

*Legal Supplement Part C to the "Trinidad and Tobago Gazette", Vol. 57,
No. 152, 6th December, 2018*

No. 21 of 2018

Fourth Session Eleventh Parliament Republic of
Trinidad and Tobago

HOUSE OF REPRESENTATIVES

BILL

AN ACT to amend the Companies Act

THE COMPANIES (AMENDMENT) BILL, 2018

Explanatory Notes

(These notes form no part of the Bill but are intended only to indicate its general purport)

This Bill seeks to amend the Companies Act, Chap. 81:01 and contains eleven clauses.

Clause 1 of the Bill would provide the short title of the Act for which this is the Bill.

Clause 2 of the Bill would provide that this Act comes into effect on such date as is fixed by the President by Proclamation.

Clause 3 of the Bill would provide for the interpretation of the word “Act”.

Clause 4 of the Bill would amend section 33 of the Act to repeal subsection (2) and replacing it with a new subsections (2) to (13)—

New subsection (2) would prohibit the issue of bearer shares, bearer share certificates, share warrants or bearer share warrants. Previously the prohibition was only in respect of bearer shares and bearer share certificates. The new subsection would also prohibit the conversion or exchange of any share into a bearer share, or bearer share certificate, share warrant bearer share warrant where previously it prohibited the conversion or exchange of bearer shares and bearer share certificates. Finally the subsection would prohibit the exchange of a share for bearer share, bearer share certificate, share warrant or bearer share warrant.

The clause would insert a new subsection (3), which would create an offence for a company to contravene subsection (2), the penalty would be that set out in section 513, which is the general penalty clause, of ten thousand dollars.

Proposed subsection (4) would require that where a company issued share warrants or bearer share warrants prior to the commencement of the Act for which this is the Bill, that it shall within 6 months of that commencement deliver to the Registrar a

return indicating the number of share warrants and bearer share warrants it has issued. The return would be in the prescribed form and accompanied by the prescribed fee.

Proposed subsection (5) would make it an offence for a company and every director and officer of the company to fail to comply with the requirement to file a return under subsection (4). The offence carries a penalty of ten thousand dollars and imprisonment for three years and a continuing offence penalty for every day for which the offence continues of three hundred dollars.

Proposed subsection (6) would require a company which has, notified the Registrar that it previously issued share warrants or bearer share warrants to require the holder of the share warrants or bearer share warrants to bring in the share warrants or bearer share warrants for registration.

Proposed subsection (7) would require the holder of a share warrant or bearer share warrant within six months of the receipt of such notice to bring in the share warrant or bearer share warrant for registration.

Proposed subsection (8) would require a company, where the holder of a share warrant or bearer share warrant brings in the share warrant or bearer share warrant for registration to enter the name of the holder in the register of members as the shareholder of the share represented in accordance with the terms of issue.

Proposed subsection (9) would make it an offence for the holder of share warrants or bearer share warrants to not bring in the share warrants or bearer share warrants for registration within the time frame required. The penalty for not doing so is ten thousand dollars and imprisonment for three years.

Proposed subsection (10) empowers a company who has required the holder of a share warrant or bearer share warrant to bring them in but the holder fails to do so, to approach the High Court to apply for the share warrant or bearer share warrant to be cancelled and upon the Court cancelling the share warrant or bearer share warrant the company may make any required amendments to its state capital as a result of such cancellation.

Proposed subsection (11) would give the holder of share warrants or bearer share warrants aggrieved by a decision of the Court under subsection (10) to cancel his share warrants or bearer share warrants to apply to the High Court under section 245 for an order that his share warrants or bearer share warrants be noted and that the registers or records be rectified to include his name on the register in accordance with subsection (8).

Proposed subsection (12) a company under subsection (4) to include in its next annual return such particulars as may be prescribed for the share warrants or bearer share warrants cancelled or surrendered.

Proposed subsection (13) would require the Registrar to establish a register of share warrants or bearer share warrants issued before the commencement of the Companies (Amendment) Act, 2018.

Proposed subsection (14) would provide a definition for “bearer share warrants”.

Clause 5 of the Bill would amend section 177 of the Act. The clause would now require a company to prepare and maintain a register of members showing a statement of the number and [classes][category] of shares held by each member where previously the requirement was to show simply the shares held by each member.

The clause would also insert a new subsection (7) that would require a company which had issued bearer share warrants before the commencement of this Act to prepare and maintain a register accordingly.

Clause 6 of the Bill would amend 190(3) of the Act by inserting after the words “and 184” the words “, 184 and 337C(6)” to empower the Trinidad and Tobago Securities and Exchange Commission to receive information from companies relative to share warrants or bearer share warrants put into its register.

Clause 7 of the Bill would amend section 318(1) of the Act to insert a new paragraph (*n*) to require external companies who establish a place of business within Trinidad and Tobago to also include in the statement filed with the Registrar, where the company is resident in Trinidad and Tobago for tax purposes, the

shareholders, the number and [class][category] of shares they hold, and the nominal or par value of such shares, if any and their nominal or par value, the name of the shareholders and the number and category of shares they hold, if any.

Clause 8 of the Bill would insert a new section 333A which would—

- (a) prohibit external companies from issuing, bearer shares, bearer share certificates, share warrants or bearer share warrants;
- (b) require external companies to require the external companies where bearer shares, bearer share certificates, share warrants and bearer share warrants were issued to call in the warrants for registrations;
- (c) require external companies to enter the name of the holder of a bearer shares, bearer share certificates, share warrant or bearer share warrant which has been brought in, in the register of members as the shareholder in respect of the shares represented by the instrument;
- (d) to require an external company to approach the High Court to cancel share warrants and bearer share warrants which have not been brought in;
- (e) require external companies to prepare and maintain a register of the number of bearer shares, bearer share certificates, share warrants and bearer share warrants that were issued and surrendered, to notify the Registrar General of all bearer shares, bearer share certificates, share warrants or bearer share warrants issued in Trinidad and Tobago prior to the commencement of this Act and provide penalties for breach of any of the requirements set out in this section.

Clause 9 of the Bill would insert after section 337 a new Part VA entitled “Beneficial Ownership” which would contain 5 new sections.

Proposed new section 337A would provide that sections 337B to 337D would apply to a corporation sole, a body corporate created under any written law except under the Companies Act and international organization where members include two or more countries or territories or their government. The clause would also define the term “beneficial owner”.

Proposed new section 337B, would require a company within 12 months of the coming into force of this Act and regularly thereafter to ascertain all the beneficial owners holding an interest in the company whether the person held the interest prior to the coming into force of the Act or after.

Under proposed subsection (2) the company is required to issue annually, a notice to all shareholders requiring a statutory declaration be sent to the company in accordance with section 337C.

Proposed subsection (3) would make it an offence for a company not to take all reasonable steps to ascertain and obtain the information and knowingly and recklessly failing to file a return to the Registrar. The company and every director and officer of the company is liable on summary conviction to a fine of ten thousand dollars and to imprisonment for three years and a further fine of three hundred dollars for every day the offence continues.

Proposed subsection (4) would allow the company to rely on the statutory declaration sent in good faith to the company as a defence when identifying persons who are beneficial owners under subsection (1).

In proposed section 337C the holder of shares in a company is required to file a declaration with the company specifying the beneficial owner of the shares.

Proposed subsection (2) would require a person who held beneficial ownership in shares of a company to submit a statutory declaration within thirty days of the issue of the notice from the company under 337B.

Proposed subsection (3) would require every person who on the commencement of this Act acquires a beneficial interest in the shares of a company and whose name is not entered in the register of members of the company as the holder of a share or shares to within 30 days of acquiring the beneficial interest to make a statutory declaration to the company stating the nature of the interest, the particulars of the person in whose name the shares stand registered in the books of the company, the date on which the beneficial interest was created and such other particulars which may be prescribed.

Proposed subsection (4) would require the beneficial owner of shares in a company to submit a statutory declaration to a company where any changes are made to the beneficial interest in shares in the company specifying the nature of the change and such other particulars as may be prescribed. The person is required to do this within 30 days of the change.

Proposed subsection (5) would provide that failure to submit the declaration is an offence and the person is liable on summary conviction to a fine of ten thousand dollars and to imprisonment for three years and a further fine of three hundred dollars for every day the offence continues.

Proposed subsection (6) would provide that once a declaration is made the company is required to make a note of the declaration in its register and deliver a return with the Companies Registry.

Proposed subsection (7) would provide that where a company knowingly and recklessly fails to file a return under proposed subsection (6) it commits an offence and the company and every director and officer is liable on summary conviction to a fine of ten thousand dollars and to imprisonment for three years and a further fine of three hundred dollars for every day the offence continues.

Proposed subsection (8) would provide that if the beneficial owner does not make the required declaration, then any right or interest to any share for which a declaration was to be made is not exercisable.

Proposed subsection (9) would provide that this section does not prejudice the right of shareholder to receive dividends.

In proposed section 337D, which would require a company to file a return every time it issues or registers a transfer of shares to a shareholder within 30 days from the date of the issuance or transfer of the shares delivered to the Registrar a return notifying the Registrar of the issuance or transfer of the shares.

Proposed subsection (2) requires information which would be prescribed to be contained in the return and must be current.

Proposed subsection (3) empowers a director officer of the company to certify the contents of a return.

Proposed subsection (4) would provide where there is failure to comply with the requirements of the section that such failure is an

offence and every director and officer of the company is liable on summary conviction to a fine of ten thousand dollars and to imprisonment for three years and a further fine of three hundred dollars for every day the offence continues.

Proposed new section 337E, would provide that sections 337B to 337D shall not apply to publically traded companies.

Clause 10 of the Bill would seek to amend section 462 of the Act to provide for the Official Receiver to be the Chief State Solicitor for the purposes of sections 462 and 463.

Clause 11 of the Bill would provide for amendments to the Companies Regulations in Schedule 2, by deleting the reference to “warrants”.

BILL

AN ACT to amend the Companies Act

[, 2018]

ENACTED by the Parliament of Trinidad and Tobago as Enactment
follows:

1. This Act may be cited as the Companies Short title
(Amendment) Act, 2018.

2. This Act comes into effect on such date as is fixed Commencement
by the President by Proclamation.

3. In this Act, “Act” means the Companies Act.

Interpretation
Chap. 81:01

4. Section 33 of the Act is amended by repealing subsection (2), and substituting the following new subsections:

“ (2) No company may—

- (a) issue a bearer share, bearer share certificate, share warrant or bearer share warrant;
- (b) convert any share into a bearer share, bearer share certificate, share warrant or bearer share warrant; or
- (c) exchange a share for a bearer share, bearer share certificate, share warrant or bearer share warrant.

(3) Where a company contravenes subsection (2) the company and every director and officer of the company commits an offence.

(4) Where a company has prior to the commencement of the Companies (Amendment) Act, 2018, issued share warrants or bearer share warrants, it shall within six months of the commencement of the Companies (Amendment) Act, 2018 deliver to the Registrar a return in the prescribed form of the number of share warrants and bearer share warrants it has issued accompanied by the prescribed fee.

(5) Where a company fails to comply with subsection (4) the company and every director and officer of the company commits an offence and is liable on summary

conviction to a fine of ten thousand dollars and to imprisonment for three years and for every day for which the offence continues, a further fine of three hundred dollars.

(6) Where a company under subsection (4), has notified the Registrar of the previous issue of a share warrant or bearer share warrant, the company shall, as soon as possible, issue a notice requiring the holder of the share warrant or bearer share warrant issued by the company to bring in the share warrant or bearer share warrant for registration within six months the notification under subsection (4).

(7) Where the holder of a share warrant or bearer share warrant, referred to in subsection (6) receives a notice he shall within six months of receipt of such notice bring in the share warrant or bearer share warrant for registration.

(8) Where the holder of a share warrant or bearer share warrant under subsection (7) presents the share warrant or bearer share warrant, for registration the company shall enter the name of the holder in the register of members as the shareholder in respect of the share or shares represented by the instrument in accordance with the terms of issue thereof.

(9) Where the holder of a share warrant or bearer share warrant fails, without reasonable cause, to bring in the share warrant or bearer share warrant to the company within the time frame and as requested under subsection (7), he commits an offence and is liable on summary conviction to a fine of ten thousand dollars

and to imprisonment for three years and for every day in which the offence continues, a further fine of three hundred dollars.

(10) Where the holder of a share warrant or bearer share warrant fails to bring in the share warrant or bearer share warrant to the company within the time frame and as requested under subsection (7), the company shall apply to the High Court for the share warrant or bearer share warrant to be cancelled and upon the Court making an order to cancel the share warrant or bearer share warrant, the company may make any required amendment to its stated capital as a result of such cancellation.

(11) The holder of a share warrant or bearer share warrant, which is subject to cancellation under subsection (10) may apply to the High Court under section 245 for an order that his share warrant or bearer share warrant be noted and that the registers or records of the company be rectified to include his name on the register in accordance with subsection (8).

(12) A company under subsection (4) shall on its next annual return after the commencement of the Companies (Amendment) Act, 2018, include such particulars as may be prescribed of all share warrants or bearer share warrants surrendered pursuant to subsection (7) or cancelled under subsection (11) .

(13) The Registrar shall establish a register of share warrants or bearer share warrants issued before the commencement of the Companies (Amendment) Act, 2018.

(14) For the purposes of this section “bearer share warrant” means a negotiable instrument that accords ownership in a legal person to the person who possesses the bearer share certificate.”.

5. Section 177 of the Act is amended—

Section 177 amended

- (a) in subsection (2) in paragraph (b), by inserting after the words “shares,” the words “, the number of shares and the categories or classes of shares”; and
- (b) by inserting after subsection (6) the following new subsection:

“ (7) A company which issued share warrants or bearer share warrants prior to the commencement of the Companies (Amendment) Act, 2018, shall prepare and maintain a register of the number of share warrants or bearer share warrants that were issued and the date on which the share warrants or bearer share warrants were surrendered under section 33(6).”.

6. Section 190 of the Act is amended in subsection (3) Section 190 amended
by deleting the words “and 184” and substituting the words “, 184 and 337C(6)”.

7. Section 318(1) of the Act is amended—

Section 318 amended

- (a) in paragraph (l) by deleting the words “; and” and substituting the word “;”;
- (b) in paragraph (m) by deleting the word “.” and substituting the words “; and”; and

(c) by inserting after paragraph (m) the following new paragraph:

“(n) in addition to all the requirements of the foregoing paragraphs, where the company is resident in Trinidad and Tobago for tax purposes, the shareholders, the number and category or class of shares they hold, and the nominal or par value of such shares, if any and their nominal or par value, the name of the shareholders and the number and category or class of shares they hold, if any.”.

Section 333A
inserted

8. The Act is amended by inserting after section 333 the following new section:

333A. (1) An external company, whether or not permitted to issue bearer shares, bearer share certificates, share warrants or bearer share warrants in its country of origin, shall not issue bearer shares, bearer share certificates, share warrants or bearer share warrants in Trinidad and Tobago.

(2) Where prior to the commencement of the Companies (Amendment) Act, 2018, an external company previously issued a bearer share, bearer share certificate, share warrant or bearer share warrant in Trinidad and Tobago it shall, within twelve months of the commencement of the Companies (Amendment) Act, 2018, notify the Registrar in the prescribed form of the previous issue of such bearer shares, bearer share certificates, share warrants or bearer share warrants.

(3) An external company and every director and officer of the external company who contravenes subsections (1) or (2), commits an offence and is liable on summary conviction to a fine of ten thousand dollars and to imprisonment for three years and for every day in which the offence continues, a further fine of three hundred dollars.

(4) Where an external company under subsection (2) has notified the Registrar of the previous issue of a bearer share, bearer share certificate, share warrant or bearer share warrant, the external company shall, as soon as possible, issue a notice requiring every person who is the holder of a bearer share, bearer share certificate, share warrant or bearer share warrant issued by the external company to bring in the bearer shares, bearer share certificates, share warrants or bearer share warrants to the external company for registration.

(5) Where the holder of a bearer share, bearer share certificate, share warrant or bearer share warrant, referred to in subsection (4) receives a notice he shall within six months of receipt of such notice bring in the bearer share, bearer share certificate, share warrant or bearer share warrant for registration.

(6) Where the holder of a bearer share, bearer share certificate, share warrant or bearer share warrant under subsection (5) presents the bearer share, bearer share certificate, share warrant or bearer share warrant for registration the external company shall enter the name of

the holder in the register of members as the shareholder in respect of the share or shares represented by the instrument in accordance with the terms of issue thereof.

(7) Where the holder of a bearer share, bearer share certificate, share warrant or bearer share warrant fails, without reasonable cause, to bring in the bearer share, bearer share certificate, share warrant or bearer share warrant to the external company within the time frame and as requested under subsection (5), he commits an offence and is liable on summary conviction to a fine of ten thousand dollars and to imprisonment for three years and for every day in which the offence continues, a further fine of three hundred dollars.

(8) Where the holder of a bearer share, bearer share certificate, share warrant or bearer share warrant fails to bring in the bearer share, bearer share certificate, share warrant or bearer share warrant to the external company within the time frame and as requested under subsection (5), the external company shall apply to the High Court for the bearer share, bearer share certificate, share warrant or bearer share warrant to be cancelled and upon the Court making an order to cancel the bearer share, bearer share certificate, share warrant or bearer share warrant, the external company may make any required amendment to its stated capital as a result of such cancellation.

(9) The holder of a bearer share, bearer share certificate, share warrant or bearer share warrant, which is subject to cancellation under subsection (8), may apply to the High Court under section 245 for an order that his bearer share, bearer share certificate, share warrant or bearer share warrant be noted and that the registers or records of the company be rectified to include his name on the register in accordance with subsection (6).

(10) An external company which issued a bearer share, bearer share certificate, share warrant or bearer share warrant prior to the commencement of the Companies (Amendment) Act, 2018, shall prepare and maintain a register of the number of bearer shares, bearer share certificates, share warrants or bearer share warrants that were issued and the date on which the bearer shares, bearer share certificates, share warrants or bearer share warrants were surrendered under subsection (6).

(11) Where the Registrar is of the view that an external company is in default of any of the provisions of this section, he shall send a notice to the external company advising of the default and stating that unless the default is remedied with thirty days from the date of the notice, the registration of the external company will be cancelled.

(12) Where an external company fails to file any return, notice or declaration required by this section, the Registrar may cancel the registration of the external company.”.

Section 177A
inserted

9. The Act is amended by inserting after Part V the following new Part:

“PART VA

BENEFICIAL OWNERSHIP

Interpretation
of certain
words and
phrases in
Part VA

337A. (1) Sections 337B to 337E are to be read and have effect as if each of the following were an individual, even if they are legal persons under the laws by which they are governed:

- (a) a corporation sole;
- (b) a body corporate created under any written law except under this Act; and
- (c) an international organization where members include two or more countries or territories or their government.

(2) For the purposes of this Part—

“beneficial owner” means—

- (a) the natural person on whose behalf a transaction is being conducted; or
- (b) the natural person who exercises ultimate effective control over a legal person or arrangement;

(c) in respect of companies subject to this Act—

(i) the natural person who ultimately owns or controls the company through indirect or direct ownership or control through other means, other than a company listed on a regulated market that is subject to disclosure requirements which ensure adequate transparency of ownership information; or

- (ii) if no natural person is identified under paragraph (i) or if there is any doubt that the person identified in paragraph (i) with the controlling ownership interest is the beneficial owner, the natural person who exercises control of the legal person or arrangement through other means;
- (iii) if no person is identified under paragraphs (a), (b) or (c)(i) or (ii) or if

there is any doubt that the person identified is the beneficial owner, the natural person who holds the position of senior managing official; and

(d) in respect of legal arrangements such as—

(i) trusts, the identity of the settlor, the trustee, the protector, the beneficiaries or class of beneficiaries and any other natural person exercising ultimate effective control over the

t r u s t
including
through a
chain of
control or
ownership;

- (ii) other types
of legal
arrange-
ments, the
identity of
persons in
equivalent
or similar
positions.

Obligation
to ascertain
and obtain
beneficial
ownership
information

337B. (1) A company shall, within twelve months of the coming into force of the Companies (Amendment) Act, 2018 and regularly thereafter, ascertain and obtain information as to all the beneficial owners holding an interest in the company whether before the commencement of the Companies (Amendment) Act, 2018 or after the commencement of the Companies (Amendment) Act, 2018.

(2) A company shall annually issue a notice in the prescribed form to all shareholders requiring a declaration be submitted to the company in accordance with section 337C.

(3) Where a company fails to take reasonable steps to ascertain and obtain all information as to the beneficial owners holding an interest in the company, the company, every director and officer of the company commits an offence and is liable on summary conviction to a fine of ten

thousand dollars and to imprisonment for three years and for every day in which the offence continues a further fine of three hundred dollars.

(4) For the purpose of identifying individuals who are the beneficial owners under subsection (1), a company is entitled to rely on the declaration received in good faith by the company under section 337C as a defence for an offence under subsection (3), unless the company has reason to believe that the declaration is misleading or false.

(5) A company shall annually verify information on record at the Companies registry through the filing of its annual return.

Declaration
in respect of
beneficial
interest in
any share

337C. (1) Within thirty days of the commencement of the Companies (Amendment) Act, 2018, where the name of a person is entered in the register of members of a company as the holder of shares in that company but the person does not hold the beneficial interest in such shares, the person shall submit a declaration in the form approved by the Registrar, to the company, stating the capacity which the person making the declaration holds and indicating the person who is the beneficial owner by name and address and other particulars sufficient to enable that person.

(2) Where a person who prior to the commencement of the Companies (Amendment) Act, 2018 held beneficial ownership in a share or shares of a company, the person shall submit a

declaration in the form approved by the Registrar within thirty days of the issue of a notice from the company under section 337B(2).

(3) Every person who, upon the commencement of the Companies (Amendment) Act, 2018, acquires a beneficial interest in a share or shares of a company whose name is not entered in the register of members of the company as the holder of a share or shares shall, within thirty days of acquiring the beneficial interest submit a declaration to the company specifying the nature of the interest, particulars of the person in whose name the shares stand registered in the books of the company, the date on which the beneficial interest was created and such other particulars as may be prescribed.

(4) Where upon the commencement of the Companies (Amendment) Act, 2018 any change occurs in the beneficial interest in the shares of a company, both the person referred to in subsection (1) and the beneficial owner specified in subsections (2) and (3) shall, within a period of thirty days from the date of the change, submit a declaration to the company specifying the nature of the change and such other particulars as may be prescribed.

(5) A person who fails without reasonable cause to submit a declaration as required under this section, commits an offence and is liable on summary conviction to a fine of ten thousand dollars and to imprisonment for three years and

for every day in which the offence continues, a further fine of three hundred dollars.

(6) Where a declaration is made to a company under this section, the company shall make a note of the declaration in a register established by it for such purpose and within thirty days from the receipt of the declaration, deliver to the Registrar a return in accordance with section 337D in the prescribed form and accompanied by the prescribed fee.

(7) Where a company, required to file a return under subsection (6) within the specified period fails to do so, the company and any director and officer of the company who knowingly and recklessly fails to file the return commits an offence and is liable on summary conviction to a fine of ten thousand dollars and to imprisonment for three years and for every day in which the offence continues, a further fine of three hundred dollars.

(8) No right or interest in relation to any share in respect of which a declaration is required to be made under this section but not made by the beneficial owner, shall be enforceable by him or by any person claiming through him.

(9) Nothing in this section shall prejudice the right of a shareholder to receive dividends declared by the company.

Company to
file a return
for the issue
or transfer of
shares

337D. (1) Where a company issues or registers a transfer of shares to a shareholder, it shall within thirty days from the date of the issuance or transfer of the shares, deliver to the Registrar a return in

I confirm the above.

Speaker

Passed in the Senate this day of , 2018.

Clerk of the Senate

I confirm the above.

President of the Senate

No. 21 of 2018

FOURTH SESSION
ELEVENTH PARLIAMENT
REPUBLIC OF
TRINIDAD AND TOBAGO

BILL

AN ACT to amend the Companies Act

Received and read the

First time.....

Second time.....

Third time.....