

## Register of Beneficial Ownership Act “A New Day for Beneficial Owners”

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Since 2001, international organizations such as the Financial Action Task Force (“FATF”) have pressured offshore financial centres like the Bahamas to pass legislation to increase transparency within our financial services sector. On 20<sup>th</sup> December 2018, the Register of Beneficial Ownership Act, 2018 came into effect in the Bahamas following recommendations by the Organisation for Economic Co-operation and Development<sup>1</sup> (“OECD”) and the FATF<sup>2</sup>.

The Act seeks to create a private search registry containing details of beneficial owners of domestic and international business companies in the Bahamas. According to the Act, the Attorney-General’s Office will serve as the Competent Authority<sup>3</sup> which will establish a “secure search system” that allows every registered agent to upload particulars of the beneficial ownership of legal entities for which they have responsibility over<sup>4</sup>. The Competent Authority will appoint designated persons to access the search system. Only designated persons under the Act are allowed to access the search system from a “secured location”<sup>5</sup>.

The search system allows for the name of individuals or entities<sup>6</sup> to be searched and restrains designated persons from informing any other person of a search being conducted<sup>7</sup>. Designated persons are only permitted to conduct searches on behalf of the Office of the Attorney-General, Financial Intelligence Unit, Central Bank of the Bahamas, Compliance Commission, Securities Commission and Insurance Commission<sup>8</sup>. These bodies must produce a certification that their request for information is lawful and in compliance with its governing legislation or international agreements governed by it<sup>9</sup>.

Registered agents are required to establish and maintain a database that is accessible by the secure search system and enter into the said system particulars specified under the Act<sup>10</sup>. The legislation places an obligation on all legal entities to notify their registered agent of changes in beneficial ownership or particulars specified under the Act. The registered agent must then take steps to immediately make such changes in its database<sup>11</sup>. The retention period for information kept by registered agents is 5 years after dissolution of the legal entity, the legal entity ceases to be a legal entity or, the registered agent stops acting for the legal entity<sup>12</sup>.

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<sup>1</sup> <https://thenassaeguardian.com/2018/05/24/oecd-lists-recommendations-to-increase-compliance/>

<sup>2</sup> <http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/cfatf-4meval-bahamas.pdf>

<sup>3</sup> S.2 of the Register of Beneficial Ownership Act

<sup>4</sup> Ibid fn 3 at S.4

<sup>5</sup> Ibid fn 3 at S.4(2)

<sup>6</sup> Ibid fn 3 at S.2b

<sup>7</sup> Ibid fn 3 at S. 13

<sup>8</sup> Ibid fn 3 at S.12(6)

<sup>9</sup> Ibid fn 3 at S.12(8)

<sup>10</sup> Ibid fn 3 at S.5

<sup>11</sup> Ibid fn 3 at S.11

<sup>12</sup> Ibid fn 3 at S.10

Nevertheless, not all legal entities are required to provide particulars of their beneficial ownership. There are a number of exempted persons under the Act such as<sup>13</sup>:

- an investment condominium under the Investment Condominium Act;
- a legal entity registered under the Investment Funds Act;
- a legal entity the securities of which are listed on the Bahamas;
- international securities exchange or any other regulated securities exchange;
- a licensee<sup>14</sup>;
- a legal entity which is a subsidiary of a legal entity that falls within paragraph Investment Condominium Act & Investment Funds Act; and
- any other legal entity that the Minister may exempt by regulations.

A licensee under the Act includes registrants of the following<sup>15</sup>:

- Bank and Trust Regulations Act;
- Investment Funds Act;
- Security Industry Act 2011;
- The Insurance Act; and
- The Financial and Corporate Service Providers Act.

Therefore, some level of anonymity can be maintained by investors with legitimate desires for anonymity.

The consequences for violating the Act will result in fines of up to \$250,000, imprisonment of up to 5 years and/or both in certain instances.<sup>16</sup> Any legal entity or registered agent has 1 year from the commencement of the Act to meet the requirements of the legislation which would expire on 20<sup>th</sup> December 2019<sup>17</sup>.

### Impact

It is unlikely that the implementation of a Register Beneficial Ownership will have a negative impact on clients doing business in the Bahamas as the Register is not accessible by the public<sup>18</sup>. This differs substantially from its UK equivalent that allows the public to access information in relation to companies and partnership<sup>19</sup>. The Bahamas must ensure that such information is not accessible by the public as this would undermine one of the key advantages of selecting the Bahamas as a financial services centre.

### Challenges

The Bahamas must ensure that it pays more than lip service to implementing a “secure search system”. It is notable that a secured location is not defined under the Act. In recent times,

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<sup>13</sup> Ibid fn 3 at S.7

<sup>14</sup> Ibid fn 3 at s.2

<sup>15</sup> Ibid fn 14

<sup>16</sup> Ibid fn 3 at S.16

<sup>17</sup> Ibid fn 3 at s.18

<sup>18</sup> <http://www.tribune242.com/news/2018/sep/19/ex-ag-public-owner-register-sector-killer/>

<sup>19</sup> Schedule 1A to the Companies Act 2006

the Bahamas was embarrassed by the Panama Papers which leaked information from the Company Registry regarding shareholders, officers and directors of companies on the internet<sup>20</sup>. If a similar event was to occur in relation to the Registry of Beneficial Ownership, the consequences would be catastrophic to the Bahamas' standing as a leading offshore financial services centre and could potentially put lives at risk.

Further, enforcement and monitoring of such system is critical to ensure that the Act's objectives are achieved. If there are no checks and balances, a legal entity could register an individual as a beneficial owner and subsequently change their beneficial ownership without updating the Competent Authority, notwithstanding that they are obligated to do so<sup>21</sup>.

The Registry of Beneficial Ownership has attracted some criticism by some that it violates attorney-client privilege and confidentiality. It remains to be seen whether such criticism will result in legal challenge<sup>22</sup>.

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<sup>20</sup> <http://www.tribune242.com/news/2016/sep/22/13m-files-leak-bahamas-papers/>

<sup>21</sup> Ibid fn 3 at S.11

<sup>22</sup> <https://thenassaeguardian.com/2019/03/14/concerns-bills-to-satisfy-tax-watchdogs-are-bad-for-legal-sector/>