

# AS TABLED IN THE HOUSE OF ASSEMBLY

A BILL

entitled

## COMPANIES AND LIMITED LIABILITY COMPANY AMENDMENT ACT 2017

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WHEREAS it is expedient to amend the Companies Act 1981 and the Limited Liability Company Act 2016;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

#### Citation

1 This Act may be cited as the Companies and Limited Liability Company Amendment Act 2017.

#### Amends the Companies Act 1981

2 (1) The Companies Act 1981 is amended in section 2(1) in the definition of "book and paper", by inserting after the word "accounts," the words "records of account,".

(2) Section 83(5) of the Companies Act 1981 is amended by deleting the word "five" and substituting the word "six".

(3) The Companies Act 1981 is amended by inserting after section 254 the following—

“Form of books and papers of company and liquidators

254A (1) For the purposes of sections 255 and 261, the books and papers of the company and books and papers of the liquidators may be kept in hard copy form or in electronic form and arranged in such manner as may be prescribed under subsection (8).

(2) Where such books and papers are kept otherwise than in hard copy form, reasonable precautions shall be taken for ensuring the proper maintenance and retention of the books and papers.

(3) Where such books and papers are kept by the company or by the liquidators, as the case may be, by recording the information in question in electronic form, they shall ensure that proper facilities shall be provided to enable such books and papers to be inspected as required.

(4) In the case where books and papers are kept in electronic form, the company or the liquidators as the case may be, shall provide for the manner by which the books and papers are to be authenticated or verified.

(5) Where default is made in complying with this section, the liquidator and every person who was a director or an officer of the company at the commencement of the winding up who is in default shall be liable to a default fine.

(6) With respect to the books and papers of the company which are in existence at the commencement of the winding up—

(a) the liquidator’s duties under this section relate only to the books and papers of the company that have been received by the liquidator; and

(b) the liquidator is only required to verify that such books and papers which the liquidator has stored in electronic form are true and correct copies of the books and papers which the liquidator has received from the company.

(7) In this section—

“in electronic form” means in the form of an electronic record; and

“in hard copy form” means in a paper form or similar form capable of being read.

(8) The Minister may make regulations for the purposes of this section and, without prejudice to the generality of this subsection, the regulations may prescribe classes of books and papers that must be kept in hard copy form.

(9) Regulations made under subsection (8) shall be subject to the negative resolution procedure.”.

(4) Section 255 of the Companies Act 1981 is amended—

(a) by inserting before subsection (1) the following—

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“(A1) When a company has been wound up and is about to be dissolved the liquidator, in relation to the company for which he has been appointed as the liquidator, shall—

- (a) keep the records of account of the company referred to in section 83 which are in existence at the commencement of the winding up, and have been provided to the liquidator, for six years from the end of the period to which such records of account relate;
  - (b) keep the books and papers of the liquidator for six years from the date of the dissolution of the company;
  - (c) where applicable, keep the records specified in regulation 15 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 that are in existence at the commencement of the winding up in relation to the company, and have been provided to the liquidator, for the period specified in regulation 15.”;
- (b) in subsection (1), by deleting the full stop and substituting a comma and by inserting the following under paragraph (b)—

“provided that no direction given under this section shall direct the disposal of such books and papers of the company or of the liquidators or of such records referred to in subsection (A1) unless, with respect to the books and papers or record, the applicable period specified in this Act for its retention has expired.”;

- (c) in subsection (2)(iii), by deleting the word “two” and substituting the word “six”;
- (d) in subsection (3)—
  - (i) by inserting after the words “has been wound up,”, the words “and of its liquidator,”;
  - (ii) in paragraph (c), by deleting the word “two” and substituting the word “six”;
- (e) by inserting after subsection (5) the following—

“(6) A person who fails to comply with subsection (A1) shall be liable to a default fine of five hundred dollars.”

(5) Section 260(1)(b) of the Companies Act 1981 is amended by deleting the word “two” and substituting the word “six”.

(6) Section 261 of the Companies Act 1981 is amended as follows—

- (a) in subsection (5) in the proviso, by deleting the word “and” at the end of paragraph (a) and by inserting after paragraph (a) the following—

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“(aa) nothing in this section shall affect the continuity of the requirement imposed on such director or officer of the company by subsection (5A) to keep such records for the period referred to in that subsection; and”;

(b) by inserting after subsection (5) the following—

“(5A) Every person who was a director or an officer of a company at the date upon which the company is struck off the register pursuant to this section shall ensure that—

(a) the records of account of the company referred to in section 83 that are in existence on that date are kept for six years from the end of the period to which such records of account relate; and

(b) where applicable, any record specified in regulation 15 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 is kept for the period specified in that regulation.”;

(c) by inserting after subsection (5A) the following—

“(5B) A person who fails to comply with subsection (5A) shall be liable to a default fine of five hundred dollars.”.

(7) Section 288(1) of the Companies Act 1981 is amended by inserting after the words “winding up of a company by the Court” the words “, including matters relating to the retention of records in electronic form,”.

Amends the Limited Liability Company Act 2016

3 (1) The Limited Liability Company Act 2016 is amended in section 2 by inserting in the appropriate alphabetical order the following definitions—

“ “book and paper” includes minutes, financial statements, accounts, records of account, deeds and writings;

“electronic record” has the meaning given to that expression in section 2(1) of the Electronic Transactions Act 1999;”.

(2) Section 50(5) of the Limited Liability Company Act 2016 is amended by deleting the word “five” and substituting the word “six”.

(3) The Limited Liability Company Act 2016 is amended by inserting after section 203 the following—

“Form of books and papers of limited liability company and liquidators

203A (1) For the purposes of sections 204 and 210, the books and papers of the limited liability company and books and papers of the liquidators may be kept in hard copy form or in electronic form and arranged in such manner as may be prescribed pursuant to subsection (8).

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(2) Where such books and papers are kept otherwise than in hard copy form, reasonable precautions shall be taken for ensuring the proper maintenance and retention of the books and papers.

(3) Where such books and papers are kept by the limited liability company or by the liquidators, as the case may be, by recording the information in question in electronic form, they shall ensure that proper facilities shall be provided to enable such books and papers to be inspected as required.

(4) In the case where books and papers are kept in electronic form, the limited liability company or the liquidator, as the case may be, shall provide for the manner by which the books and papers are to be authenticated or verified.

(5) Where default is made in complying with this section, the liquidator and every person who was a manager or an officer of the limited liability company at the commencement of the winding up who is in default shall, pursuant to Part 15, each be liable to a default fine.

(6) With respect to the books and papers of the limited liability company which are in existence at the commencement of the winding up—

- (a) the liquidator's duties under this section relate only to the books and papers of the limited liability company that have been received by the liquidator; and
- (b) the liquidator is only required to verify that such books and papers which the liquidator has stored in electronic form are true and correct copies of the books and papers which the liquidator has received from the limited liability company.

(7) In this section—

“in electronic form” means in the form of an electronic record; and

“in hard copy form” means in a paper form or similar form capable of being read.

(8) The Minister may make regulations under section 255 for the purposes of this section and, without prejudice to the generality of this subsection and section 255, the regulations may prescribe classes of books and papers that must be kept in hard copy form.”.

(4) Section 204 of the Limited Liability Company Act 2016 is amended—

- (a) by inserting before subsection (1) the following—

“(A1) When a limited liability company has been wound up and is about to be dissolved the liquidator, in relation to the limited liability company for which he has been appointed as the liquidator, shall—

- (a) keep the records of account of the limited liability company referred to in section 50 which are in existence at the commencement of the winding up, and have been provided to the

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liquidator, for six years from the end of the period to which such records of account relate;

- (b) keep the books and papers of the liquidator for six years from the date of the dissolution of the limited liability company;
- (c) where applicable, keep the records specified in regulation 15 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 that are in existence at the commencement of the winding up in relation to the limited liability company, and have been provided to the liquidator, for the period specified in regulation 15.”;

- (b) in subsection (1), by deleting the full stop and substituting a comma and by inserting the following under paragraph (b)—

“provided that no direction given under this section shall direct the disposal of such books and papers of the limited liability company or of the liquidators or of such records referred to in subsection (A1) unless, with respect to the books and papers or record, the applicable period specified in this Act for its retention has expired.”;

- (c) in subsection (2)(c), by deleting the word “two” and substituting the word “six”;
- (d) in subsection (3)—
  - (i) by inserting after the words “has been wound up,” the words “and of its liquidator,”;
  - (ii) in paragraph (c), by deleting the word “two” and substituting the word “six”;
- (e) by inserting after subsection (5) the following—

“(6) A person who fails to comply with subsection (A1) shall be liable to a default fine of five hundred dollars.”

(5) Section 209(1)(b) of the Limited Liability Company Act 2016 is amended by deleting the word “two” and substituting the word “six”.

(6) Section 210 of the Limited Liability Company Act 2016 is amended as follows—

- (a) in subsection (5) in the proviso, by deleting the word “and” at the end of paragraph (a) and by inserting after paragraph (a) the following—
  - “(aa) nothing in this section shall affect the continuity of the requirement imposed on such manager or officer of the limited liability company by subsection (5A) to keep such records for the period referred to in that subsection; and”;

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(b) by inserting after subsection (5) the following—

“(5A) Every person who is a manager or an officer of a limited liability company at the date upon which the limited liability company is struck off the register pursuant to this section shall ensure that—

- (a) records of account of the limited liability company referred to in section 50 that are in existence on that date are kept for six years from the end of the period to which such records of account relate; and
- (b) where applicable, any record specified in regulation 15 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 is kept for the period specified in that regulation.”.

(c) by inserting after subsection (5A) the following—

“(5B) A person who fails to comply with subsection (5A) shall be liable to a default fine of five hundred dollars.”

(7) Section 256(1) of the Limited Liability Company Act 2016 is amended by inserting after the words “winding up of a limited liability company by the Court” the words “, including matters relating to the retention of records in electronic form,”.

### Consequential amendment

4 The Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 are amended in regulation 15(3) by deleting the word “five” and substituting the word “six”.

### Transitional

5 This Act shall not apply in relation to any record or books and papers if the period for which it is to be kept under the relevant provision of the Companies Act 1981, or the Limited Liability Company Act 2016 or the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008, that was in operation immediately before the date of coming into operation of the relevant provision of sections 2 and 3 of this Act, has expired by that date.

### Order regarding consequential amendments, savings and transitional provisions

6 (1) The Minister responsible for companies may by order make any consequential amendment—

- (a) in any relevant law that is passed before this Act; or
- (b) in any other relevant instrument made under an Act before the passing of this Act,

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where it appears to him that that provision is inconsistent with, or requires amendment consequentially upon, or has become unnecessary in consequence of, the provisions of this Act or any Regulations made under this Act.

(2) An order made under subsection (1) may include savings and transitional provisions.

(3) An order made under subsection (1) shall be subject to the negative resolution procedure.

### Commencement

7 (1) This Act shall come into operation on such day as the Minister responsible for companies shall by Notice in the Gazette appoint.

(2) The Minister may prescribe different days for the coming into operation of the provisions of this Act.



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### EXPLANATORY MEMORANDUM

This Bill amends the Companies Act 1981 and the Limited Liability Company Act 2016 to clarify record retention requirements for Bermuda companies and limited liability companies after striking off or dissolution of a company or limited liability company, as the case may be.

Clause 1 provides a title for the Bill.

Clause 2 amends the Companies Act 1981 as follows:

- subsection (1) amends the definition of “book and paper” to include records of account;
- subsection (2) amends section 83 to substitute “six years” for “five years”;
- subsection (3) inserts a new section 254A, pursuant to the new record retention requirements, to provide the option to retain records and books and papers either in hard copy or in electronic form subject to certain restrictions. Regulations may be prescribed for this purpose;
- subsection (4) amends section 255 to provide for record retention in circumstances where a company has been wound up and is about to be dissolved. The amendments are as follows: (i) records of account shall be kept for the period of six years from the end of the period to which they relate, (ii) the books and papers of the liquidator shall be kept for the period of six years after the dissolution of the relevant company, (iii) where applicable, the records specified under regulation 15 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 which are in existence at the commencement of the winding up in relation to the company, shall be kept for the period specified in that regulation, (iv) no direction shall be given for the disposal of such records or books and papers of the company prior to the expiration of the applicable retention period; (v) certain periods under section 255 are amended in consequence of the new record retention requirements, and (vi) the penalty that applies where a person fails to comply with the record retention provisions is specified;
- subsection (5) amends section 260 to increase the retention period from two years to six years in consequence of the new record retention requirements;
- subsection (6) amends section 261 to provide for record retention in circumstances where a company has been struck off the register. The amendments are as follows: (i) records of account must be kept for the period of six years from the end of the period to which they relate and (ii) where applicable, the records specified under regulation 15 of the Proceeds

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of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 which are in existence when a company is struck off the register, shall be kept for the period specified in that regulation, notwithstanding that the company has been struck off the register. The penalty that applies where a person fails to comply with the record retention provisions is specified;

- subsection (7) amends section 288 with respect to rules of court.

Clause 3 amends the Limited Liability Company Act 2016. These amendments, which seek to mirror the amendments made to the Companies Act 1981, are as follows:

- subsection (1) amends section 2 to insert a definition of “book and paper” and of “electronic record”;
- subsection (2) amends section 50 to substitute “six years” for “five years”;
- subsection (3) inserts a new section 203A, pursuant to the new record retention requirements, to provide the option to retain records and books and papers either in hard copy or in electronic form subject to certain restrictions. Regulations may be prescribed for this purpose;
- subsection (4) amends section 204 to provide for record retention in circumstances where a limited liability company has been wound up and is about to be dissolved. The amendments are as follows: (i) records of account shall be kept for the period of six years from the end of the period to which they relate, (ii) the books and papers of the liquidator shall be kept for the period of six years after the dissolution of the relevant limited liability company, (iii) where applicable, the records specified under regulation 15 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 which are in existence at the commencement of the winding-up in relation to the limited liability company, shall be kept for the period specified in that regulation, (iv) no direction shall be given for the disposal of books and papers or records of the limited liability company prior to the expiration of the applicable retention period, (v) certain periods under section 204 are amended in consequence of the new record retention requirements and (vi) the penalty that applies where a person fails to comply with the record retention provisions is specified;
- subsection (5) amends section 209 to increase the retention period from two years to six years in consequence of the new record retention requirements;
- subsection (6) amends section 210 to provide for record retention in circumstances where a limited liability company has been struck off the register. The amendments are as follows: (i) records of account must be kept for the period of six years from the end of the period to which they relate and (ii) where applicable, the records specified under regulation 15 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 which are in existence when a limited liability

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company is struck off the register shall be kept for the period specified in that regulation, notwithstanding that the limited liability company has been struck off the register. The penalty that applies where a person fails to comply with the record retention provisions is specified;

- subsection (7) amends section 256 with respect to rules of court.

Clause 4 makes a consequential amendment to regulation 15 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 to substitute six years, for five years in respect of the relevant period for which such records shall be kept.

Clause 5 provides for transitional matters.

Clause 6 enables the Minister responsible for companies to make an order for the purpose of amending relevant existing provisions relating to record retention to make consequential amendments thereto, where the Minister is satisfied that such provisions are inconsistent with, or require amendment consequentially upon, or have become unnecessary in consequence of, the provisions of this Act or any regulations made under this Act. An order made under this section may provide for savings and transitional matters and shall be subject to the negative resolution procedure.

Clause 7 provides for the commencement of the provisions of this Bill.