SCHEDULE OF COMMENTS OF THE LATT on the COMPANIES (AMENDMENT) ACT, 2017

Clause	Section	Provision	Comments
1	Short Title	Defines the Act as the Companies Amendment Act, 2018	No. Comment
2	N/A	Provides for Commencement of the Act	No Comment
4	4	TThis clause will amend **section 4** to insert a new definition for the term "**beneficial owner**". The new definition is as follows: ""beneficial owner" means the natural person- (a) who ultimately owns or **controls** a share or shares of a company; (b) who effectively exercises ultimate **control** over a person or arrangement in relation to a share or shares of a company; or (c) on whose behalf a transaction in relation to a share is conducted;"	It is our understanding that the intention is to create a definition of "beneficial owner" that captures the natural person or persons who ultimately owns or controls the legal person or legal arrangement. We note some issues with the definition as proposed: o There are existing definitions of "beneficial owner" and "beneficial interest" in the Act which are relevant to a number of other provisions of the Act (definition of "associate," sections 42, 137, 140, 148, 161,186, 227 & 303.) The proposed definition conflicts with the existing definition and will adversely impact the interpretation of these other provisions. The impact on these other provisions will need to be fully considered if the proposed definition is retained. o If as it appears this definition is targeted at identifying the natural person behind the registered shareholder rather than for the other purposes for which the term is used in the Act we recommend its inclusion in a separate Part of the Act dealing with the enhancement of transparency for utilization in the fight against fraud corruption money laundering and other illicit financial flows. o The term "**arrangement**" in subparagraph (b) of the definition of "**beneficial owner**" is not defined and it is unclear what is being referred to here. o The definition is vague and far reaching. The UK as well as other jurisdictions have included **thresholds** (in the case of the UK, 25% of the shares or voting rights) in determining who are the persons who have significant control over a company In the circumstances we wish to propose that the provisions relating to beneficial ownership (being the proposed definition of beneficial ownership and the proposed new sections 177A, 177B, 177C & 177D) be included in a separate proposed new Part V111 of the Companies Act and that the following alternative definition of "beneficial owner" be adopted
4 cont'd	4 cont'd		(1) In this Part - "**beneficial owner**", in relation to a company, has the meaning assigned by sub-sections

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			(3), (4) and (5); "**individual**" means a natural person; "**legal entity**" means a company, limited liability company or other body that is a legal person under the law by which it is governed; (2) This Part is 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 other than the Companies Act (c) an international organization whose members include two or more countries or territories or their governments; (d) Municipal Corporations under the Municipal Corporations Act. (3) An individual ("X") is a beneficial owner of a company ("company Y") if the individual meets one or more of the following conditions in relation to the company - (a) X must hold, directly or indirectly, more than 25% of the shares in company Y; (b) X must hold, directly or indirectly, more than 25% of the voting rights in company Y; (c) X must hold the right, directly or indirectly, to appoint or remove a majority of the board of directors of company Y. (4) If no individual meets the conditions in subsection (3), X is a beneficial owner of company Y if X has the absolute and unconditional legal right to exercise, or actually exercises, significant influence or control over company Y through the ownership structure or interests described in subsection (3), other than solely in the capacity of a director, professional advisor or professional manager. (5) If no individual meets the conditions in subsections (3) and (4) but the trustees of a trust (or the members of a partnership or other entity that, under the law by which it is governed is not a legal person) meet one of those conditions in relation to company Y in their capacity as such, X is a beneficial owner of company Y if X has the absolute and unconditional legal right to exercise, or actually exercises, significant influence or control over the activities of that trust (or partnership or other entity), other than solely in the capacity of a director, professional advisor or professional manager.
5	33(2) to (7)	Abolition of Bearer Shares. The provisions prohibiting bearer shares have been updated to provide for the following: (a) Prohibition of:	Clause 5 of the Bill amends Section 33(2) of the Companies Act which currently prohibits the issue of bearer shares and bearer share certificates, so that a company will be prohibited from: a) issuing bearer shares, bearer share certificates or bearer share warrants; b) converting any share into a bearer share, bearer share certificate or bearer share warrant; c) exchanging a share for a bearer share, bearer share certificate or bearer share warrant.

Clause	Section	Provision	Comments
		• issuance of bearer share warrants • conversion of any shares in bearer shares, warrants or certificates • exchange of shares for bearer shares, warrants or certificates (b) Create an offence for contravention of all prohibitions relating to bearer shares, warrants and certificates; (c) Require conversion of any existing bearer share warrant into regular shares; and (d) Require the establishment of a register of bearer share warrants issued prior to the amendments.	Further, a company which contravenes the above provisions will commit an offence under the proposed new Section 33(3). We note the following concerns with these provisions: o Subject to comments below regarding the reference to "bearer share warrants", the provisions of **Section 33(4)** to **33(7)** and **Section 177(7),** would, in effect, be regulating "bearer share warrants", the issue of which is prohibited under **Section 33(2)**. Even if there are "share warrants" outstanding, which were issued years ago under the Companies Ordinance, given the mischief to which the amendment is aimed, it does not seem that as a practical matter such warrants would be means of money-laundering or financing terrorism. For these reasons, **Section 33(4)** to **33(7)** and **Section 177(7)** are unnecessary and it is recommended that these provisions be deleted.
5	33(2)	Extension of prohibition to "bearer share warrants" and to conversion and exchange	o In essence, the new provision extends the current prohibition against bearer shares and bearer share certificates to **"bearer share warrants".** It is submitted that the correct reference is "**share warrants".** Under the Companies Ordinance, companies, if authorised by their articles, could issue a warrant, known as a "share warrant" stating that the bearer of the warrant was entitled to the shares specified therein. There was no reference to "bearer share warrant". The share warrant entitled the bearer to the shares specified in the warrant, which shares could be transferred by delivery of the warrant. Further, on the issue of a share warrant, the company was required to strike off its register of members the name of the member entered therein as holding the shares specified in the warrant as if he had ceased to be a member and enter certain particulars in the register instead. It would seem therefore that the amendment should be prohibiting the issue of "share warrants" and not "bearer share warrants". Alternatively, consideration should be given to defining the term "bearer share warrant." As the Companies Act does not contain provisions permitting the issue of "share warrants" as obtained under the Companies Ordinance, arguably, the share warrants may no longer be issued. That said, for the avoidance of doubt, there is no harm in expressly prohibiting the issue of share warrants. o As a share certificate is only evidence of the issue of a share, strictly speaking, once the issue of "bearer shares" is prohibited, it is not necessary to expressly prohibit "bearer share

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			certificates". o In order to "convert" a share into a bearer share, bearer share certificate or bearer share warrant or to "exchange" a share for a bearer share, bearer share certificate or bearer share warrant it would be necessary to "issue" the bearer share, bearer share certificate or bearer share warrant into which the share is being converted or for which it is being exchanged. As the issue of such a bearer share, bearer share certificate or bearer share warrant is prohibited by 33 (2) (a) sub-paragraphs (b) and (c) are redundant and should be deleted.
5	Proposed 33 (3)	A person who contravenes subsection (1) commits an offence	We suggest the following amendments: o change "person" to "company" since the prohibition is against issue and only the company can issue these instruments? o There is a typographical error in the proposed new **Section 33(3)** which should state "**a company which contravenes subsection (2)**" commits an offence and not "a person who contravenes subsection (1)."
5	Proposed 33 (4)	**Subsection (4)** requires a company which has issued bearer share warrants, prior to the amending legislation, to notify the Registrar of the number of such share warrants issued.	As indicated in our earlier comments bearer shares and bearer share certificates were prohibited with effect from the coming into force of the Companies Act and, in our view there was no provision in the Companies Act akin to that in the Companies Ordinance which would permit the issue of bearer warrants to be issued. As such it appears that the intended object of the proposed subsection is to capture bearer instruments which may have been in existence under the Companies Ordinance rights to which are preserved under section 345 of the Companies Act. We question the utility of notification of merely the number of bearer share warrants issued. We also consider 12 months to be a long time period notification of a matter of which the company must be aware, namely, the issue by it of these instruments. We suggest the following amendments: o Replace "bearer share warrants" with "bearer shares, bearer share certificates or bearer share warrants" in the two places it occurs o Replace "twelve months" with "six months."
5	Proposed 33 (5)	**subsection (5)** places an obligation on a company to require the holder of the bearer share warrants to submit them to the	Due to the nature of a bearer instrument a company has no record of the holders of such instruments so it is an unreasonable burden to place on the company. Additionally there is no consequence to the

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		company for registration.	holder of the bearer instrument for failing to respond to the company's request. We question why this obligation should only arise following notification to the Registrar We note that similar legislation in Jamaica provides for the Registrar to issue the advertisement with respect to bearer instruments and we suggest a similar provision to reduce the burden on the companies. We suggest the revision of this subsection to read as follows: (5) A company under subsection (4), shall within six months of the commencement of the Companies (Amendment) Act, 2018, require the holder of any bearer share, bearer share certificate or bearer share warrant to present himself to the company to surrender such share, certificate or warrant in exchange for a certificate for the share or shares represented by such surrendered instrument and to be entered in the register of members pursuant to subsection (5B). (5A) The obligation of the company under subsection (5) may be discharged by publication of such request in two daily newspapers of general circulation in Trinidad and Tobago. (5B) Upon commencement of the Companies (Amendment) Act 2018 the holder of a bearer share, bearer share certificate or bearer share warrant shall be entitled upon presentation and surrender of the share, certificate or warrant to the company to have his name entered in the register of members as the shareholder in respect of the share or shares represented by such instrument in accordance with the terms of issue thereof. (5C) Upon the expiration of twelve months from commencement of the Companies (Amendment) Act 2018 and provided it has made the request required under subsection (5) a company under subsection (4) shall cancel any bearer share, bearer share certificate or bearer share warrant in respect of which no person has been registered in the register of members pursuant to subsection (5B) and may make any required amendment to its stated capital as a result of such cancellation Provided However that such cancellation shall be subject to the right of the holder of any such bearer share, bearer share certificate or bearer share warrant to apply to the Court under section 245 for an order that the registers or records of the company be rectified to include his name on the register in accordance with subsection (5B)
	Proposed 33 (6)	**subsection (6)** requires that such a bearer share warrant must be reflected on that company's next annual return as a regular share under **subsection (6).**	Subsection (4) gives the company 12 months to notify the Registrar yet provides for inclusion of the bearer warrant on its next annual return. This appears inconsistent and we suggest that the timeframe

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			be the same. The term "regular" share is not a term recognised under the Companies Act and the reference to subsection (2) is incorrect We suggest the subsection read as follows: (6) A company under subsection (4) shall on its next annual return following the expiration of twelve months from commencement of the Companies (Amendment) Act 2018 include such particulars as may be prescribed of all bearer shares, bearer share certificates and bearer share warrants surrendered pursuant to subsection (5B) or cancelled pursuant to subsection (5C)
5	Proposed 33 (7)	Under the proposed **Section 33(7),** the Registrar would have to establish a register of any bearer share warrants issued before the amending legislation and under the proposed new **Section 177(7)**, a company would also have an obligation to maintain a register of the number of bearer share warrants issued prior to the amending legislation**.**	We question the need for maintenance of a register by the Registrar if these bearer instruments are prohibited. We suggest the deletion of this provision.
6	Sec 177(2)	The Act currently requires that all companies must maintain a register of members which includes a statement of the shares held by each member. The proposed amendment will now also require the statement to include the number of shares and the categories of shares held.	The term "**categories of shares**" is not defined in the Act. If what is means is "**classes of shares**" that should be stated. But if so it is arguable that this is already covered in Section 177(2) which requires a company to maintain a register showing the name and last known address of each person who is a member, a statement of the shares held by each member and the date on which each person was entered in the register as a member and the date on which any person ceased to be a member. If the amendment is to be retained we suggest that section 177 (2) (b) be amended to read as follows: (b) a statement of the shares held by each member including the classes and number of shares of each class held by such member;
6	Sec 177(7) new section	The amendments will also now require that all companies include in the register of members the number of bearer share warrants it issued prior to the commencement of the amendments.	We question the need for maintenance of this information in the company's register if these bearer instruments are prohibited. We suggest the deletion of this provision. However if the provision is retained we suggest that it read as follows: "(7) A company which issued bearer shares, bearer share certificates or bearer share warrants prior to the commencement of the Companies (Amendment) Act, 2018, shall prepare and maintain a register of the number of such instruments that were issued

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			and the date on which they were surrendered in compliance with subsection 33(5B)."
7	Sec. 177A Interpretation of certain words and phrases in sections 177B to 177E	This provision deems that a corporation sole, a body corporate created under any written law, an international organization where members include two or more countries or territories or their government and Municipal Corporations under the Municipal Corporations Act, are "individuals" for the purpose of the sections referred to at 7 to 9 items below.	Reference is made to our proposed definition of "beneficial owner' above at clause 4 where this is best addressed and the amendments indicated there.
7	Sections 177B Obligtion to ascertain and obtain beneficial ownershio information, 177C – Declaration in respect of beneficial Interest in any share and 177D - Company to file a return for the issue or transfer of shares	Introduction of the requirement to maintain a register of beneficial owners. Company to ascertain beneficial owners and file a return under Section 177D.	We submit that the approach of these sections 177B, 177C and 177D be relooked. We refer to our comments at clause 4 on as regards the definition of beneficial ownership that: • These provisions should apply as regards the beneficial owner of "the company." We submit that the objectives of the Bill are directed at persons who are the owners or controllers of companies rather than individual shareholders. To require maintenance of a register of all beneficial owners of shares would require the company to operate 2 registers and would create confusion as regards the rights of legal and beneficial owners as against the company. • That they be included in a separate Part of the Act to avoid confusion with the existing principles applicable to regulating corporate affairs and to also clearly highlight the obligations applicable to achieve the objectives of transparency for the purpose of combatting crime, money-laundering, financing terrorism etc. • That due to the high turnover of shares in public companies, the large number of shares in issue and existing obligations as regards substantial shareholdings, these companies should be exempt from these provisions • The requirement for notification of changes in beneficial ownership will obviate the need for companies to file notices of every issue or transfer of shares which would be an unreasonable and unnecessary burden on companies contributing to greater bureaucracy and adversely affecting productivity and competitiveness of our commercial environment. As knowledge of beneficial ownership lies with the beneficial owner as opposed to making the company liable for the failure to ascertain beneficial ownership we propose that this become the responsibility of the beneficial owner of shares and the person recognised by the company as the "legal owner." For this purpose we believe the legal owner is the person currently defined in the Companies Act as a "shareholder."

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			Furthermore we note that there are valid reasons for nominee/trust arrangements which have nothing to do with criminal activity but do require secrecy. For instance, achieving control for the purpose of a valid take-over, fear of being targeted due to wealth, or fear of reprisals for the type of business of the company in which the shares are held (e.g. fur trade, weapons, chemicals, animal testing, etc.) We are concerned as to the access to be given to information on beneficial ownership filed with the Registrar. Is it the intention for this information to be publicly available or will there be restrictions on access? If the information is to be publicly available consideration needs to be given to the exclusion of certain cases, including those identified above, from the requirement to disclose beneficial ownership We propose the following provisions to replace the Bill's **Clauses 177B, 177C** and **177D** as a preview of what such shift in responsibility would look like. **A. Duty of Beneficial Owners** (1) A person who is a beneficial owner of a company to which this Part applies shall give notice in writing to the company of the required details specified in section --- within 30 days after that person becomes aware that he is a beneficial owner of the company and shall also notify the company of any changes in such details including his ceasing to be a beneficial owner within 30 days of any such change. (2) The notice shall be so given notwithstanding that the person has ceased to be a beneficial owner before the expiration of the period referred to in subsection (2). (3) If a company identifies any person as a beneficial owner of the company and such person has not delivered a notice under subsection (1) to the company the company may by notice in writing to such person require that such notice be delivered. (4) A person who fails to comply with subsection (2) or (3) commits an offence. (5) A person guilty of an offence under subsection (3) is liable ----- B. **Duty of Shareholders** (1) It is the duty of each shareholder of a company to which this Part applies to ascertain the beneficial owner of the shares of which he is the holder. (2) Subjection (3) applies if a shareholder receives a notice described in subsection (5). (3) The shareholder must within one month of the date of the notice received under subsection (2) give notice to the company of the required details specified in section --- in respect of each beneficial owner of the shares held by the shareholder. (4) To avoid doubt, beneficial ownership is to be traced through any number of persons or arrangements of any description.

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			(5) A company may at any time issue a notice in writing to any shareholder whose shares it reasonably suspects are included in the holding of a beneficial owner of the company. (6) Where notice is given by a shareholder under subsection (3), it must be accompanied by information from a reliable and independent source which verifies the required details. (7) A shareholder to which this Part applies commits an office if that person, without reasonable excuse- (a) fails to comply with this section; or (b) knowingly or recklessly makes a statement to the company which is false, deceptive or misleading in a material particular. (8) A person guilty of an office under subsection 7 (a) above is liable ------- (9) A person guilty of an office under subsection 7 (b) above is liable ------- C. **Duty of beneficial owners and intermediate owners** (1) This section applies to a person who is:- a. The beneficial owner of any shares but not the holder of such shares as defined in section **B**; or b. neither the beneficial owner nor the holder of a share but has an intermediate ownership interest in such share (intermediate owner).(Note: this could be placed in the definition section) (2) A beneficial owner and an intermediate owner of any shares must assist the holder of such shares to ascertain the beneficial owner of the shares and notify the holder of such shares of any changes in the beneficial ownership of such shares. (3) A person who fails to comply with subsection (2) commits an offence. (4) A person guilty of an offence under subsection (3) is liable ----- D. **Required Details** (1) The "required details" are in respect of a beneficial owner: (a) His or her name; (b) His or her usual residential address;

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			(c) A service address where different from the residential address; (d) His or her nationality; (e) His or her date of birth; (f) The date on which he or her acquired an interest in the company; (g) The nature and extent (expressed as a percentage) of his or her interest in the company.
			In the interest of completeness we have nonetheless commented on the existing clauses in the Bill
7	117B (1)	Introduction of the requirement to maintain a register of beneficial owners. Company to ascertain beneficial owners and file a return under Section 177D. **Determining beneficial owners:** Each company shall now be required to determine and obtain information relating to its beneficial owners (section 177B(1). The responsibility for doing so falls to company and to its officers and directors (section 177B(3).	We note that section 186 of the Companies Act provides notice of trust (which generally indicates beneficial interest) is not to be received by the company nor the Registrar. In light of the changes proposed in these new provisions, it will be necessary to rationalize these sections. Note: If our proposal is accepted as regards these provisions being contained in a separate Part of the Act, then this comments would fall away **177B (1)** speaks to the company ascertaining and obtaining "information" as to all the beneficial owners holding an interest in the company. It does not state the nature of the information to be obtained – the required information should be stated. This requirement to ascertain beneficial owners can be quite onerous on a **public company**, which has thousands of shareholders and changes in shareholder on a daily basis. As pointed out, we strongly oppose the application of these provisions to public companies. We also consider that it may be worthwhile carving out entities in the financial services sector whose owners and controllers would already be subject to regulatory oversight. We consider that the duty imposed on companies is overly onerous and far reaching. We consider that it would be more appropriate for the Company to have a duty to take reasonable steps to identify any persons who hold beneficial interests in the company but who are not listed on the company's register of members and, if any such persons are identified, to request further information from such persons in relation to their identity. There is no indication in the proposed subsection as to when this obligation arises. Does it arise at a specified time or is it an ongoing obligation? The latter would appear to be highly onerous on the company.

Clause	Section	Provision	Comments
			See also comments on section 177D regarding return to be filed.
7	177B(2)	**Request for declaration:** By section 177B(2), each company shall issue to each person whose name is displayed in the register or members a notice requiring that they submit a declaration in accordance with section 177C (i.e. a declaration as to the beneficial ownership of the shares held by them if they are not the beneficial owner).	The words "under subsection (1)" add nothing to the intent of the section and should be deleted. There is no indication in the proposed subsection as to when this obligation arises. Does it arise at a specified time or is it an ongoing obligation? The latter would appear to be highly onerous on the company.
7	177B(3)	**Offences:** Failure by the company to ascertain and obtain information as to beneficial ownership and/or to file the relevant return is an offence committed by the company and every officer and director. The liability for same on summary conviction is a fine of $10,000.00 and imprisonment for 3 years and for every day in which the offence continues a further fine of $300.00	We note that an onus is placed on the company to ascertain and obtain information as to the identity of beneficial owners and that the company commits an offence where it fails to do so. The company, under the proposed amendment, is relying on the registered shareholders to make a declaration, which includes the identification of who these beneficial owners are, and in some circumstances it may be impossible to obtain such information. The strict liability appears unwarranted for matters over which the company and its directors and officers may have little control. We agree that failure to make such enquiries should be an offence in order to improve compliance by companies but we disagree that the company could find itself committing an offence as a result of a legal owner or the beneficial owner failing to supply the information on receipt of such a request. Officers and directors will now be directly responsible determining who is a "beneficial owner" and for any failure in this regard, the liability for which is substantial. This is likely to make the holding such position much less appealing. There should be some element of fault on the part of the officer/director and also the company should be protected where appropriate efforts are made to secure this information. There are instances where it is obvious that there is an unknown beneficial owner but in others it is less so. For example, if the name on the register is that of a natural person the company would not be put on notice to investigate. We recommend that the clause be amended to read as follows: (3) A company that fails to take reasonable steps to ascertain and obtain all required information as to the beneficial owners holding an interest in the company and file a return under subsection (1), the commits an offence and the company and every director and officer of the company who directed,

Clause	Section	Provision	Comments
			authorised, assented to, acquiesced in or participated in the commission of the offence 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.

7	177B (4)	**Defence:** It shall be a defence to the offence under section 177B (3) for the company, directors and officers to have relied upon a declaration sent in good faith to the company, unless the company has reason to believe that the declaration is misleading or false.	Proposed 177B (4) establishes a defence where the company relies on a declaration under 177C (presumably from the shareholder) made in good faith in response to the notice issued by the company under 177B (2). However the declaration is only required from the shareholder who acknowledges that he/she is the not the beneficial owner. So the company is not protected if the shareholder does not respond There is usually no evidence of identity required as regards share ownership, nor evidence of signing authority. Is it the intention that evidence of identity and signing authority would also need to be requested for the declaration to be relied on? This provision appears to permit the defence once the company *believes* that declaration was sent in good faith. But it does not indicate the method by which the company may determine whether it is sent in good faith. Rather, it provides that the defence will not apply if the company has reason to believe that the declaration is misleading or false. We question the need for inclusion of the requirement of good faith. Our proposal is for section 177B (4) to provide that the company is entitled to rely on a declaration unless there is reason to believe that the declaration is misleading or false. This amendment together with the proposed amendment to 177 B (3) requiring "reasonable steps" would provide the company with some protection. We therefore recommend that the clause be amended to read as follows, (4) For the purpose of identifying individuals who are the beneficial owners under subsection (1), a company is entitled as a defence to an offence under subsection (3), to rely on a declaration made to the company under section 177C (1) unless the company has reason to believe that the declaration is misleading or false.

7	177C(1) Declaration in respect of beneficial interest in any share	**Member Declaration of beneficial ownership:** All registered members who do not hold the beneficial interest in the shares are required to make a declaration to the company within a prescribed time and in a prescribed form specifying the beneficial owner .	This requires a person who is not the beneficial owner to make a declaration specifying the beneficial owner We note that the timing for making this declaration as well as the form of declaration are still to be prescribed. We believe those are important elements relative to the assessment of this provision. Additionally there is no provision for a situation where the registered owner does not know the identity of the beneficial owner. As mentioned above this will effectively remove any privacy hitherto enjoyed by beneficial owners under trust or nominee agreements. We repeat our deep concerns regarding the custody of and access to information supplied in response to this requirement.
7	177C(2)	**Acquirer's Declaration of acquisition of beneficial interest:** Within 30 days of acquiring a beneficial interest in shares of the company such person must make a declaration of same to the company setting out the nature of the interest, details of the person to whom the shares are registered and the date the beneficial interest was created (section 177C(2)).	Requires a declaration by the beneficial owner within 30 days of acquiring an interest in shares. We note that the required particulars are still to be prescribed. We believe those are important elements relative to the assessment of this provision. We submit that this provision should only apply if the person is not the registered member and suggest the following amendment: (2) Every person who holds or 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 such share or shares shall, within thirty days of acquiring the beneficial interest make 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. As mentioned above this will effectively remove any privacy hitherto enjoyed by beneficial owners under trust or nominee agreements. We repeat our deep concerns regarding the custody of and access to information supplied in response to this requirement.
7	177C(3)	**Declarations of change in ownership** Within 30 days of a change in beneficial ownership in shares, BOTH the registered member who does not hold the beneficial interest in the shares AND the person acquiring the beneficial interest shall make a declaration to the company detailing the nature of the change and any other prescribed details	Requires notification of changes in beneficial interest by both holder and person who acquires – repetitive? **Section 177(C) (3)** goes on to state, "***Where any change occurs in the beneficial interest of the shares …***". What is meant by "***any change***" in the beneficial interest in the shares? Does this mean where the person no longer has the beneficial interest? This requires that both the legal owner and the beneficial owner make a declaration to the company specifying the nature of the change. However, if there is a change in the beneficial interest why is the person with the legal

			interest required to make a declaration to the company, especially as there may be situations where the legal owner may not be aware as to any dealings by the beneficial owner. We recommend that the changes to be notified should be specifically identified and that the declaration referenced should be a declaration under (2),i.e. made by the beneficial owner.
7	177C(4)	**Public company declaration:** Notwithstanding the provisions above, where the company is a public company the declaration of beneficial ownership by an acquirer of and person holding the shares or the beneficial interest in the company must be made at least once in every quarter in each calendar year specifying the acquisition and any other prescribed details	We maintain our position that this Bill should not be applicable to public companies and other regulated entities. We also note a number of issues with the provision • The requirement for persons holding or persons who acquire shares of **publicly** traded companies to make declarations at least once every quarter is excessive, onerous and impractical on both the person and the company. • The need for quarterly declarations where there are no changes is excessive • There needs to be standardization of the quarterly filing date otherwise the company may theoretically be receiving returns on a daily basis. • There is also no definition of "***stock exchange***". • Further, companies are not listed rather the shares of companies are listed on the exchange. • This sub-section refers to where a company is listed as a "***publicly traded company***". There is no reference to a "***publicly traded company***" in the Companies Act. There is a definition of "***public company***" but this is not defined exclusively as a company whose shares are listed on the Trinidad and Tobago Stock Exchange, rather it is defined as a company whose issued shares are part of a distribution to the public. A company may be a public company without having its shares listed on the "***stock exchange***".
7	177C(5)	**Offence of failure to declare:** Failure to make any of the declarations above, without reasonable cause is an offence, the penalty for which on summary conviction is $10,000.00 and imprisonment for 3 years and a fine of $300.00 for each day the offence continues.	Imposes penalty where no declaration without reasonable cause: $10k and prison for 3 years and $300 for each day offence continues. We are of the opinion that the penalty /punishment for failure to comply with subsection 177C is unreasonable, harsh and oppressive. It is recommended that a fine is a amore reasonable penalty
7	177C(6)	**Register of declarations and filing of return:** Each company is required to establish a register of declarations and to make note of the declarations above therein. A non-publically traded company must file a return in respect of the declaration within 30 days of receipt of the declaration, and a publically traded company must file a return in respect of the	Requires the company to establish a register for such declarations and file a return. There is no requirement for a separate register to be maintained by a company although this obligation is implied by the proposed section. For the purpose of clarity any required register should be the subject of specific obligation similar to the register of members. There is also reference to a "***private company***" and a "***publicly traded company***" but there are no

		declaration 30 days from the end of each [calendar?] quarter, in the prescribed form with the Registrar and pay the prescribed fees	such defined terms in the Companies Act per the comments above. We note that the form of return and fee are still to be prescribed. We believe those are important elements relative to the assessment of this provision. We repeat our comments above as regards: • The application of these provisions to public companies • The custody of and accesss to information filed with the Registrar
7	177C(7)	**Offence of failure to file return:** The company and every officer thereof who knowingly or recklessly fail to file a return specified above will on summary conviction be liable to a fine of $10,000.00 and imprisonment for 3 years and a further fine of $300.00 for every day the offence continues	Include "director and" before "officer"
7	177C (8)	**Rights not enforceable if required declaration not made**	We note that this section only applies where a declaration is required by the beneficial owner.
7	177C(9)	**Dividends** No prejudice to payment of dividends	**Section 177(C) (9)** states that nothing in the section shall prejudice the obligation of a company to pay dividends to its members under the Act. It goes on to state "***and that obligation shall, on such payment stand discharged***". What does this mean? What is the intent behind this wording? The obligation to pay dividends does not arise under the Act but under the terms of issue of the relevant shares. We suggest the following amendment: (9) Nothing in this section shall prejudice the right of a shareholder to receive dividends declared by the company.
7	177D(1)	**Return of issuance or transfer of shares:** A company is now required to file a return of issuance or transfer of shares in the prescribed form as follows: (i) by a non-public company - within 30 days of the issuance or transfer; and (ii) by a public company - 30 days from the end of each quarter	We consider that the requirement for this information to be filed with the Registrar is unduly burdensome and question its utility. It provides for a return on issue or transfer. It would have to be amended to cater for the initial return. This provision does not address the **repurchase or redemption of shares** by the company or donation of shares by a shareholder. Are these intended to be covered? If so they should be stated specifically. **Section 177(D) (1)** commences by stating "***Where a company issues or transfers shares to a shareholder …***". A company does not transfer shares to a shareholder – perhaps the language should

			refer to "registers a transfer of shares". Accordingly the following amendment is proposed: *"(1) Where a company issues or registers a transfer of shares to a shareholders it shall, -"* Again, it refers to a "***private company***" and a "***publicly traded company***" which are not defined terms under the Companies Act. We repeat our comments above as regards: • The application of these provisions to public companies • The custody of and accesss to information filed with the Registrar • There need for standardization of the quarterly filing date We note that the form of return is still to be prescribed. We believe this to be an important element relative to the assessment of this provision.
7	177D(2)	**Prescribed information and fee:** The return above must be current up to the date of the return and the prescribed fee must be paid upon filing. It must also be certified by a director or officer of the company	We note that the required information and fee are still to be prescribed. We believe those are important elements relative to the assessment of this provision. Section 177 D (1) allows a period for filing of the return but this subsection (2) requires that the information must be current up to the date of the return. These two requirements are in conflict and we suggest that the requirement for the information to be current up to the date of the return be deleted as it is unnecessarily burdensome
7	177D(3)	A Director of Officer or the company shall certifiy the contents of the return made under subsection 177(D)**1**	What is the purpose of this requirement? It seems an unnecessary administrative step. Filings are usually signed by a director or the secretary. There is no justification for this certification requirement.
7	177D(4)	**Offence and penalties** The company and every director and officer shall be liable for failure of the company to file the return. The liability shall be, on summary conviction, a fine of $10,000.00, 3 years imprisonment and for each day the offence continues a further fine of $300.00.	We are of the opinion that the penalty is harsh and oppressive and should be restricted to a fine. The unfortunate reality is that many smaller businesses which do not have dedicated legal or corporate secretarial departments find it difficult to adhere to filing requirements. This is a hefty penalty and may be too heavy for such smaller businesses to bear.
7	177E Application of sections 177A to 177D to Part V	The provisions of section 177 are made applicable to all companies under Part V of the Companies Act.	This states that **Sections 177(A)** to **177(D)** shall also apply to companies in **Part V** of the **Companies Act**. **Part V** of the Act deals in Division 1 with companies without share capital. Therefore, this part cannot apply to those companies. Division 2 applies to external companies, which are dealt with in the amendments to **Section 333**. Under conflict of laws principles, companies are regulated by the laws of the place of incorporation. These obligations will require foreign companies to keep registers specifically for Trinidad and Tobago. This is a matter that should be regulated by the place of incorporation of the company. Where the FIU wishes to obtain this information they should have arrangements with equivalent

			organisations in these jurisdictions to obtain this information. By requiring companies to comply with these requirements may have a dampening effect on foreign investment in Trinidad and Tobago We are of the view that this Bill should exclude External Companies for these additional reasons: - The directors and officers of these branches are mostly outside of the jurisdiction so enforcement will be virtually impossible. - These companies are already subject to and regulated by the home jurisdiction - the only officership position that they are required to report on is 'Director'. This Section places obligations on other officers of the branches, such as secretaries, and separate and apart from them not being in the jurisdiction, we currently do not know, nor are we required to know, who they are. The amendment does not change this. - The framers of the provisions of Clause 9 of Bill appear to treat extrnal companies in the same manner as non-public companies under the Act as regards the requirement to issue notice to shareholders. The fact is external companies are simply branch offices of the company incoprorated in another jurisdiction and no shares are issued or registered in this jurisdiction. In our view provisions 333A (2), (3), (4) and (5) are really not applicable or appropriate for an external company Our following comments as regards external companies are made for completeness of this review, but our recommendation is that the proposed Bill provisions do not apply to external companies..
8	318(1)(j)	Section 318(1)(j) of the Companies Act currently requires that an external company provide information relating to the authorised, subscribed and paid-up or stated capital of the company, and the shares that the company is authorised to issue and their nominal or par value, if any. The amended provision will now also require information relating to the shareholders and the number and category of shares they hold.	We make the point that this provision should be deleted. In any event at the time of registration an external company will be required to provide "***the shareholders, the number and category of shares they hold***". Should this not be a reference to the "name of the shareholders" instead of simply "shareholders"? Further, again, there is the reference to "***categories of shares***" which would need a definition, as it is not a term of art in company law. This section could be problematic for companies abroad, which are publicly-traded and have thousands of shareholders.
9	333A(1) - Bearer shares, bearer share certificates and bearer share warrants	**Prohibition of bearer shares, warrants and certificates:** This provision creates an absolute prohibition upon an external company's power to issue bearer shares, bearer share certificates or bearer share warrants in Trinidad and Tobago	**Section 333A (1)** should be in the Securities Act. That act is concerned with the distribution of securities by foreign companies in Trinidad and Tobago. We are of the view that this is really not a provision for the **Companies Act**. **Section 333A (1)** refers to "country of origin." This is not defined. The more appropriate reference would be to "the place of the incorporation of the external company" or the "jurisdiction in which incorporated". In general we are of the opinion that the proposed clauses may serve to deter foreign companies

			and investors from establishing business locally.
9	333A(2)	**Notice of declaration** This sub-section shall require that all **external companies** shall issue a notice to all shareholders requiring that a declaration be sent to the company (section 333A(2)).	**Section 333A (2)** refers to an obligation on an external company to issue a notice to all shareholders requiring a declaration to be sent to the company, however, no particulars of the declaration (or timeline for sending same) are required. On a broad level, this may be seen as an attempt to regulate foreign companies. This is a matter, which should be dealt with by the jurisdiction in which such a company is incorporated. For example, a company, which is incorporated in the State of New York, will be required to have this information for the New York regulators. If the local Financial Intelligence Unit ("**FIU**") wishes to obtain this information then it should do this through an exchange of information with its counterpart in New York. In any event are subsections (2) to (5) required since 177E purports to extend its provisions to external companies? The sub-section, does not itself specify, or does not (like section 177B(2)) cross reference a subsequent section specifying the declaration required and information required. In fact, there appears to be no provision which sets out the information required. Presumably it will be the same information required at section 177C(2); if so, this should be specifically set out.
9	333A (3)	**Determine information as to beneficial owners:** Each **external company** shall now be required to determine and obtain information relating to its beneficial owners The responsibility for doing so falls to company and to its secretary and directors.	Is it intended that the "secretary" have such responsibility, or should it instead state the "officers" since the latter shall have the prospective liability under sub-section 333A(4).
9	333A(4)	**Offence – failure to notify under section 333A(3):** Failure by the external company to determine information as to beneficial ownership and/or to file the relevant return is an offence committed by the external company and every officer and director. The liability for same on summary conviction is a fine of $10,000.00 and imprisonment for 3 years and for every day in which the offence	The new proposed **sub-section (4)** imposes an obligation on "***an external company, its secretary and every director***" to ascertain and obtain information as may be prescribed as to all the beneficial owners holding an interest in that company. How is an external company, its secretary and every director to ascertain and obtain this information? And importantly, how is this to be enforced? Also, why is the obligation on every director and the secretary to go out and ascertain and obtain the information, which is required? Should this not be an obligation on the company alone? Confirmation required whether "officers" or instead the "secretary" alone to be liable here in light of section 333A(3).
9	333A(5)	**Defence:**	**Sub-section (5)** needs re-drafting. It purports to establish a defence for the company, but not the

		It shall be a defence to the offence under section 333A(4) for the external company, directors and officers to have relied upon a declaration sent in good faith to the company, unless the company has reason to believe that the declaration is misleading or false	secretary and the directors, who are also liable under **sub-section (4)**. Further, the purported defence is that the company can rely on a declaration provided when the offence is not obtaining information. This provision appears to permit the defence once the **external** company ***believes*** that declaration was sent in good faith. But it does not indicate the method by which it may determine whether it is sent in good faith. Rather, it provides that the defence will not apply if the external company has reason to believe that the declaration is misleading or false. We propose that language be included indicating that a declaration will be deemed to be sent in good faith unless the external company has reason to believe that the declaration is misleading or false. The times should be specified in the Amendment.
9	333A(6)	**Notice of pre-amendment issuance of bearer shares** All external companies, its directors and secretary, shall be required to inform the Registrar of any bearer shares issued in Trinidad and Tobago prior to the commencement of the Act within a prescribed time and on the prescribed form (section	No comment
9	333A(7)	**Offence – failure to notify under section 333A(6):** Failure by the external company to inform the Registrar of the issuance of bearer share warrants in Trinidad	No comment
10	Schedule 2, paragraph 20.3	The Companies Regulations are amended in Schedule 2, in paragraph 20.3 by deleting the words “warrants,”.	The intent of this clause needs to be explained, as the relevance of same is unclear.