

Regulations of Anguilla: 48/2022

Gazette Dated: 13th May, 2022

COMMERCIAL REGISTRY AND BENEFICIAL OWNERSHIP REGISTRATION SYSTEM ACT, 2022

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

Regulations made by the Governor under section 50 of the Commercial Registry and Beneficial Ownership Registration System Act, 2022.

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PART 1
GENERAL PROVISIONS

Interpretation

1. (1) In these Regulations, unless the context otherwise requires—

“Act” means the Commercial Registry and Beneficial Ownership Registration System Act, 2022;

“arrangement” is to be construed in accordance with subsection (2);

“CDD information” means the customer due diligence information and particulars set out in the Schedule;

“constitution” means in the case of—

(a) an Anguilla company, its articles; and

(b) any other legal entity, the documents that constitute and govern the legal entity;

“joint arrangement” means an arrangement between the holders of shares or rights in an Anguilla company that they will exercise all or substantially all the rights conferred by their respective shares or rights jointly in a way that is pre-determined by the arrangement;

“legal entity” means a body corporate or a firm that is a legal person under the law by which it is governed and includes an Anguilla company;

“limited partner” means a—

(a) limited partner in a limited partnership, other than a limited partner who takes part in the management of the business of the limited partnership; or

(b) foreign limited partner, as defined in section 2;

“majority interest” has the meaning specified in section 10;

“relevant legal entity”, in relation to an Anguilla company, means another Anguilla company, including a listed company, or a foreign listed company that, if an individual, would be a beneficial owner of the Anguilla company;

“service provider” has the meaning specified in the AML&TF Regulations; and

“voting rights” is to be construed in accordance with section 14.

(2) Subject to subsection (3), an arrangement includes any—

(a) scheme, agreement or understanding, whether or not it is legally enforceable; and

(b) convention, custom or practice of any kind.

(3) A scheme, agreement, understanding, convention, custom or practice is not considered to be an arrangement unless there is at least some degree of stability about it, whether by its nature or terms, the time it has been in existence or otherwise.

Meaning of foreign limited partner

2. (1) A foreign limited partner is an individual who—
- (a) participates in a foreign limited partnership as a limited liability participant; or
 - (b) directly or indirectly holds shares or a right in, or in relation to, a legal entity which participates in a foreign limited partnership as a limited liability participant.
- (2) In this section—
- (a) a “foreign limited partnership” is an arrangement which is established under the law of a country outside Anguilla and which consists of at least one person who has—
 - (i) unlimited liability for the debts and obligations of the arrangement, and
 - (iii) no, or limited, liability for the debts and obligations of the arrangement for so long as that person does not take part in the management of the arrangement’s business; and
 - (b) a “limited liability participant” is a person who—
 - (i) has no, or limited, liability for the debts and obligations of the foreign limited partnership for so long as that person does not take part in the management of the foreign limited partnership’s business, and
 - (ii) does not take part in the management of the foreign limited partnership’s business.

PART 2

REGISTRATION SYSTEM

Secure access locations

3. For the purposes of section 4(3) of the Act, the following are secure locations from which the registry system may be accessed for the—
- (a) whole registration system any premises for the time being occupied by the Registrar or the Financial Services Commission; and
 - (b) Beneficial Ownership Register and the Commercial Registry, any premises for the time being occupied by the FIU.

PART 3

THE CUSTOMER DUE DILIGENCE REGISTER

Retention period for CDD information

4. (1) A trust or corporate service provider may file a notice in the approved form stating that the retention period for the CDD information specified in the notice has expired.

(2) Subject to subsection (3), the Registrar shall ensure that CDD information filed by a trust or corporate services provider are not removed from the CDD Register before the—

- (a) trust or corporate services provider has filed a notice under subsection (1) with respect to the CDD information; or
- (b) Registrar is otherwise satisfied that the retention period with respect to the CDD information has expired.

(3) Nothing in subsection (2) requires the Registrar to remove CDD information from the CDD Register if the Registrar has reason to believe that the retention period with respect to the CDD information has not expired.

(4) For the purposes of this section, the retention period for CDD information obtained by a trust or corporate service provider with respect to a person is the period for which the trust or corporate services provider must keep the information or records under section 18 of the AML&TF Regulations.

Period for filing CDD information

5. A trust or corporate service provider must file the CDD information specified in section 14(2) of the Act no more than 14 days after the trust or corporate services provider obtains the information or records.

Filing of changes to CDD information

6. (1) A trust or corporate service provider must file a notice of change in the approved form, within 14 days of becoming aware of any change in the CDD information filed by the service provider with respect to a person.

(2) Subsection (1) applies to—

- (a) a change in CDD information already filed;
- (b) any inaccuracy in CDD information already filed; and
- (c) any additional CDD information that a trust or company service provider obtains with respect to a person.

PART 4

REGISTRATION OF BENEFICIAL OWNERSHIP

Division 1

Determination of Beneficial Ownership and Registrable Persons

Scope of this Division

7. This Division specifies for the purposes of Part 4 of the Act the—

- (a) circumstances in which a person—
 - (i) is a beneficial owner of an Anguilla company,
 - (ii) holds an interest in an Anguilla company indirectly through a legal entity;
- (b) application of Part 4 of the Act to protected cell companies; and

- (c) criteria for determining whether a person is a registrable person.

Persons treated as individuals for the purposes of beneficial ownership

8. The following are to be treated as individuals for the purposes of section 17(3) of the Act—
- (a) a corporation sole;
 - (b) a government or a government department of a country;
 - (c) a local authority or local government body in a country; and
 - (d) an international organisation, the members of which include 2 or more countries or their governments.

Holding an interest

9. A person holds an interest in an Anguilla company if the person—
- (a) holds, directly or indirectly, shares in the company;
 - (b) holds, directly or indirectly, voting rights in the company;
 - (c) holds, directly or indirectly, the right to appoint or remove any member 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) the person has the right to exercise, or actually exercises, significant influence or control over the activities of a partnership that, under the law by which it is governed, is not a corporate body, or the trustees of a trust, hold an interest in the company and subsection (1)(a), (b), (c) or (d) apply to the—
 - (i) members of the partnership, or
 - (ii) trustees of the trust;in the capacity of members of the partnership or trustees.

Majority interests

10. A person has a “majority interest” in a legal entity if the person—
- (a) holds a majority of the voting rights in the legal entity;
 - (b) is a member of Y and has the right to appoint or remove a majority of the directors of the legal entity;
 - (c) is a member of Y and controls alone, pursuant to a joint agreement with other members, a majority of the voting rights in the legal entity; or
 - (d) has the right to exercise, or actually exercises, dominant influence or control over the legal entity.

Interests held through a legal entity

11. (1) A person holds an interest in an Anguilla company through a legal entity if the person—
- (a) holds the interest by virtue of indirectly holding shares or a right; and
 - (b) the interest is held by virtue of having a majority interest in a legal entity—
 - (i) which holds the shares or right directly, or
 - (ii) that is part of a chain of legal entities that includes the legal entity referred to in subparagraph (i).
- (2) If subsection (1)(b)(ii) applies, the person holds the interest in the Anguilla company through each legal entity in the chain.

Joint interests and arrangements

12. (1) If 2 or more persons each hold a share or right jointly, each of them is treated as holding that share or right.
- (2) If shares or rights held by a person, and shares or rights held by another person, are the subject of a joint arrangement between those persons, each of them is treated as holding the combined shares or rights of both of them.

Calculating shareholdings

13. (1) This section specifies the rules for determining whether a person's holding in the issued shares of an Anguilla company exceeds 25% for the purposes of section 17(2)(a) of the Act.
- (2) In the case of an Anguilla company if—
- (a) all the shares in the company are issued with a par value, a person holds shares exceeding 25% of the issued shares in the company if the nominal value of the shares that the person holds exceeds, in aggregate, 25% of the nominal value of all issued shares;
 - (b) some of the issued shares in the company have a par value and the other issued shares do not have a par value, a person holds shares exceeding 25% of the issued shares in the company if the—
 - (i) nominal value of the shares with a par value that the person holds exceeds, in aggregate, 25% of the nominal value of all shares issued by the company with a par value, or
 - (ii) number of shares without a par value that the person holds exceeds, in aggregate, 25% of the total number of shares issued by the company without a par value; and
 - (c) all the shares in the company are issued without a par value, a person holds shares exceeding 25% of the issued shares in the company if the number of shares that the person holds exceeds, in aggregate, 25% of the total number of shares issued by the company.
- (3) In the case of a LLC, a person holds shares exceeding 25% of the issued shares in the company if the LLC interest held by the person holds in aggregate in excess of 25% of the totality of the LLC interests of all members of the LLC.

Voting rights

14. (1) For the purposes of section 17(2)(b) of the Act—

- (a) a reference to the voting rights in an Anguilla company is to the rights, including rights that arise only in certain circumstances, conferred on a member of the company to vote on members' resolutions on all, or substantially all, matters;
- (b) where any matters are not decided by members' resolution a reference to exercising—
 - (i) voting rights in an Anguilla company is to be read as a reference to exercising rights in relation to the company that are equivalent to those of a member entitled to vote on a members' resolution, and
 - (ii) more than 25% of the voting rights in the company is to be read as a reference to exercising the right under the constitution of the company, or a members' agreement, to block changes to the overall policy of the company or to the terms of its constitution.

(2) In applying these Regulations, the voting rights in an Anguilla company are to be reduced by any rights held by the company itself.

Rights to appoint or remove directors

15. For the purposes of section 17(2)(c) of the Act, a reference to the right to appoint or remove a majority of the directors of an Anguilla company is to the right to appoint or remove directors holding a majority of the voting rights in respect of directors' resolutions on all or substantially all matters.

Holding a share or right indirectly

16. (1) This section applies in determining whether a person holds a share or right indirectly.

(2) A person holds a share indirectly if the person has a majority interest in a legal entity, and the legal entity—

- (a) holds the share in question; or
- (b) is part of a chain of legal entities—
 - (i) each of which (other than the last) has a majority interest in the legal entity immediately below it in the chain, and
 - (ii) the last of which in the chain holds the share.

(3) A person holds a right "indirectly" if the person has a majority interest in a legal entity and the legal entity—

- (a) holds that right, or
- (b) is part of a chain of legal entities—
 - (i) each of which (other than the last) has a majority interest in the legal entity immediately below it in the chain, and
 - (ii) the last of which in the chain holds that right.

(4) In applying this section to the right to appoint or remove a majority of the directors, a legal entity is to be treated as having the right to appoint a director if—

- (a) a person's appointment as director follows necessarily from that person's appointment as director of the legal entity; or
- (b) the directorship is held by the legal entity itself.

Shares held by a nominee

17. A share held by a person as nominee for another person is to be treated for the purposes of the Act and these Regulations as held by the other person, and not by the nominee.

Rights treated as held by person who controls their exercise

18. (1) Where a person controls a right, the right is to be treated for the purposes of the Act and these Regulations as held by that person, and not by the person who in fact holds the right, unless that person also controls it.

(2) A person controls a right if, by virtue of any arrangement between that person and others, the right is exercisable only—

- (a) by that person;
- (b) in accordance with that person's directions or instructions; or
- (c) with that person's consent or concurrence.

Rights exercisable only in certain circumstances

19. (1) Rights that are exercisable only in certain circumstances are to be taken into account only when the circumstances—

- (a) have arisen, and for so long as they continue to subsist; or
- (b) are within the control of the person having the rights.

(2) Despite subsection (1), rights that are exercisable by an administrator or by creditors while a legal entity is in relevant insolvency proceedings shall not be taken into account, even while the company is in those proceedings.

(3) Rights that are normally exercisable but are temporarily incapable of exercise are to continue to be taken into account.

(4) In this regulation, "relevant insolvency proceedings" means proceedings under the insolvency law of any country outside Anguilla during which a legal entity's assets and affairs are subject to the control or supervision of a third party or creditor.

Rights attached to shares held by way of security

20. (1) Rights attached to shares held by way of security provided by a person are to be treated for the purposes of these Regulations as held by that person where—

- (a) apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in accordance with that person's instructions; and

- (b) the shares are held in connection with the granting of loans as part of normal business activities and, apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in that person's interests.

Significant influence or control

21. (1) Without limiting section 17(2)(d) of the Act, a person is considered to have the legal right to exercise significant influence or control over an Anguilla company if the person is a member of the company, but not a shareholder, and the person holds a right to share in more than 25% of the capital or, as the case may be, profits of the company.

(2) The Commission may issue guidance under section 51 of the Act concerning the meaning of “significant influence or control” for the purposes of section 17(2)(d) of the Act and regard must be had to any guidance issued in accordance with this section in interpreting references in the Act or these Regulations to “significant influence or control”.

Persons considered not to exercise significant influence or control

22. (1) A person does not exercise significant influence or control over an Anguilla company merely because the person—

- (a) provides advice or direction in a professional capacity, including by acting as—
- (i) a legal practitioner,
 - (ii) an accountant,
 - (iii) a financial or tax advisor,
 - (iv) an investment manager;
- (b) deals with the company under a third party commercial or financial agreement;
- (c) has the benefit of a security interest over shares or voting rights in the company;
- (d) has commercial exposure to the financial performance of the company through a financial derivative or other similar contractual arrangement;
- (e) is an employee acting in the course of the employee’s employment and as nominee for the employer, including an employee, director or chief executive officer of a third party which has significant influence or control over the company;
- (f) is a director of the company, including a managing director, a sole director or a non-executive director; or
- (g) exercises a function under an enactment, including as the liquidator or receiver of a company.

(2) Subsection (1) does not set out an exhaustive list of circumstances in which a person does not exercise significant influence or control over a company.

Limited partnerships

23. (1) An individual does not meet the conditions for being a beneficial owner of an Anguilla company specified in section 17(2)(a), (b) or (c) of the Act merely because the person is a limited partner.

(2) An individual does not meet the conditions for being a beneficial owner of a company specified in section 17(2)(a), (b) or (c) of the Act in relation to a company merely because the person, directly or indirectly holds shares or holds rights in or in relation to a limited partner which, in its capacity as such, would meet the condition if it were an individual.

(3) Subsection (1) and (2) do not apply for the purposes of determining whether the requirement specified in section 17(2)(e) of the Act is met.

Protected cell companies

24. A person is a beneficial owner of a protected cell company if paragraph (a), (b), (c), (d) or (e) of section 17(2) of the Act apply to the person with respect to—

- (a) a protected cell account of the protected cell company; or
- (b) the general account of the protected cell company.

Registrable persons

25. (1) An individual who is a beneficial owner of an Anguilla company is not a registrable person if the individual does not hold an interest in the Anguilla company except through one or more legal entities over each of which the individual has significant control, and with respect to any share or right in the company that the individual holds indirectly by virtue of having a majority interest in a legal entity, the legal entity—

- (a) holds the shares or right directly and is a relevant legal entity in relation to the company; and
- (b) is part of a chain of legal entities—
 - (i) each of which (other than the last) has a majority interest in the legal entity immediately below it in the chain and the last of which in the chain holds the share, and
 - (ii) at least one of the legal entities is also a relevant legal entity in relation to the company.

(2) If subsection (1) does not apply to an individual who is a beneficial owner of an Anguilla company, the individual is a registrable person in relation to the Anguilla company.

(3) A legal entity that is a relevant legal entity with respect to an Anguilla company is not a registrable person if the relevant legal entity does not hold an interest in the Anguilla company except through one or more other legal entities over each of which the relevant legal entity has significant control, and with respect to any share or right in the company that the relevant legal entity holds indirectly by virtue of having a majority interest in a legal entity, the legal entity—

- (a) holds the shares or right directly and is a relevant legal entity in relation to the company; and
- (b) is part of a chain of legal entities—
 - (i) each of which (other than the last) has a majority interest in the legal entity immediately below it in the chain and the last of which in the chain holds the share, and
 - (ii) at least one of the legal entities is also a relevant legal entity in relation to the company.

(4) If subsection (3) does not apply to a legal entity, the legal entity is a registrable person in relation to the Anguilla company.

Division 2*Beneficial Ownership Information***Prescribed beneficial ownership information**

26. (1) This section specifies prescribed beneficial ownership information for the purposes of Part 4 of the Act.

(2) The prescribed beneficial ownership information with respect to an individual who is a registrable person comprises—

- (a) the individual's—
 - (i) full legal name, any former names and any alias,
 - (ii) date of birth,
 - (iii) place of birth,
 - (iv) nationality, and
 - (v) country of usual residence and usual residential address;
- (b) an address for service on the registrable person of notices under the Act or these Regulations;
- (c) the criteria specified in paragraphs (a) to (e) of section 17(2) of the Act that apply to the individual; and
- (d) the date on which the individual became or ceased to be a registrable person in relation to the company in question.

(3) The prescribed beneficial ownership information with respect to an Anguilla company that is a registrable person comprises the—

- (a) company's full name and its company number;
- (b) company's registered office;
- (c) legal form of the company and the law under which it is incorporated or formed
- (d) criteria specified in paragraphs (a) to (e) of section 17(2) of the Act apply to the company; and
- (e) date on which the company became or ceased to be a registrable person in relation to the company in question.

(4) The prescribed beneficial ownership information with respect to a person to be treated as an individual, as specified in section 8 comprises—

- (a) the person's full legal name, any former names and any alias;
- (b) the address of the person's registered or principal office;

- (c) the legal form of the person and the law by which the person is governed;
- (d) the country—
 - (i) in which a corporation sole or a foreign listed company is incorporated, formed or otherwise constituted,
 - (ii) of a government, government department, local authority or local government body, and
 - (iii) of usual residence of an international organisation;
- (e) if applicable, details of the register of companies, or equivalent register, maintained in a country outside Anguilla in which the person is registered and its registration number in that register;
- (f) which of the criteria specified in paragraphs (a) to (e) of section 17(2) of the Act apply to the person; and
- (g) the date on which the person became or ceased to be a registrable person.

(5) A person who was a registrable person in relation to an Anguilla company on the company's incorporation or continuation in Anguilla is considered to have become a registrable person on the date that the Anguilla company was incorporated or continued, as the case may be.

Notice in relation to change in prescribed beneficial ownership information

27. (1) A notice given by an Anguilla company under section 22(1) of the Act shall require the addressee—

- (a) to confirm whether or not the change specified in the notice has occurred; and
- (b) if so to—
 - (i) state the date of the change, and
 - (ii) confirm or correct the information included in the notice and supply any beneficial ownership information that is missing from the notice.

(2) A notice under subsection (1) shall state that the addressee must comply with the notice by no later than the end of the period of 4 weeks of receipt of the notice.

Inaccurate beneficial ownership information filed

28. (1) If an Anguilla company becomes aware of an inaccuracy in any beneficial ownership information that it has filed, it shall file a notice correcting the inaccuracy within 14 days of discovering the inaccuracy.

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

Retention of information on Beneficial Ownership Register

29. The Registrar shall retain information recorded on the Beneficial Ownership Register in relation to an Anguilla company for a period of 20 years after the dissolution of the company.

Division 3

General Provisions

Criteria for persons with a qualifying legitimate interest

30. For the purposes of section 28 of the Act, the following persons have a qualifying legitimate interest in obtaining information recorded on the Beneficial Ownership Register, a service provider for the purposes of applying customer due diligence measures in accordance with the AML&TF Regulations.

Inspection of Beneficial Ownership Register by member of the public

31. (1) A request to the Registrar to inspect the Beneficial Ownership Register under section 28(1)(d) of the Act by a person who is a member of the public shall be accompanied by information and documents satisfactory to the Registrar that enables the Registrar to—

- (a) identify the person making the request; and
- (b) verify the person's identity.

(2) The Registrar may, following the inspection of the information on the Beneficial Ownership Register relating to an Anguilla company by a member of the public, notify the Anguilla company concerned—

- (a) that information on the Beneficial Ownership Register relating to the company has been inspected by a member of the public;
- (b) of the full name of the member of the public who undertook the inspection.

Exemptions and obligations in relation to listed companies

32. (1) A listed company is exempt from the following provisions of Part 4 of the Act—

- (a) section 19;
- (b) section 20;
- (c) section 22; and
- (d) section 26.

(2) A listed company shall, no more than 14 days after becoming a listed company or after continuing into Anguilla as a listed company, file—

- (a) a notice in the approved form stating—
 - (i) its name,
 - (ii) the recognised exchange on which its voting shares are listed, and
 - (iii) the date on which its voting shares were first listed on the recognised exchange; and
- (b) evidence acceptable to the Registrar of the listing of its shares on the recognised exchange specified in the notice filed under paragraph (a).

PART 5

MISCELLANEOUS PROVISIONS

Criteria for recognition of exchanges

33. The Commission may recognise an exchange if the—
- (a) exchange is a regulated market situated in the United Kingdom or the European Economic Area; or
 - (b) Commission is of the opinion that the exchange is subject to disclosure and transparency rules contained in international standards that are equivalent to the disclosure and transparency rules applicable to an exchange specified in paragraph (a).

Fees

34. The following fees are payable to the Registrar for an inspection of the Beneficial Ownership Register—
- (a) member of the public - US\$100; and
 - (b) person with a qualifying legitimate interest - US\$25.

Transition date

35. For the purposes of section 52(2) of the Act, the transition date is 1 September 2022.

Citation and commencement

36. These Regulations may be cited as the Commercial Registry and Beneficial Ownership Registration System Regulations, 2022 and shall be deemed to have come into effect on April 19, 2022.

SCHEDULE

Section 1(1)

CDD INFORMATION***CDD information***

The following information and particulars is “CDD information”—

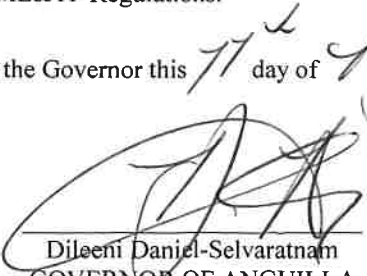
Identification information for beneficial owner

1. Full name
2. Gender
3. Nationality
4. Date of birth
5. Country of residence

Trust or corporate service provider’s risk assessment

1. Trust or corporate service provider’s risk assessment of the customer (by category specified by the Commission).
2. Confirmation as to whether the trust or corporate services provider has determined that any person specified in section 16(2)(c) of the AML&TF Regulations is a politically exposed.
3. Confirmation as to whether the trust or corporate services provider has determined that any beneficial owner is a high net worth individual.
4. Confirmation that the trust or corporate services provider has obtain satisfactory information concerning the customer’s source of funds, within the meaning of the Anti-Money Laundering and Terrorist Financing Code.
5. Confirmation that the trust or corporate services provider has obtain satisfactory information concerning the customer’s source of wealth, within the meaning of the Anti-Money Laundering and Terrorist Financing Code.
6. Confirmation that the trust or corporate services provider has obtained proof of address of all persons for which required by the AML&TF Regulations.

Made by the Governor this 11th day of May 2022



Dileeni Daniel-Selvaratnam
GOVERNOR OF ANGUILLA