

COMPANIES (AMENDMENT) BILL, 2016

MEMORANDUM

The object of the Bill is to provide for the inclusion of the names and particulars of beneficial owners of companies in the register of members, to establish a Central Register and to provide for related matters.

Over the past decades, a small minority of companies have hidden their business dealings behind a complicated web of shell companies. This cloak of secrecy has fuelled global corruption, money laundering, and the movement of other illicit flows. The cloak of secrecy has also enabled corrupt individuals to hide their moneys. This has resulted in the fact that most businesses and governments do not know who they are dealing with and this is unfair to citizens who abide by the rules. The Panama Papers which are an unprecedented leak of about eleven point five million files from the database of the world's fourth biggest offshore law firm, have shown that Government needs to continue to take firm action on increasing beneficial ownership transparency. Critical to making beneficial ownership transparency a tool for fighting corruption and detecting inappropriate government conflicts of interest is the identification of beneficial owners who are politically exposed persons. The Bill therefore requires the identification of members and beneficial owners of companies who are politically exposed persons and for this information to be submitted to the Registrar for registration.

There is a global emerging consensus that central registers of companies are the most effective way of indicating information on the beneficial owners of a company; and the information obtained from these registers are the most effective way of tackling corruption.

The benefits of requiring companies to keep registers include the fact that businesses can identify who really owns the companies they are trading with; countries will have easy access to the data entered in the register, so that they know who they are really going into business with; and civil society and citizens may use information entered in the register to fight corruption. Moreover, law enforcement agencies would have ease of access to critical information required to undertake their mandate.

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Clause 1 of the Bill seeks to amend section 27 of the Companies Act, 1963 (Act 179) to require a subscriber of a company to provide the details of the subscriber. The *clause* also places an obligation on the subscriber to provide the details of the beneficial owner in a situation where the subscriber is not the beneficial owner. The details of the beneficial owner required to be provided include particulars of residence or work permit in the case of a non-national and the nature of the interest including the details of how the beneficial ownership is maintained.

Clause 2 of the Bill seeks to amend section 32 of the Companies Act, 1963 (Act 179) to require a company to include in the register of that company, the nature of interest of the members of that company. Furthermore, *clause 2* requires that where a member of a company is not the beneficial owner of that company, the company should indicate in the register, the details of the beneficial owner including the name and address of the beneficial owner, the date and place of birth and proof of identity of the beneficial owner as well as the nature of the interest including the details of how the beneficial ownership is maintained. In addition, the member is to provide the company with the particulars of the beneficial owner at the time of conclusion of the agreement with the company to become a member. The person is required to provide the information within twenty-eight days of receipt of the necessary particulars and indicate the members or beneficial owners who are politically exposed persons as well as update the company within twenty-eight days of any change in the particulars submitted. A person who fails to provide the information required or who provides false or misleading information to the Registrar commits an offence and is liable on summary conviction to a fine of not less than one hundred and fifty penalty units and not more than two hundred and fifty penalty units or to a term of imprisonment of not less than one year and not more than two years or to both.

Clause 3 seeks to amend section 33 of the Companies Act, 1963 (Act 179) to require a company to also make available the register of members, and the index of the names of the beneficial owners of the company for inspection by a member without charge, and any other person on payment of a reasonable fee prescribed by the company, for each inspection.

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Furthermore *clause 4* of the Bill amends section 122 of the Companies Act, 1963 (Act 179) to require a company to include the details of every beneficial owner of the company in the Annual return when the company is submitting its Annual return to the Registrar.

The Bill in *clause 5* amends section 303 of the Companies Act, 1963 (Act 179) by placing an obligation on an external company to provide a statement which is duly notarised in the jurisdiction of origin of the company, giving the particulars regarding the beneficial owners of the company. This information is in addition to the documents to be provided to the Registrar by an external company.

Clause 6 seeks to amend section 304 of the Companies Act, 1963 (Act 179) to reflect accurate cross references in subsections (2) and (3) of section 304.

The Bill, in *clause 7*, amends section 331 of the Companies Act, 1963 (Act 179) by establishing a Central Register. The Registrar is to keep and maintain the Central Register both in manual and electronic formats and enter in the Central Register, the particulars required to be submitted for registration under section 32 of the Act, the particulars required to be submitted for registration under section 303 of the Act and any other information that the Registrar may require. The *clause* also requires the Registrar to co-operate with other relevant authorities for the purpose of maintaining, verifying and updating the register and on request and in a timely manner, make the register available to the relevant authorities for inspection. The relevant authorities in this case include the National Security Council, the Ghana Revenue Authority and the Financial Intelligence Centre.

Clause 8 amends section 336 of the Act in relation to Regulations. The amendment seeks to empower the Registrar to include in the Regulations matters required to be entered in the Central Register established under the Act and the maintenance of the Central Register generally as well as extend the requirements of section 32 to other forms of ownership interests.

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Clause 9 amends the First Schedule to the Companies Act, 1963 (Act 179) by providing a definition for a "beneficial owner", "politically exposed person" and "registration officer". A beneficial owner is an individual who directly or indirectly ultimately owns or exercises substantial control over a person or company or who has a substantial economic interest in or receives substantial economic benefits from a company whether acting alone or together with other persons or on whose behalf a transaction is conducted and also includes an individual who exercises ultimate effective control over a person or arrangement.

A politically exposed person for this purpose includes a head of state or head of government, a politician, a senior public official, a senior military officer or a senior officer of a public corporation. A high rank political party official, an artificial politically exposed person, a member of family of a politically exposed person and a close partner or associate of a politically exposed person are also included in the definition.

Clause 10 amends the Third Schedule to the Companies Act, 1963 (Act 179) by requiring a company, as part of the submission of annual returns, to provide information on the beneficial owners of the company.

MRS. MARIETTA BREW APPIAH-OPONG
Attorney-General and Minister for Justice

Date: 15th July, 2016

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ARRANGEMENT OF SECTIONS

Sections

1. Section 27 of Act 179 amended
2. Section 32 of Act 179 amended
3. Section 33 of Act 179 amended
4. Section 122 of Act 179 amended
5. Section 303 of Act 179 amended
6. Section 304 of Act 179 amended
7. Section 331 of Act 179 amended
8. Section 336 of Act 179 amended
9. First Schedule to Act 179 amended
10. Third Schedule to Act 179 amended

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BILL

ENTITLED

COMPANIES (AMENDMENT) ACT, 2016

AN ACT to amend the Companies Act, 1963 (Act 179) to provide for the inclusion of the names and particulars of beneficial owners of companies in the register of members, for the establishment of a Central Register and for related matters.

PASSED by Parliament and assented to by the President:

Section 27 of Act 179 amended

1. The Companies Act, 1963 (Act 179), referred to in this Act as the "principal enactment" is amended in section 27 by

(a) the insertion after paragraph (g) of

"(h) the following particulars of each subscriber:

(i) the present full name and any former or alternate name;

(ii) the date and place of birth;

(iii) the telephone number; and

(iv) the nationality, residential and postal address;

(i) where a subscriber under paragraph (h) is not the beneficial owner of the interest, the particulars specified in paragraph (h) and the following particulars in respect of the beneficial owner:

- (a) the particulars of residence or work permit in the case of a non-national and
 - (b) the nature of the interest including the details of how the beneficial ownership is maintained."
- (b) the substitution for subsection (3) of
- "(3) The return shall
- (a) identify the members or beneficial owners who are politically exposed persons; and
 - (b) be signed by two directors and the secretary of the company."

Section 32 of Act 179 amended

2. The principal enactment is amended by the substitution for section 32 of

"Register of members

32.(1) Subject to the Central Securities Depository Act, 2007 (Act 733) and any other enactment, a company shall keep in the Republic a register of its members and shall enter in the register

- (a) in respect of members of the company,
 - (i) the names and addresses of the members and, in the case of a company having shares, a statement of the shares held by each member, and of the amount paid, or agreed to be considered as paid, on the shares of each member, and of the amount remaining payable on the shares;
 - (ii) the date at which a person was entered in the register as a member;
 - (iii) the nature of the interest of each member; and

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- (iv) the date at which a person ceased to be a member; and
- (b) where a member is not the beneficial owner of the interest,
 - (i) the present full name and any former name of the beneficial owner;
 - (ii) the date and place of birth and proof of identity;
 - (iii) the telephone number of the beneficial owner;
 - (iv) the nationality, residential and postal address of the beneficial owner;
 - (v) the particulars of residence or work permit in the case of a non-national; and
 - (vi) the nature of the interest including the details of how the beneficial ownership is maintained.”
- (2) For the purpose of paragraph (b) of subsection (1), where a member of a company is not the beneficial owner, that member shall
 - (a) provide the company with the particulars of the beneficial owner at the time of conclusion of the agreement with the company to become a member; and
 - (b) update the company within twenty-eight days of a change in the particulars submitted under paragraph (a).
- (3) The entry required under subparagraphs (i) to (iii) of paragraph (a) of subsection (1) shall be made within twenty-eight days of the conclusion of the agreement with the person to become a member.
- (4) The entry required under subparagraph (iv) of paragraph (a) of subsection (1) shall be made within twenty-eight days of the date when the person concerned ceased to be a member, or if that person ceased to be a member otherwise than as a result of an action by the company, within twenty-eight days of production to the company of evidence satisfactory to the company of

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the occurrence of the event by which that person ceased to be a member.

(5) The entry required under paragraph (b) of subsection (1) shall be made within twenty-eight days of receipt of the necessary particulars under subsection (2).

(6) A company shall, within twenty-eight days of making an entry required under paragraph (b) of subsection (1), submit particulars of the entry to the Registrar for registration and indicate the members or beneficial owners who are politically exposed persons.

(7) The entries relating to a person who has ceased to be a member may be deleted from the register after the expiration of six years from the date when the person ceased to be a member.

(8) Where a company has more than fifty members, the register shall contain an index of the names of the members and the names of beneficial owners in a form that enables the account of each member to be readily found.

(9) An existing company shall, within twenty-eight days of a change in the place at which its register of members is kept, send notice of the change to the Registrar.

(10) A company is not bound to send notice where the register has, since the company came into existence, been kept at the registered office of the company.

(11) An existing company shall, within two months after the coming into force of this Act, submit the information required under paragraph (b) of subsection (1) to the Registrar for registration.

(12) The company may arrange with any other person, to be known as the registration officer, for the making up of the register to be undertaken on behalf of the company by the registration officer at that officer's office; and if by reason of a default of the registration officer the company defaults in complying with this section or with section 33 the registration officer is liable to the same penalties as if the registration officer were an officer of the company.

(13) The power of the Court under subsection (5) of section 33 shall extend to the making of orders against the registration officer and the officers and employees of the registration officer.

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(14) A person who

- (a) fails to provide the information required under subsection (2), or
- (b) provides false or misleading information to the Registrar

commits an offence and is liable on summary conviction to a fine of not less than one hundred and fifty penalty units and not more than two hundred and fifty penalty units or to a term of imprisonment of not less than one year and not more than two years or to both.

(15) Where a company defaults in complying with this section, the company and every officer of the company that is in default is liable to pay to the Registrar, an administrative penalty of twenty-five penalty units for each day during which the default continues.”.

Section 33 of Act 179 amended

3. The principal enactment is amended in section 33 by the substitution for subsection (1) of

“(1) Except when the register of members is closed in accordance with section 34, the register, the index of the names of the members of the company and the index of the names of the beneficial owners of the company shall, during business hours, and subject to reasonable restrictions that the company may impose, be open to inspection of

- (a) a member without charge, and
- (b) any other person on payment of a reasonable fee prescribed by the company, for each inspection.”.

Section 122 of Act 179 amended

4. The principal enactment is amended in section 122 by the substitution for subsection (1) of

“(1) A company shall, at least once in every year, deliver to the Registrar for registration, an annual return including particulars of every member of the company and every beneficial owner of that company, and in the form and relating to the matters prescribed in the Third Schedule.

Section 303 of Act 179 amended

5. The principal enactment is amended in section 303 by the insertion after paragraph (b) of subsection (1) of

“(bA) a statement duly notarised in the jurisdiction of origin of the company giving the following particulars regarding the beneficial owners of the company:

- (i) the present full name and any former or alternate name;
- (ii) the date and place of birth;
- (iii) the telephone number;
- (iv) the nationality, residential and postal address; and
- (v) the nature of the interest including the details of how the beneficial ownership is maintained;”

Section 304 of Act 179 amended

6. The principal enactment is amended in section 304 by

- (a) the insertion after “paragraph (b)” in line 2 of subsection (2) of “or (bA)”; and
- (b) the insertion after “paragraph (b)” in line 2 of subsection (3) of “or (bA)”.

Section 331 of Act 179 amended

7. The principal enactment is amended by the substitution for section 331 of

“Central Register

331. (1) There is established by this Act a register to be known as the Central Register.

(2) The Registrar shall

- (a) keep and maintain the Central Register both in manual and electronic formats; and
- (b) enter in the Central Register,
 - (i) the particulars required to be submitted for registration under subsection (1) of section 27;
 - (ii) the particulars required to be submitted for registration under subsection (6) of section 32;

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- (iii) the particulars required to be submitted for registration under paragraph (c) of subsection (1) of section 303; and
- (iv) any other information that the Registrar may require.

(3) The Registrar shall

- (a) co-operate with other relevant authorities for the purpose of maintaining, verifying and updating the register; and
- (b) on request and in a timely manner, make the register available to the relevant authorities for inspection.

(4) Subject to section 335A, where under a section of this Act, other than sections 27, 32 and 303, a document or particulars are required to be registered by the Registrar, registration shall be effected by inserting the document or making the appropriate entries of the particulars in the Central Register.

(5) For the purpose of this Act, a document has not or particulars have not, been delivered to the Registrar for registration until the appropriate registration fee has been paid to the Registrar.

(6) Where the Registrar is of opinion that a document or particulars delivered to the Registrar for registration,

- (a) contain a matter contrary to law,
- (b) by reason of an error, omission or a misdescription, have not been duly completed,
- (c) otherwise do not comply with the requirements of this Act, or
- (d) contain an error

the Registrar may request that the document or particulars be appropriately amended or completed and re-submitted, and may refuse to register the document or particulars until appropriately amended or completed; and in that event the document has not or the particulars have not, been delivered for registration until re-submitted as appropriately amended or completed.

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(7) For the purpose of this section, "relevant authority" includes

- (a) National Security Council;
- (b) Ghana Revenue Authority;
- (c) Financial Intelligence Centre;
- (d) Economic and Organised Crime Office;
- (e) Commission on Human Rights and Administrative Justice;
- (f) Narcotics Control Board; and
- (g) any other authority or agency authorised in writing by the Minister."

Section 336 of Act 179 amended

8. The principal enactment is amended in section 336 by the insertion after subsection (1) of a new subsection (1A) as follows:

"(1A) Regulations made under subsection (1) shall include Regulations

- (a) in respect of matters required to be entered in the Central Register established under section 331 and the maintenance of the Central Register generally; and
- (b) extending the requirements of section 32 to other forms of ownership interests.

First Schedule to Act 179 amended

9. The First Schedule to the principal enactment is amended by

- (a) the insertion in the appropriate alphabetical order of "“beneficial owner” means an individual
 - (a) who directly or indirectly ultimately owns or exercises substantial control over a person or company;
 - (b) who has a substantial economic interest in or receives substantial economic benefits from a company whether acting alone or together with other persons;
 - (c) on whose behalf a transaction is conducted; or
 - (d) who exercises ultimate effective control over a legal person or legal arrangement”;

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““politically exposed person” includes

- (a) Head of state;
 - (b) Head of government;
 - (c) politician;
 - (d) senior public official;
 - (e) senior military officer;
 - (f) senior officer of a public corporation;
 - (g) high rank political party official;
 - (h) an artificial politically exposed person;
 - (i) members of family of a politically exposed person;
and
 - (j) a close partner or associate of a politically exposed person;”;
- (b) the substitution for the definition of “registration officer” of “registration officer” has the meaning assigned to it in subsection (12) of section 32;”.

Third Schedule to Act 179 amended

10. The Third Schedule to the principal enactment is amended by the insertion after paragraph 6 of

“7. The following personal particulars of every beneficial owner of the company:

- (a) the present full name and any former or alternate name;
- (b) the date and place of birth;
- (c) the telephone number;
- (d) the nationality, residential address and postal address; and
- (e) the nature of interest including the details of how the beneficial ownership is maintained at the date of the return.”

Date of *Gazette* notification: 18th July, 2016.

