a certificate of incorporation of, or register, a company under section 27 of the former Ordinance;
- (b) issue a certificate of incorporation of, or register, an exempted company under section 211 of the former Ordinance;
- (c) register a company as a limited life company under section 233 of the former Ordinance;
- (d) register a foreign company as continued in the Islands under section 246 of the former Ordinance or issue a certificate of continuation under section 246(7) of the former Ordinance; or
- (e) register a foreign company under section 250 of the former Ordinance.

Repeal of specified provisions of the former Ordinance

25. The provisions of the former Ordinance specified in section 309(2) of the Ordinance are repealed on the transition commencement date.”.

Schedule 2 amended

3. Schedule 2 of the Companies Ordinance 2017 (referred to in this Order as “the Ordinance”) is amended by inserting in the table set out in Schedule 2, the following as rows at the end of the table—

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| 152 | Company contravening a provision of section 152 (Duty to maintain beneficial ownership register) |
| 153 | Company contravening a provision of section 153 (Duty to keep information up to date) |

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| 157 | Company contravening a provision of section 157 (Giving beneficial ownership information to Commission) |
| 163(1) | Company failing to keep a register of relevant charges |
| 184 | Protected cell company— (a) failing to maintain the records required by subsection (1) (b) in the case of a protected cell company to which the Insurance Ordinance applies, failing to keep its records at its principal office in accordance with subsection (2) (c) failing to prepare or cause to be prepared financial statements in relation to respect of each protected cell account as required by subsection (4) (d) failing to maintain a register of account owners as required by subsection (7) |
| 270(1) | Foreign company failing to file change of particulars within one month |
| 271(1) | Foreign company carrying on business without a registered agent |
| 273(4) | Foreign company— (a) failing to appoint a new registered agent following receipt of notice sent under section 272(2) (b) failing to file a notice of change of registered agent |

MADE this 21st day of December 2017.

Dr. John Freeman
GOVERNOR

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends Schedule 1 to the Companies Ordinance 2017 by making amendments to the commencement, transitional provisions and the savings provision. It postpones the automatic registration date to 31 October 2018; the end of the transition period to 31 October 2018 and setting the transition commencement date as 1 February 2018.