



St Helena
Government

ST HELENA GOVERNMENT
A BILL FOR AN ORDINANCE
COMPANIES (AMENDMENT) BILL 2024

Laid on the Table 5th Dec 2024



ST HELENA

A BILL

FOR

AN ORDINANCE

to amend the Companies Ordinance, 2004, to provide for the registration of beneficial ownership in a company; and for connected and incidental purposes.

Enacted by the Governor of St Helena with the advice and consent of the Legislative Council of St Helena.

Short title, commencement and interpretation

1. (1) This Ordinance may be cited as the Companies (Amendment) Ordinance, 2024, and comes into force on a date or dates fixed by the Governor by Order.
- (2) An Order under subsection (1) may—
 - (a) appoint different dates for different provisions or for different purposes of the same provision; and
 - (b) contain such transitional or consequential provisions as appear to the Governor to be necessary or convenient.
- (3) In this Ordinance “the principal Ordinance” means the Companies Ordinance, 2004.

Insertion of “Division FA - Beneficial Ownership”

2. The principal Ordinance is amended by inserting after Division F the following Division—
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DIVISION FA: BENEFICIAL OWNERSHIP

Interpretation

- 148A.** In this Division, unless the context otherwise requires—
“**person**” means an individual, corporate body, firm or other entity that is a legal person under the law by which it is governed and includes—
- (a) a corporation sole;
 - (b) a government or government department of a country or territory (or part of a country or territory); or

(c) a local authority or local government body;

“**required particulars**” means those specified in section 148C(2); and

“**company**” means a company or corporate body incorporated or formed under the Companies Ordinance 2004 but does not include a company or corporate body that has voting shares admitted to trading on a U.K. regulated market or an EU regulated market.

Beneficial ownership of a company

148B. A beneficial owner of a company is a person who—

- (a) holds, directly or indirectly, more than 25% of the shares in the company;
- (b) holds, directly or indirectly, more than 25% of the voting rights in the company;
- (c) holds the right, directly or indirectly, to appoint or remove a majority of the board of 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 trust or firm that, under the law by which it is governed, is not a legal person and the trustees or members of such trust or firm meet any of the conditions set out above in subsections (a), (b), (c) or (d) (in their capacity as trustees or members) in relation to the company, or would do so if the trustees or members were individuals.

Duty to ascertain beneficial ownership, file and maintain records

148C. (1) A company must take all reasonable steps to—

- (a) ascertain and identify a person who is the beneficial owner of the company and the nature of the beneficial interest of such person; and
- (b) obtain the required particulars for a beneficial owner.

(2) The required particulars for a beneficial owner to be obtained by a company under subsection (1) are—

- (a) in respect of a person who is an individual—
 - (i) the person’s full legal name;
 - (ii) the person’s country or territory of usual residence;
 - (iii) the person’s nationality;
 - (iv) the person’s month and year of birth; and
 - (v) the manner in which the person is a beneficial owner of the company for which the person is a beneficial owner; and
- (b) in respect of a corporate body, firm or other entity that is a legal person under the law by which it is governed—
 - (i) the full legal name of the corporate body, firm or other entity;
 - (ii) the principal office address of the corporate body, firm or other entity;
 - (iii) the legal form of the corporate body, firm or other entity;
 - (iv) the governing law of the corporate body, firm or other entity; and
 - (v) the manner in which the corporate body, firm or other entity is a beneficial owner of the company for which the corporate body, firm or other entity is a beneficial owner.

(3) A company must maintain a record of the required particulars of a beneficial owner and must, upon the request of the Registrar, make such record available for inspection by the Registrar.

(4) For the purpose of ascertaining and identifying a beneficial owner, a company, may, in the approved form, request that a person—

- (a) confirm whether the person is a beneficial owner in the company;
- (b) identify any person which the person—
 - (i) knows or believes is a beneficial owner in the company; or
 - (ii) has reason to believe can identify a beneficial owner in the company; or
- (c) if the person is a beneficial owner, provide the person's required particulars.

(5) A company is entitled to rely, without further enquiry, on information provided by a person pursuant to subsection (4) unless it would be reasonable in the circumstances to believe that the information provided is misleading or false.

(6) A person who receives a request pursuant to subsection (4) must within 30 days after the day of the date upon which the request is received by the person, provide the information requested unless the information requested is legally privileged and the person relying on such legal privilege must provide proof of such legal privilege to the satisfaction of the Registrar to justify why the person is legally prevented or unable to provide the information requested.

(7) A company must within 30 days of day of the date of the registration of the company under this Ordinance or, if already registered within 30 days of the day of the date that this Division comes into force, in the approved form, file a notice with the Registrar—

- (a) confirming whether or not the company has identified any beneficial owners in relation to the company; and
- (b) setting out the required particulars in respect of each person who is a beneficial owner of the company.

(8) Where a company is registered under this Ordinance for more than 30 days of the day of the date that this Division comes into force and the beneficial ownership of the company has changed since the company was registered the company must in the approved form—

- (a) notify the Registrar of the change in the beneficial ownership of the company; and
- (b) notify the Registrar of any changes in the required particulars in respect of the change in the beneficial ownership of the company.

Request for non-disclosure and revocation of request

148D. (1) A person who is an individual or the legal representative of such person may in writing to the Registrar request that such of the required particulars included in a request to the Registrar relating to the beneficial ownership of a company be excluded from disclosure (hereinafter referred to as a request for non-disclosure) on grounds that—

- (a) the person is of a minor age or lacks legal capacity; or
- (b) public access to the required particulars of the person would expose the person to serious risk of—
 - (i) fraud;
 - (ii) kidnapping;

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

(2) Where there is a change in the circumstances of a person making a request to the Registrar under subsection (1) the person or the legal representative of such person must within 1 week of such change or within one week of the person or the legal representative of such person becoming aware of such change in writing notify the Registrar of such change and if relevant to the change provide the Registrar with satisfactory evidence of such change.

(3) Where a request for non-disclosure is made under subsection (1) under the circumstances specified under subsection (1)(b) the Registrar may at the Registrar's discretion approve the request for non-disclosure and exclude the required particulars in respect of which the application is made for a period not exceeding 12 months.

(4) If the Registrar, in the Registrar's discretion, is satisfied that the circumstances specified in subsection (1)(b) no longer apply to a person who is the subject of an application made under subsection (1) the Registrar may—

- (a) revoke the Registrar's decision made under subsection (3);
- (b) notify the person or the legal representative of such person in respect of whom the decision under subsection (3) was made of the revocation; and
- (c) upon the expiration of 30 days of day of the date of the notification made under paragraph (b) update the register regarding the beneficial ownership of a company with the required particulars of the person.

(5) A person or the legal representative of such person may within 7 days of the day of the date of the notification of the Registrar under subsection (4)(b) appeal to the Court against the decision of the Registrar regarding revocation.

Duty to supply and maintain information

148E. (1) This section applies—

- (a) to a person who believes, knows, or ought reasonably to know, that the person is a beneficial owner of a company; and
- (b) to a person where the required particulars of the person are—
 - (i) not entered in the register established under this Division; or
 - (ii) entered in the register established under this Division but are inaccurate.

(2) A person to whom section (1) applies must notify the company—

- (a) within 30 days of the day of the date of the person's belief or knowledge that the person is a beneficial owner of the company;
- (b) of, to the best of the person's knowledge, the date upon which the person became a beneficial owner of the company and within 30 days of such date; and
- (c) of the person's required particulars.

(3) If a person to whom subsection (2) applies is no longer the beneficial owner of a company the person must notify the company that the person is no longer a beneficial

owner in the company and the date from which the person ceased to be a beneficial owner in the company within 30 days of day of the date that the person ceased to be a beneficial owner in the company.

Duty to update records

148F. A company must take all reasonable steps to ensure that the records of the company relating to the beneficial ownership of the company are correct and complete and are kept up to date and in particular where a person ceases to be a beneficial owner of the company the company must confirm the cessation of the beneficial ownership of the person and complete the required particulars in respect of such cessation as applicable.

Duty of Registrar - establishment, administration and inspection of register

148G. The Registrar must in the manner that the Registrar considers appropriate—

- (a) establish and maintain a register containing all information submitted to the Registrar in respect of the beneficial ownership of a company to which this Division applies;
- (b) as notified by a company in respect of information relating to the beneficial ownership of the company update as soon as possible the information entered in the register established under paragraph (a) unless the Registrar satisfied that the information notified to the Registrar is misleading or false;
- (c) where no beneficial owner of a company is identified include in the register in respect of such company a statement that no beneficial owner has been identified for such company;
- (d) make available for inspection (including via electronic means) by any member of the public upon request to the Registrar in the manner specified by the Registrar the register established under paragraph (a); and
- (e) make available to a member of the public making a request in accordance with paragraph (c) such copies (including digital copies) of the register requested.

Authority to request information and documents

148H. (1) The Registrar may in respect of a person identified as a beneficial owner of a company request from a person or a company any information or documentation which in the discretion of the Registrar is necessary to confirm or verify the required particulars of the beneficial owner of the company.

(2) A person or a company to whom a request is made pursuant to subsection (1) must within 30 days of the day of the date of the request comply with such request.

Rectification of the register by Court

148I. (1) A person may apply to the Court for the rectification of the register—

- (a) if the name of the person is entered as a beneficial owner into or omitted from the register established under section 148G(a) without sufficient reason; or
- (b) if no notification is made to the Registrar by a company in the time prescribed that the person is no longer a beneficial owner of the company.

(2) Upon an application made under subsection (1) the Court may—

- (a) refuse the application; or
- (b) order the rectification of the register and—
 - (i) direct that relevant notification be made to the Registrar by the company; and
 - (ii) order damages to be paid by the company against whom an order is made to the person in respect of whose name the order for rectification is made.

Application of section 231

148J. For the avoidance of doubt section 231 applies to a company in respect of which notification is required to be made to the Registrar under this Division.”.

Amendment of section 251 - regulations

- 3.** The principal Ordinance is amended in section 251—
- (a) by repealing the words “Governor in Council” and substituting the words “Governor on the advice of the Executive Council”; and
 - (b) by repealing the full stop at the end of paragraph (l) and inserting “; or”; and
 - (c) by inserting after paragraph (l) the following paragraph—

“(m) respecting the registration of the beneficial ownership of a company.”.

Insertion of section 255A - Offences relating to beneficial ownership

4. The principal Ordinance is amended by inserting after section 255 the following section—

“Offences relating to beneficial ownership

(255A) (1) A person who is an individual who does not comply with any requirement or obligation prescribed pursuant to Division FA or who provides false or misleading information in relation to a requirement or obligation pursuant to Division FA commits an offence.

Penalty: A fine of £5,000.

(2) A company which does not comply with any requirement or obligation prescribed pursuant to Division FA or which provides false or misleading information in relation to a requirement or obligation pursuant to Division FA commits an offence.

Penalty: A fine of £50,000.”.

EXPLANATORY NOTE

(This note is not part of the Ordinance)

This Bill would make provision for the registration of beneficial ownership in a company.