



ANGUILLA

BILL FOR

COMMERCIAL REGISTRY AND BENEFICIAL OWNERSHIP

REGISTRATION SYSTEM ACT, 2022

CONSULTATION DRAFT

Published by Authority

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I Assent

Governor

ANGUILLA
NO. XX/2022

**COMMERCIAL REGISTRY AND BENEFICIAL OWNERSHIP
REGISTRATION SYSTEM ACT, 2022**

[Gazette Date:] [Commencement: Assent under section 57 of the Constitution]

An Act to establish an electronic registration system for the Commercial Registry and certain customer due diligence and beneficial ownership information.

ENACTED BY THE LEGISLATURE OF ANGUILLA

**PART 1
GENERAL PROVISIONS**

Interpretation

1. (1) In this Act, unless the context otherwise requires—

“AML&TF Regulations” means the Anti-Money Laundering and Terrorist Financing Regulations;

“Anguilla company” means—

- (a) a company within the meaning of the Business Companies Act; or
- (b) a limited liability company within the meaning of the Limited Liability Company Act;

“Anguilla foundation” means a foundation within the meaning of the Anguilla Foundation Act;

“Anguilla trust” has the meaning specified in section 2;

“approved form” means a form approved by the Registrar under section 49;

“beneficial owner”—

- (a) in relation to an Anguilla company and for the purposes of Part 4, has the meaning specified in section 17;
- (b) for the purposes of Part 3 and the AML&TF Regulations, has the meaning specified in sections 9 to 12;

“Beneficial Ownership Register” means the Register of Beneficial Ownership established under Part 4;

“beneficial ownership sharing agreement” means an agreement between the Government and the government of another jurisdiction of a type or description or having the characteristics prescribed in the Regulations, for the sharing of beneficial ownership information;

“body corporate”—

- (a) includes—
 - (i) an Anguilla company;
 - (ii) a body corporate other than an Anguilla company, incorporated or constituted in Anguilla; and
 - (iii) a body corporate constituted under the law of a country outside Anguilla;
- (b) but does not include—
 - (i) a corporation sole;
 - (ii) a limited partnership; and
 - (iii) a partnership that, whether or not a legal person, is not considered to be a corporate body under the law by which it is governed;

“CDD information” means the customer due diligence information and particulars specified in the Regulations’

“CDD Register” or “Customer Due Diligence Register” means the Customer Due Diligence Register established under Part 3;

“Commercial Registry” means the Commercial Registry established under Part 5;

“Commission” means the Financial Services Commission established under section 2 of the Financial Services Commission Act;

“competent authority” has the meaning specified in section 1(1) of the Tax Information Exchange (International Co-operation) Act;

“country” includes a territory;

“Court” means the High Court;

“document” has the meaning specified in the Business Companies Act and includes a record;

“express trust” means a trust within the meaning of the Trusts Act, but excludes a trust arising by operation of law, including a resulting trust and a constructive trust;

“file”, in relation to information or a document means to file the information or document with the Registrar;

“FIU” means the Financial Intelligence Unit established under section 3 of the Financial Intelligence Unit Act, 2020;

“foreign listed company” means a legal entity incorporated, formed or constituted outside Anguilla which, if it was an Anguilla company, would be a listed company;

“limited partnership” means a limited partnership registered under section 11 of the Limited Partnership Act;

“listed company” means an Anguilla company—

- (a) with voting shares that are listed on a recognised exchange; or
- (b) which, in the opinion of the Commission, is subject to disclosure and transparency rules which are—
 - (i) contained in international standards; and
 - (ii) equivalent to those applicable to Anguilla companies referred to in subparagraph (a);

“LLC” means a limited liability company within the meaning of the Limited Liability Company Act;

“LLC interest” has the meaning specified in the Limited Liability Company Act;

“Minister” means the Minister with responsibility for finance;

“prescribed” means prescribed by the Regulations;

“recognised exchange” means a stock exchange or an investment exchange recognised by the Commission under section **48**;

“registrable person” has the meaning specified in section **18**;

“Registrar” means the Registrar of Companies;

“registration system” means the registration system established under section **4**;

“Registry Act” means—

- (a) the Business Companies Act;

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- (b) the Limited Liability Company Act;
 - (c) the Limited Partnership Act;
 - (d) the Trusts Act; or
 - (e) the Anguilla Foundation Act;

“Regulations” means the regulations made under section 50;

“segregated portfolio company” means a segregated portfolio company within the meaning of the Business Companies Act; and

“trust or corporate services provider” means a person holding—

- (a) a trust company licence issued under the Trust Companies and Offshore Banking Act; or
 - (b) a licence to carry on company management business issued under the Company Management Act.
- (2) In the case of a LLC, a reference in this Act to—
- (a) an “issued share” includes a reference to a LLC interest;
 - (b) a “registered shareholder” includes a reference to a member of a LLC; and
 - (c) a “director” includes a reference to a manager or other person having responsibility for the management of a LLC.

Anguilla trust

2. (1) A trust is an Anguilla trust for the purposes of this Act if—

- (a) the trust is an express trust; and
- (b) any of the following applies—
 - (i) the proper law of the trust is the law of Anguilla;
 - (ii) a trustee of the trust is resident in Anguilla;
 - (iii) any property of the trust is situated in Anguilla; or
 - (iv) any part of the administration of the trust is carried on in Anguilla.

(2) For the purposes of subsection (1), the following are resident in Anguilla—

- (a) an Anguilla company;
- (b) a limited partnership; and

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- (c) an Anguilla foundation.

Compliance by and enforcement on trusts and limited partnerships

3. In this Act—

- (a) an obligation, penalty or other sanction imposed on;
- (b) anything required to be done or not to be done by; and
- (c) a notification addressed to or served on—
 - (i) an express trust shall be construed as being imposed on, required of addressed to or served on the trustee of the trust or, if there is more than one trustee, of each of the trustees;
 - (ii) a limited partnership shall be construed as being imposed on, required of, addressed to or served on the general partner of the limited partnership or, if there is more than one general partner, of each of the general partners.

PART 2

REGISTRATION SYSTEM

Establishment of registration system

4. (1) The Registrar must ensure that there is established and maintained a registration system comprising—

- (a) the Customer Due Diligence Register;
- (b) the Beneficial Ownership Register; and
- (c) the Commercial Registry.

(2) The registration system must be established in electronic form.

(3) The registration system must—

- (a) be always available for the purposes specified in this Act;
- (b) be secure and accessible only by persons authorised under this Act; and
- (c) enable—
 - (i) searches to be conducted across the registration system as a whole; and
 - (ii) information recorded and documents stored on the registration system to be readily inspected and reproduced in legible and useable form.

(4) The Registrar may, with the written consent of the Governor in Council, by written agreement, engage one or more competent and experienced contractors to establish and maintain the registration system.

(5) The registration system and its contents is and at all times remains the property of the Government and may not be assigned or otherwise dealt with except as provided by this Act.

Functions of the Registrar with respect to registration system

- 5.** (1) The Registrar has the following functions with respect to the registration system—
- (a) the establishment, maintenance and management of the registration system;
 - (b) ensuring that the registration system—
 - (i) complies with section 4(2) and (3); and
 - (ii) enables the registers required to be maintained under the Registry Acts to be maintained in compliance with the Registry Acts;
 - (c) oversight and management of contractors engaged by the Registrar to establish or maintain the registration system under section 4(4); and
 - (d) other functions conferred on the Registrar by or under this Act.
- (2) The Registrar may delegate any of the Registrar’s functions, responsibilities or powers to a member of the Registrar’s staff.
- (3) If the Registrar delegates any functions, responsibilities or powers under subsection (2), the member of staff to whom the functions are delegated may, subject to directions given by the Registrar, exercise the powers and perform the duties of the Registrar.

Access to the registration system for operational reasons

- 6.** (1) The Registrar and authorised members of the Registrar’s staff may access the registration system and the information recorded and the documents stored in the registration system, but only—
- (a) to the extent necessary to exercise a function of the Registrar under this Act or a Registry Act; and
 - (b) in the case of an authorised member of staff, in accordance with the authorisation.
- (2) A contractor engaged by the Registrar to maintain the registration system under section 4(4) may access the registration system and the information recorded and the documents stored in the registration system, but only to the extent necessary to carry out maintenance of the registration system in accordance with the terms of the contractor’s engagement.

Access to the registration system by the Commission

7. (1) The Registrar must ensure that, at all times, the Commission has direct and immediate access to the registration system, including the information recorded and the documents stored in the registration system.

(2) The Commission may access the registration system only to the extent necessary to discharge its functions or to exercise its powers.

(3) The functions and powers of the Commission include the Commission's functions and powers under—

- (a) this Act;
- (b) the Financial Services Commission Act;
- (c) a financial services enactment, within the meaning of the Financial Services Commission Act;
- (d) a Registry Act; and
- (e) any other related enactment.

Access to the registration system by the FIU

8. (1) The Registrar must ensure that, at all times, the FIU has direct and immediate access to the Beneficial Ownership Register and the Commercial Registry, including the information recorded and the documents stored in each.

(2) The FIU may access the Beneficial Ownership Register and the Commercial Registry only to the extent necessary to discharge its functions or to exercise its powers.

(3) The functions and powers of the FIU include the FIU's functions and powers under—

- (a) this Act;
- (b) the Proceeds of Crime Act;
- (c) the Financial Intelligence Unit Act, 2020; and
- (d) any other related enactment.

(4) The functions and powers of the FIU under this Act include satisfying requests for information made by, or on behalf of—

- (a) a law enforcement authority in Anguilla;
- (b) a foreign law enforcement authority; and
- (c) a foreign government under a beneficial ownership sharing agreement.

PART 3**THE CUSTOMER DUE DILIGENCE REGISTER****Beneficial owners of a body corporate**

9. (1) In this Part and in the AML&TF Regulations, “beneficial owner” in relation to a body corporate means an individual who ultimately owns or controls the body corporate and includes an individual who—

- (a) exercises ultimate control over the management of the body corporate;
- (b) ultimately owns or controls (in each case whether directly or indirectly), including through bearer share holdings or by other means, more than 25% of the shares or voting rights in the body corporate; or
- (c) controls the body corporate.

(2) The criteria specified in section 17 must be applied, with appropriate modifications, for the purposes of determining whether, for the purposes of subsection (1)(c), an individual controls—

- (a) an Anguilla company; or
- (b) any other body corporate as if the body corporate was an Anguilla company.

(3) This section does not apply to a listed company or a foreign listed company.

Beneficial owners of a partnership

10. (1) In this Part and in the AML&TF Regulations, “beneficial owner” in relation to a partnership that is not a body corporate, including a limited partnership, means an individual who ultimately owns or controls the body corporate and includes an individual who—

- (a) ultimately is entitled to or controls, in each case whether directly or indirectly, more than a 25% share of the capital or profits of the partnership or more than 25% of the voting rights in the partnership; or
- (b) satisfies one or more of the following criteria—
 - (i) the individual holds the right to, or is entitled to, in each case directly or indirectly, more than 25% of any surplus assets of the partnership on a winding up of the partnership;
 - (ii) the individual is entitled, directly or indirectly, to exercise, or control the exercise of, more than 25% of the voting rights in the partnership;
 - (iii) the individual has the right, directly or indirectly, to appoint or remove a majority of the persons who are entitled to take part in the management of the partnership or otherwise exercises ultimate control over the management of the partnership; or

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- (iv) the individual has the right to exercise, or actually exercises, significant influence or control over the partnership.

Beneficial owners of an Anguilla trust, an Anguilla foundation or other trust or similar legal arrangement

11. (1) For the purposes of this Part and the AML&TF Regulations, the following are beneficial owners of an Anguilla trust—

- (a) the settlor or settlors of the trust;
- (b) the trustee or trustees of the trust;
- (c) the protector or protectors of the trust;
- (d) the enforcer or enforcers of the trust;
- (e) the beneficiaries of the trust;
- (f) where all the individuals benefiting from the trust have yet to be determined, the class or classes of persons for whom the trust is set up or operates;
- (g) any individual who exercises ultimate control over the trust whether by means of direct or indirect ownership or by other means.

(2) For the purposes of subsection (1)(e), “control” means a power (whether exercisable alone, jointly with another person or with the consent of another person) under the trust instrument or by law to—

- (a) dispose of, advance, lend, invest, pay or apply trust property;
- (b) vary or terminate the trust;
- (c) add or remove a person as a beneficiary or to or from a class of beneficiaries;
- (d) appoint or remove trustees or give another individual control over the trust;
- (e) direct, withhold consent to or veto the exercise of a power mentioned in subsection (1)(a) to (d).

(3) The beneficial owners of any other trust or legal arrangement similar to a trust are the individuals who hold similar or equivalent positions to those set out in subsection (1).

(4) The following are beneficial owners of an Anguilla foundation—

- (a) the founder or founders;
- (b) the Foundation Council members;
- (c) the guardian or guardians of the foundation;

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- (d) the beneficiaries of the foundation;
 - (e) where all the individuals who are beneficiaries of the foundation have yet to be determined, the class or classes of persons for whom the foundation is formed or operates;
 - (f) any individual who exercises ultimate control over the foundation whether by means of direct or indirect ownership or by other means.

(5) The beneficial owners of any other foundation or legal arrangement similar to a foundation are the individuals who hold positions similar or equivalent to those set out in subsection (4).

Beneficial owners of any other legal entity or arrangement

12. (1) For the purposes of this Part and the AML&TF Regulations, the beneficial owners of a legal entity of legal arrangement that does not fall within sections **9** to **11** are—

- (a) any individual who benefits from the property of the entity or arrangement;
- (b) where the individual or individuals who benefit from the entity or arrangement have yet to be determined, the class of persons in whose main interest the entity or arrangement is set up or operates; and
- (c) any individual who exercises control over the property or management of the entity or arrangement.

Customer due diligence register

13. (1) The Registrar must ensure that there is established and maintained a Customer Due Diligence Register complying with this Act.

- (2) The CDD Register must—
 - (a) be established in electronic form; and
 - (b) must contain for each trust or corporate service provider the CDD information required to be filed under section **14**.

(3) The Registrar must ensure that information and records filed by a trust or corporate service provider under section **14** are kept on the CDD Register for the period specified in the Regulations.

Requirement to file CDD information

- 14.** (1) A trust or corporate services provider must file—
- (a) subject to subsection (3), the CDD information obtained under the AML&TF Regulations relating to—
 - (i) each customer of the trust or corporate services provider;
 - (ii) any third party for whom a customer of the trust or corporate services provider is acting;

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- (iii) each beneficial owner of a customer of the trust or corporate services provider;
 - (iv) each beneficial owner of any third party for whom a customer of the trust or corporate services provider is acting;
 - (b) any other information or records that may be prescribed; and
 - (c) any changes to the CDD information specified in paragraphs (a) and (b).
- (2) The CDD information must be filed within the period specified in the Regulations.
- (3) The Regulations must provide for—
- (a) the filing by trust and corporate service providers of changes and updates to the CDD information filed; and
 - (b) the information to be filed in relation to a listed company or a foreign listed company.
- (4) For the avoidance of doubt, this section applies to a trust or corporate services provider when acting as the registered agent of an Anguilla company.
- (5) A trust or corporate service provider must notify the Registrar if the CDD information concerning the beneficial owner of an Anguilla company for which it acts as registered agent are different to the information or records recorded on the Beneficial Ownership Register.

Access to the CDD Register by trust and corporate service providers

- 15.** (1) Subject to subsection (2), the Registrar must ensure that each trust or corporate service provider has direct and immediate access to the CDD Register for the purposes of—
- (a) filing, changing and updating information and records under section 13; and
 - (b) viewing and obtaining copies of the CDD information filed by the trust or corporate service provider under section 14.
- (2) The Registrar may impose restrictions on access to the CDD Register by trust and corporate service providers when reasonably required for operational reasons, including maintenance of the Register.

PART 4

REGISTRATION OF BENEFICIAL OWNERSHIP

Scope of this Part

- 16.** Unless the context otherwise requires—
- (a) this Part applies to an Anguilla company unless the company falls within a prescribed exemption; and

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- (b) a reference in this Part to an Anguilla company is to an Anguilla company to which this Part applies.

Beneficial owner of an Anguilla company

17. (1) A person is a beneficial owner of an Anguilla company if the person is an individual who meets one or more of the conditions specified in subsection (2).

(2) The conditions specified for subsection (1) are that the individual—

- (a) holds, directly or indirectly, more than 25% of the issued shares in the company;
- (b) is entitled, directly or indirectly, to exercise, or control the exercise of, more than 25% of the voting rights in the company;
- (c) has the right, directly or indirectly, to appoint or remove a majority of the directors of the company;
- (d) has the right to exercise, or actually exercises, significant influence or control over the company; or
- (e) has the right to exercise, or actually exercises, significant influence or control over the activities of a partnership that, by the law under which the partnership is governed, is not a corporate body, or a trust and paragraph (a), (b), (c) or (d) apply to—
 - (i) the members of the partnership; or
 - (ii) the trustees of the trust,in the capacity of member of the partnership or trustee.

(3) The Regulations may specify persons, entities or bodies who are to be treated as if individuals for the purposes of this section.

Registrable persons

18. A person is a registrable person in relation to an Anguilla company if the person is—

- (a) a beneficial owner of the company who falls within the criteria prescribed for the purposes of this paragraph; or
- (b) a listed company, an Anguilla company or a foreign listed company that—
 - (i) if an individual, would be a beneficial owner of the company; and
 - (ii) falls within the criteria prescribed for the purposes of this paragraph.

Duty of Anguilla company to ascertain beneficial owners and registrable persons and hold information on registrable persons

19. (1) An Anguilla company must—

(a) take reasonable steps to—

- (i) ascertain and identify all persons who are beneficial owners of the company; and
- (ii) identify those beneficial owners who are registrable persons and the nature of that person's beneficial interest in the company;

(b) obtain the prescribed beneficial ownership information for each registrable person; and

(c) make and retain a written record of the prescribed beneficial ownership information it obtains for each registrable person.

(2) For the purposes of ascertaining and identifying persons who are beneficial owners or registrable persons, an Anguilla company is entitled to rely, without further enquiry, on the response of a person to a written notice sent in good faith by the company, unless the company has reason to believe that the response is misleading or false.

(3) An Anguilla company that contravenes this section commits an offence and is liable on summary conviction to a fine of \$50,000.

Duty of Anguilla company to give notice to registrable persons

20. (1) An Anguilla company must give written notice complying with subsection (2) to each beneficial owner identified in accordance with section **19** and to any person that it knows or has reasonable cause to believe is a registrable person in relation to the company.

(2) A notice given under subsection (1) must require the person to whom it is given, within four weeks of receipt of the notice—

(a) to state whether or not the person is a registrable person; and

(b) if the person is a registrable person, to confirm or correct any of the prescribed beneficial ownership information that is included in the notice and supply any of the prescribed beneficial ownership information that is missing from the notice.

(3) An Anguilla company is not required to give written notice to a registrable person under subsection (1) if—

(a) the Anguilla company has already been informed of the person's status as a registrable person in relation to the company and has been supplied with the prescribed beneficial ownership information; and

(b) in the case of a registrable person that is not another Anguilla company, the information was provided by, or with the knowledge of, the registrable person.

(4) An Anguilla company may give written notice in the terms specified in subsection (5) to a registered shareholder or a legal entity if—

- (a) the Anguilla company knows or has reasonable cause to believe that the registered shareholder or legal entity knows the identity of a registrable person or someone likely to know the identity of a registrable person; and
- (b) in the case of a legal entity, the legal entity would be a registrable person if it was an Anguilla company.

(5) A notice under subsection (4) may require the person to whom it is given (the addressee)—

- (a) to state whether or not the addressee knows the identity of a registrable person or any person likely to have that knowledge; and
- (b) if so, within four weeks of receipt of the notice, to supply, at the expense of the Anguilla company, any prescribed beneficial ownership information respecting such registrable persons that are within the addressee's knowledge, and to state whether the information is being supplied with or without the knowledge of the person concerned.

(6) A person to whom a notice is given under subsection (2) is not required by the notice to disclose any information in respect of which a claim to legal privilege could be maintained in any legal proceedings.

(7) An Anguilla company that contravenes this section commits an offence and is liable on summary conviction to a fine of \$50,000.

Duty to supply information

21. (1) This section applies to a person if—

- (a) the person is a registrable person with respect to an Anguilla company;
- (b) the person knows that the person is a registrable person with respect to the Anguilla company;
- (c) the person has no reason to believe that the prescribed beneficial ownership information concerning the person is contained in a written record retained by the Anguilla company under section **19**(1)(c);
- (d) the person has not received a notice from the company under section **20**; and
- (e) the circumstances described in paragraphs (a), (b), (c) and (d) have continued for a period of at least one month.

(2) If this section applies to a person, the person must—

- (a) notify the Anguilla company of the person's status as a registrable person in relation to the company;

- (b) state the date, to the best of the person's knowledge, on which the person acquired that status; and
- (c) give the company the prescribed beneficial ownership information.

(3) The duty under subsection (2) must be complied with by the end of the period of one month beginning with the day on which the conditions in subsection (1)(a), (b), (c) and (d) were first met with respect to the person.

(4) A person who contravenes this section commits an offence and is liable on summary conviction to a fine of \$50,000.

Duty of Anguilla company to keep information up to date

22. (1) If an Anguilla company knows or has reasonable cause to believe that, in relation to a person whose particulars contained in a written record retained under section 19(1)(c)—

- (a) the person ceases to be a registrable person; or
- (b) any other change occurs, as a result of which, the particulars stated in the written record for the registrable person are incorrect or incomplete,

the Anguilla company must, as soon as reasonably practicable after it learns of the change or first has reasonable cause to believe that the change has occurred, give written notice that complies with the Regulations to the registrable person.

(2) An Anguilla company is not required to comply with subsection (1) with respect to a person if—

- (a) the company has already been informed that the person has ceased to be a registrable person or of the change in particulars; and
- (b) in the case of a registrable person that is not another Anguilla company, the information was provided by the registrable person or with the knowledge of the registrable person.

(3) An Anguilla company that contravenes this section commits an offence and is liable on summary conviction to a fine of \$50,000.

Offence of failure to comply with notice

23. Subject to any prescribed exemptions, a person to whom a notice is given under section 20 or section 22 who—

- (a) fails to comply with the notice; or
- (b) in purported compliance with the notice—
 - (i) makes a statement that the person knows to be false in a material particular; or
 - (ii) recklessly makes a statement that is false in a material particular

commits an offence and is liable on summary conviction to a fine of \$50,000.

Duty of other persons to keep information up to date

- 24.** (1) This section applies to a person if—
- (a) the person has—
 - (i) reason to believe that beneficial ownership information with respect to the person is included in a written record retained by an Anguilla company under section **19(1)(c)**; or
 - (ii) stated that the person is a registrable person in response to a notice received from the Anguilla company under section **20**;
 - (b) a change in the beneficial ownership information specified in section **20(1)** occurs with respect to the person;
 - (c) the person knows of the change;
 - (d) the person has no knowledge that the beneficial ownership information with respect to the person that is contained in a written record retained by the Anguilla company under section **19(1)(c)** has been altered to reflect the change; and
 - (e) the person has not received a notice from the Anguilla company under section **20** by the end of the period of one month beginning with the day on which the change occurred.
- (2) A person to which this section applies must—
- (a) notify the Anguilla company of the change;
 - (b) state the date on which the change occurred; and
 - (c) give the company any information needed to update the written record retained by the Anguilla company under section **19(1)(c)**.
- (3) The duty under subsection (2) must be complied with by the end of the period of one month beginning with the day on which the person discovered the change.
- (4) A person who contravenes this section commits an offence and is liable on summary conviction to a fine of \$50,000.

Establishment of Beneficial Ownership Register

- 25.** (1) The Registrar must ensure that there is established and maintained a Beneficial Ownership Register in which is recorded the prescribed particulars with respect to each Anguilla company.
- (2) The Beneficial Ownership Register must be established in electronic form.

Duty of Anguilla company to file beneficial ownership information

- 26.** (1) An Anguilla company must, no more than fourteen days after its incorporation, formation or continuation into Anguilla, file a notice in the approved form—

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- (a) setting out the prescribed beneficial ownership information with respect to each person who is a registrable person in relation to the company; or
 - (b) stating that there are no registrable persons in relation to the company..

(2) An Anguilla company must, within the time period specified in the Regulations, file notice in the approved form of—

- (a) any change in the persons who are registrable persons in relation to the company; and
- (b) any change in the prescribed beneficial ownership information held by the company with respect to a registrable person.

(3) The Registrar must, on receipt of a notice under subsection (1) or (2), register the information in the Beneficial Ownership Register.

(4) An Anguilla company that contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to a fine of \$50,000.

Rectification of Beneficial Ownership Register by the Court

27. (1) If—

- (a) the name of any person as a registrable person is, without sufficient cause, entered in or omitted from the Beneficial Ownership Register; or
- (b) an Anguilla company makes default or unnecessary delays notifying the occurs in entering on the Beneficial Ownership Register, the fact that a person has ceased to be a registrable person;

the person aggrieved, any member of the company or any other person who is a registrable person in relation to the relevant company may apply to the Court for rectification of the Beneficial Ownership Register.

(2) On an application under subsection (1), the Court may—

- (a) refuse the application; or
- (b) order rectification of the register and, if it orders rectification, the Court—
 - (i) shall direct that notification of the rectification be given to the Registrar; and
 - (ii) may order the company to pay damages to the aggrieved party.

Inspection of information in the Beneficial Ownership Register

28. (1) The following persons may make a request to the Registrar to inspect the information relating to an Anguilla company on the Beneficial Ownership Register—

- (a) the competent authority, for the purposes of discharging its functions or exercising its powers, including its functions or powers under the Tax Information Exchange (International Co-operation) Act or the Business Companies Act;

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- (b) the Government in accordance with the Regulations;
 - (c) a person with a qualifying legitimate interest in obtaining information recorded on the Beneficial Ownership Register, determined in accordance with the Regulations; and
 - (d) a member of the public in or outside Anguilla.

(2) Subject to section **29**, a member of the public shall only have access to the following information concerning a registrable person—

- (a) if the registrable person is an individual—
 - (i) the individual's full name;
 - (ii) the individual's month and year of birth;
 - (iii) the individual's nationality and usual country of residence;
 - (iv) the nature of the individual's beneficial ownership of the Anguilla company; and
 - (v) such other information as may be prescribed;
- (b) in the case of an Anguilla company—
 - (i) the company's full name and its company number;
 - (ii) the company's registered office;
 - (iii) the legal form of the company and the law under which it is incorporated or formed;
 - (iv) the nature of the company's beneficial ownership of the Anguilla company; and
 - (v) such other information as may be prescribed; and
- (c) in the case of a person to be treated as an individual under section **17**—
 - (i) the person's full legal name;
 - (ii) the address of the person's registered or principal office;
 - (iii) the legal form of the person and the law by which the person is governed;
 - (iv) the country—
 - (A) in which a corporation sole or a foreign listed company is incorporated, formed or otherwise constituted;
 - (B) of a government, government department, local authority or local government body; and
 - (C) of usual residence of an international organisation;

- (D) the nature of the person's beneficial ownership of the Anguilla company; and
- (E) such other information as may be prescribed.

(3) The Regulations—

(a) must specify—

- (i) criteria for determining persons who have a qualifying legitimate interest in obtaining information recorded on the Beneficial Ownership Register for the purposes of subsection (1)(b);
- (ii) the procedure for requests made under subsection (1);

(b) may specify information recorded on the Beneficial Ownership Register concerning a registrable person that the Registrar—

- (i) must not provide to persons with a qualifying legitimate interest or to specified types or descriptions of persons with a qualifying legitimate interest; or
- (ii) may refuse to provide to persons specified in subparagraph (i);

(c) may specify that a request to the Registrar under subsection (1)(d) by a person who is a member of the public shall be accompanied by information and documents enabling the Registrar to—

- (i) identify the person making the request; and
- (ii) verify the person's identity; and

(d) may—

- (i) permit the Registrar to notify an Anguilla company that an inspection of the information relating to the company on the Beneficial Ownership Register has been undertaken by a member of the public;
- (ii) specify information concerning the identity of the member of the public who has undertaken the inspection that may be provided to the company.

Application for non-disclosure of registrable person

29. (1) Application may be made to the Registrar for a determination that the information specified in section 28(2)(a) with respect to an individual who is a registrable person, or information specified in one or more subparagraphs of section 28(2)(a), should not be disclosed to members of the public on the grounds that—

- (a) the registrable person is a minor or lacks legal capacity; or
- (b) the access to the information would expose the registrable person to the serious risk of—

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- (i) fraud;
 - (ii) kidnapping;
 - (iii) blackmail;
 - (iv) extortion;
 - (v) harassment;
 - (vi) violence;
 - (vii) intimidation; or
 - (viii) other similar harm.

(2) An application under subsection (1) may be made by—

- (a) an individual who is, or proposes to become, a registrable person in relation to an Anguilla company; or
- (b) with the consent of an individual specified in paragraph (a), by an Anguilla company in relation to which the individual is, or proposes to become, a registrable person.

(3) A person who makes an application under subsection (1) must inform the Registrar in writing without delay upon becoming aware of any change to any information or evidence provided to the Registrar in connection with the application.

Determination of application for non-disclosure of registrable person

30. (1) The Registrar must not grant an application for non-disclosure under section 29(1)(b) unless, on a detailed evaluation of the circumstances, the Registrar is satisfied that there are reasonable grounds for believing that the individual person concerned would be at serious risk of one or more of the harms specified in that paragraph.

(2) For the purpose of determining an application made under section 29(1)(b), the Registrar may—

- (a) direct that additional information or evidence should be delivered to the Registrar;
- (b) refer any question relating to an assessment of the nature or extent of any risk of violence or intimidation to a relevant body or to any other person the Registrar considers may be able to assist in making the assessment; and
- (c) accept any answer to a question referred under paragraph (b) as providing sufficient evidence of the nature or extent of any risk.

(3) The Registrar may determine that the individual's full name should be subject to disclosure but that information in one or more of in section 28(2)(a)(ii) to (v) should not be subject to disclosure.

(4) The Registrar must determine an application for non-disclosure under subsection (1) and, within 7 days beginning with the date that the determination is made, send notice of the determination to—

- (a) the individual who made the application; or
- (b) the Anguilla company that made the application on the individual's behalf.

(4) If the application for non-disclosure is not granted the Registrar must, in the determination notice—

- (a) give reasons for the refusal to grant the application;
- (b) inform the individual or Anguilla company of their right to apply for permission to appeal against the determination within the period specified in section 34.

Registrar not to disclose details concerning application for non-disclosure

31. If an application is made to the Registrar under section 29(1), the Registrar must not disclose—

- (a) that the application has been made;
- (b) any documents provided in support of the application;
- (c) that a determination notice has been issued or the contents of the determination notice;
or
- (d) any evidence or information provided under section 30

Duration of determination

32. (1) A determination granting an application for non-disclosure of specified information made under section 29(1) continues to have effect until—

- (a) either—
 - (i) the person to whom the determination relates; or
 - (ii) that person's personal representative,
notifies the Registrar in writing that the person wishes the determination to cease to have effect; or
- (b) the Registrar revokes the determination under section 33 and the period for appealing the Registrar's revocation of the determination has not passed;

(2) If the applicant appeals the Registrar's revocation of the determination under section 34, the determination granting an application for non-disclosure continues to have effect until—

- (a) the appeal has been withdrawn; or

- (b) the appeal has been determined by the Court.

Revocation of determination

33. (1) The Registrar may revoke a determination made under section 30 if it has reasonable grounds for believing that the grounds for the application are not established or are no longer established.

(2) Before revoking a determination under this section, the Registrar must send a notice to the applicant in relation to the determination and, if different, the person to whom the determination relates stating—

- (a) the Registrar's intention to revoke the determination and the grounds for the intended revocation;
- (b) that the addressee may, within 28 days beginning with the date of the notice, provide written representations to the Registrar as to why it should not revoke the determination; and
- (c) that if the Registrar receives representations within that period, the Registrar will have regard to them in deciding whether to revoke the determination.

(3) After the expiration of the time specified in the notice, unless the addressee of the notice has shown cause to the contrary, the Registrar may revoke the determination.

(4) The Registrar must send notice of its decision as to whether to revoke a determination to the applicant in relation to the determination and, if different, the person to whom the determination relates within 7 days beginning with the date of the decision.

Appeal against determination of Registrar

34. (1) If the Registrar rejects an application for non-disclosure or revokes a determination under section 33, the applicant may, within 28 days of the date of rejection or revocation notice, appeal to the Court on the grounds that the determination or revocation of determination—

- (a) is unlawful; or
- (b) is irrational or, in all circumstances, unreasonable or unjust to the applicant or, in the case of an application by an Anguilla company, to the individual to whom the information relates.

(2) The Court must not extend the time for appeal unless it is satisfied that there was good reason for the failure of the applicant to appeal within the 28 day period.

(3) An applicant who appeals the Registrar's determination or revocation must serve notice of the appeal on the Registrar within 7 days of lodging the appeal with the Court and the Registrar is entitled to attend and be heard at the hearing of the appeal.

(4) On the hearing of an appeal under this section, the Court may—

- (a) dismiss the appeal; or

(b) set the Registrar's determination or decision to revoke its determination aside.

(5) If the Court sets the Registrar's determination or decision to revoke aside, it may refer the matter back to the Registrar with a direction to reconsider it and make a determination or decision in accordance with the directions of the Court.

Non-disclosure by Registrar

35. If the Registrar makes a non-disclosure determination with respect to specified information relating to a registered person that it has not revoked, the Registrar must not disclose the information to a member of the public.

PART 5

COMMERCIAL REGISTRY

Establishment of Commercial Registry

36. (1) The Registrar must ensure that there is established and maintained the Commercial Registry comprising—

- (a) each Register that the Registrar is required to keep under the Registry Acts; and
- (b) any other information or documents that are required or permitted to be filed under the Registry Acts.

(2) The Commercial Registry must be established in electronic form.

Proof of documents

37. The Registrar may require that a document filed under a Registry Act, or a fact stated in such a document, is verified by affidavit or affirmation in such manner as may be specified in the Regulations.

Amendment of documents

38. (1) The Registrar may amend a document filed under a Registry Act if authorised or requested to do so by—

- (a) the person who filed the document or the person's representative; or
- (b) the person on whose behalf the document was filed or the person's representative.

(2) A document amended in accordance with subsection (1) is to be taken to be a document filed by the person who filed the document or on whose behalf the document was filed.

(3) Subsection (1) does not apply to an affidavit, affirmation or statutory declaration.

Power to refuse and remove documents

39. (1) The Registrar may refuse to receive, record, retain or register a document filed under a Registry Act or remove a document from the Commercial Registry if, in the Registrar's opinion, the document—

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- (a) is not in compliance with—
 - (i) the Registry Act under which it is filed or any regulations made under a Registry Act;
 - (ii) this Act or any other Act; or
 - (iii) the Regulations; or
 - (iv) the Guidance issued under section **51**; or
 - (b) contains an error or an unauthorised alteration or erasure.

(2) If the Registrar refuses or removes a document under subsection (1), the Registrar must, as soon as practicable, but within 28 days of refusing or removing the document, give written notice of the refusal or removal to the person who filed the document, stating the reasons for the refusal or removal and, if appropriate—

- (a) any action that needs to be taken;
- (b) the time period within which the action must be taken.

Issue of document under a Registry Act

40. (1) This section applies where the Registrar issues a document that is required to be issued under a Registry Act.

(2) The Registrar must issue the document in electronic form formatted in a way that enables the data it contains to be readily accessed electronically and rendered into legible printed form.

(3) In so far as it is possible and practical to do so, the document—

- (a) must be formatted in such a way as to prevent its amendment; and
- (b) must contain non-reproducible elements that authenticate it as a document issued by the Registrar.

Appeal against Registrar's decisions

41. (1) If the Registrar—

- (a) refuses to receive, record, retain or register a document filed under a Registry Act;
- (b) removes a document from the Commercial Registry; or
- (c) refuses to issue a document that is issuable under a Registry Act,

a person aggrieved by the removal or refusal may, within the 3 months after receiving notice of the refusal or removal, apply to the court for an order.

(2) The order applied for may require the Registrar—

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- (a) to receive, record, retain or register the document filed;
 - (b) not to remove the document from the Commercial Registry; or
 - (b) to issue the document sought.
- (3) If the court makes the order it may do so upon terms it considers appropriate.

Inspection by members of the public of documents and records in the Commercial Registry

42. (1) A right to inspect and obtain extracts or copies of a register maintained under a Registry Act or any document or record registered or retained by the Registrar under a Registry Act extends only to—

- (a) electronic access to the register, document or record; and
- (b) the inspection and reproduction of the extract, document or record in legible and useable form.

(2) A right specified in subsection (1) must be exercised in accordance with the prescribed requirements.

PART 6

MISCELLANEOUS PROVISIONS

Protection of confidential information

43. (1) The following information is protected information for the purposes of this section and section **44**—

- (a) the Customer Due Diligence Register;
- (b) the Beneficial Ownership Register;
- (c) any documents or information in the Commercial Registry which a person is not entitled to access under a Registry Act.

(2) Subject to section **44**, protected information must not be disclosed to any person by—

- (a) the Registrar;
- (b) a member of the Registry staff;
- (c) a person acting under the authority of the Registrar; or
- (d) a contractor engaged by the Registrar under section **6(2)**.

(3) A person who contravenes subsection (2) commits an offence and is liable on summary conviction to a fine of \$50,000.

Gateways for disclosure

44. (1) Section 44 does not apply to a disclosure made—

- (a) to the FIU;
- (b) to the Commission;
- (c) in accordance with this Act;
- (d) any person or authority prescribed by the Regulations as a person or authority to whom a disclosure of beneficial ownership information may be made.

(2) For the purposes of subsection (3), a relevant disclosure is a disclosure of protected information made in accordance with subsection (1).

(3) Subject to subsection (4), a person commits an offence if—

- (a) the person knows or suspects that a request for a relevant disclosure is being or has been made or that a relevant disclosure is being or has been made;
- (b) the person discloses the fact that a relevant disclosure is being or has been requested or that a relevant disclosure is being or has been made; and
- (c) the disclosure in paragraph (b) is likely to frustrate or prejudice the purpose for which the request for a relevant disclosure, or the relevant disclosure, is being or was made.

(4) It is not an offence for a person to make a disclosure to a professional legal adviser for the purposes of legal advice or for a professional legal adviser to make a disclosure—

- (a) to, or to a representative of, a client of his in connection with the giving by the legal adviser of legal advice to the client; or
- (b) to any person—
 - (i) in contemplation of, or in connection with, legal proceedings; and
 - (ii) for the purpose of those proceedings.

(5) Subsection (4) does not apply to a disclosure made with the intention of furthering any criminal purpose.

(6) Any question on the existence of legal professional privilege is to be determined in accordance with the laws of Anguilla.

(7) In proceedings against a person for an offence under subsection (3), it is a defence to prove that the person did not know or suspect that the disclosure was likely to frustrate or prejudice the purpose for which the request for a relevant disclosure, or the relevant disclosure, is being or was made.

(8) A person who contravenes subsection (3) commits an offence and is liable on summary conviction to a fine of \$50,000.

Filing of documents

45. Except as otherwise provided in the Regulations, a document required or permitted to be filed by an Anguilla company under this Act, may only be filed by the registered agent of the company.

Filing false or misleading information

46. (1) A person commits an offence if, in alleged compliance with this Act, the person—

- (a) files a document, record or information that the person knows or, with reasonable diligence, should know to be false or misleading in a material particular; or
- (b) without carrying out any necessary checks, recklessly files a document, record or information that is false or misleading in a material particular.

(2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine of \$100,000.

Offences by persons other than natural persons

47. (1) Subsection (2) applies if —

- (a) an offence under this Act is committed by a natural person; and
- (b) it is proved that the person is an officer of a corporate person or a person authorised by the corporate person to have access to the registration system.

(2) The corporate person, as well as the natural person, is guilty of the offence and is liable to the penalty provided for the offence if it is shown that the corporate person, permitted, participated in, or failed to take all reasonable steps to prevent, the commission of the offence by the natural person.

(3) In this section, “officer”, in respect of a corporate person includes—

- (a) a director, secretary, partner, or other similar officer of the corporate person;
- (b) a person purporting to act as a director, secretary, partner or other similar officer of the corporate person; and
- (c) if the affairs of the corporate person are managed by its members or council members, a member or council member of the corporate person.

Recognised exchange

48. (1) The Commission may, by notice published in the Gazette, recognise exchanges for the purposes of this Act.

(2) The Regulations must specify criteria for the recognition of exchanges under this section.

Approval of forms

49. (1) The Registrar may, by publication in the Gazette, approve forms to be used for documents filed, issued or produced under this Act or the Regulations, except in relation to the CDD Register.

(2) The Commission may, by publication in the Gazette, approve forms to be used for documents filed, issued or produced under this Act or the Regulations in relation to the CDD Register.

(3) If the Registrar or the Commission has published an approved form with respect to a document to be filed, issued or produced under this Act or the Regulations, the document must—

- (a) be in the form of, and contain the information specified in, the approved form; and
- (b) have attached to it such documents as may be specified by the approved form.

Regulations

50. (1) The Governor may, after consulting with the Registrar and the Commission, make Regulations generally for giving effect to this Act and specifically in respect of anything required or permitted to be prescribed by this Act.

(2) Without limiting subsection (1), the Regulations—

- (a) may provide for the form and operation of the registry system, including—
 - (i) specifying how documents must be filed for registration;
 - (ii) providing for an electronic signature or other means of verification in place of a physical signature; and
 - (iii) providing for any other matter to ensure the proper and efficient operation of the registry system;
- (b) may, for the purposes of Part 4—
 - (i) prescribe the circumstances in which a person is a beneficial owner of an Anguilla company;
 - (ii) the circumstances in which a person holds an interest indirectly in an Anguilla company;
 - (iii) the application of Part 4 to protected cell companies;
- (c) may exempt—
 - (i) specified types or descriptions of Anguilla company from the application of Part 4 or from specified provisions of Part 4; and
 - (ii) specified types or description of persons from the requirement to comply with a notice given to them under section **20** or section **24**;
- (d) may modify the requirements of Part 4 in relation to listed companies;
- (e) may specify persons who, although falling within section **18**, are considered not to be registrable persons;

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- (f) must prescribe—
 - (i) filing and other fees to be paid and how they are to be paid; and
 - (ii) the manner in which documents that are required to be signed must be authenticated.

Guidance

51. (1) The Commission may issue guidance relevant to the Commission's functions and powers under this Act and the Regulations, concerning—

- (a) compliance with the requirements of this Act and the Regulations; and
- (b) such other matters as it considers appropriate.

(2) Registrar may issue guidance relevant to the Registrar's functions and powers under this Act and the Regulations, concerning—

- (a) compliance with the requirements of this Act and the Regulations;
- (b) the operation of the Registration System, including operational and technical requirements for filing documents and for access to the Registration System;
- (c) such other matters as it considers appropriate.

Transitional provisions

52. (1) An existing Anguilla company must, no later than the transition date, file a notice in the approved form—

- (a) setting out the prescribed particulars with respect to each person who, at midnight on the day before the commencement date, was a registrable person in relation to the company; or
- (b) stating that, at midnight on the day before the commencement date, no beneficial owner of the company was a registrable person in relation to the company.

(2) Section 26(3) applies with respect to a notice filed under subsection (1),

(3) An existing Anguilla company that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$50,000.

(4) The following provisions do not come into force on the commencement of this Act, but come into force on the date stated—

- (a) section 28(1)(b) comes into force on a date specified by the Minister by Order published in the Gazette, which must be a date no earlier than 1 January 2023;
- (b) section 28(1)(c) and sections 29 to 35 come into force on a date specified by the Minister by Order published in the Gazette, which must be a date no earlier than 1 January 2024.

(5) For the purposes of this section--

“commencement date” means 15 January 2022;

“existing Anguilla company” means an Anguilla company that, at midnight on the day before the commencement date, is on the Register of Companies, the Register of International Business Companies or the Register of Limited Liability Companies;

“transition date” means the date specified in the Regulations for the purposes of subsection (1).

Citation and commencement

53. This Act may be cited as the Commercial Registry and Beneficial Ownership Registration System Act, 2022 and shall come into force on 15 January 2022.