

MONTSERAT

STATUTORY RULES AND ORDERS

S.R.O. 15 OF 2024

PERSONS WITH SIGNIFICANT CONTROL (REGISTRATION)
REGULATIONS 2024

ARRANGEMENT OF REGULATIONS

PART 1—PRELIMINARY	3
1 Short title.....	3
2 Interpretation	3
3 Meaning of “foreign limited partner”	4
4 Meaning of “designated credit bureau”	5
PART 2—PROVISIONS FOR INTERPRETING DIVISION 2 OF PART 5 OF THE ACT	5
5 Scope of Division 2 of Part 5 of the Act	5
6 Persons or bodies treated as individuals	6
7 Holding an interest and a majority interest	6
8 Interests held through a legal entity	7
9 Joint interests and arrangements	7
10 Calculating shareholdings	7
11 Voting rights	7
12 Rights to appoint or remove directors	8
13 Holding a share or right indirectly	8
14 Shares held by nominees	9
15 Rights treated as held by person who controls their exercise	9
16 Rights exercisable only in certain circumstances	9
17 Rights attached to shares held by way of security	10
18 Significant influence or control	10
19 Persons considered not to exercise significant influence or control	10
20 Foreign limited partnerships	11
21 Registrable persons	11
PART 3—PSC INFORMATION AND VERIFICATION OF IDENTITY	12
22 Prescribed PSC information	12

Montserrat
Persons with Significant Control (Registration) Regulations 2024
S.R.O. 15 of 2024

23	Verification of identity	14
24	Notice in relation to change in PSC information.....	15
25	Inaccurate PSC information filed	15
26	Retention of information on PSC Register	15
PART 4—PROTECTION FROM DISCLOSURE		15
27	Protected PSC information	15
28	Company not to use or disclose protected PSC information	16
29	Request by Financial Intelligence Unit for disclosure of confidential PSC information.....	16
30	Designated credit bureaus	17
31	Application for non-disclosure of PSC protected residential address information.....	17
32	Determination of application by Commission.....	18
33	Duration of determination	19
34	Revocation of determination	19
35	Appeal against determination of Commission	20
36	Non-disclosure by Registrar	20
PART 5—MISCELLANEOUS		21
37	Fees	21

Montserrat
Persons with Significant Control (Registration) Regulations 2024
S.R.O. 15 of 2024

MONTSERRAT
STATUTORY RULES AND ORDERS
S.R.O. 15 of 2024

PERSONS WITH SIGNIFICANT CONTROL REGISTRATION
REGULATIONS 2024

THE PERSONS WITH SIGNIFICANT CONTROL (REGISTRATION) REGULATIONS 2024 MADE BY THE GOVERNOR ACTING ON THE ADVICE OF CABINET, AFTER CONSULTATION WITH THE COMMISSION UNDER SECTION 382 OF THE COMPANIES ACT, 2023 (NO. 15 OF 2023).

PART 1—PRELIMINARY

1 Short title

These Regulations may be cited as the Persons with Significant Control (Registration) Regulations, 2024.

2 Interpretation

(1) In these Regulations—

“**Act**” means the Companies Act, 2023;

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

“**constitution**” means—

(a) in the case of a company, its articles; and

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

“**designated credit bureau**” has the meaning specified in regulation 4;

“**Eastern Caribbean Currency Union**” refers collectively to the countries that use the Eastern Caribbean currency as their official currency;

“**foreign limited partner**” has the meaning specified in regulation 3;

Montserrat
Persons with Significant Control (Registration) Regulations 2024
S.R.O. 15 of 2024

“**joint arrangement**” means an arrangement between the holders of shares or rights in a 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 a company;

“**majority interest**” has the meaning specified in regulation 7(2);

“**relevant legal entity**”, in relation to a company (the first company), means another company or a foreign listed company that, if an individual, would be a person with significant control over the first company;

“**voting rights**” is to be construed in accordance with regulation 11.

- (2) Subject to subregulation (3), an arrangement includes—
- (a) any scheme, agreement or understanding, whether or not it is legally enforceable; and
 - (b) any 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.

3 Meaning of “foreign limited partner”

- (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 regulation—
- (a) a “**foreign limited partnership**” is an arrangement which—
 - (i) is established under the law of a country outside Montserrat;

Montserrat
Persons with Significant Control (Registration) Regulations 2024
S.R.O. 15 of 2024

- (ii) consists of at least one person who has unlimited liability for the debts and obligations of the arrangement; and
 - (iii) consists of at least one person who has 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.

4 Meaning of “designated credit bureau”

For the purposes of these Regulations, a designated credit bureau is an entity that—

- (a) holds a licence to carry on the activities of a credit bureau in the Eastern Caribbean Currency Union; and
- (b) has filed with the Registrar a written statement that it intends to use any protected PSC information that is disclosed to it only for a purpose permitted by the enactment under which it is licensed.

**PART 2—PROVISIONS FOR INTERPRETING DIVISION 2 OF
PART 5 OF THE ACT**

5 Scope of Division 2 of Part 5 of the Act

For the purposes of section 85 of the Act, a listed company is exempt from the following provisions of the Act—

- (a) section 88;
- (b) section 89
- (c) section 90;
- (d) section 91; and
- (e) section 95.

Montserrat
Persons with Significant Control (Registration) Regulations 2024
S.R.O. 15 of 2024

6 Persons or bodies treated as individuals

The following are to be treated as individuals for the purposes of section 86(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 two or more countries or their governments.

7 Holding an interest and a majority interest

- (1) A person holds an interest in a 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 subregulation (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.
- (2) 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 a legal entity and has the right to appoint or remove a majority of the directors of the legal entity;
 - (c) is a member of a legal entity and controls alone, pursuant to a joint agreement with other members, a majority of the voting rights in the legal entity; or

Montserrat
Persons with Significant Control (Registration) Regulations 2024
S.R.O. 15 of 2024

(d) has the right to exercise, or actually exercises, dominant influence or control over the legal entity.

8 Interests held through a legal entity

- (1) A person holds an interest in a 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 which holds the shares or right directly.
- (2) If subregulation (1)(b)(ii) applies, the person holds the interest in the company through each legal entity in the chain.

9 Joint interests and arrangements

- (1) If two 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.

10 Calculating shareholdings

A person holds shares exceeding 25% of the issued shares in a company if the number of shares that the person holds exceeds, in aggregate, 25% of the total number of shares issued by the company.

11 Voting rights

- (1) A reference to the voting rights in a company is to the rights, including rights that arise only in certain circumstances, conferred on a shareholder or other member of the company to vote on members' resolutions on all, or substantially all, matters.
- (2) In relation to any matters that are not decided by members' resolution, a reference to exercising—

Montserrat

Persons with Significant Control (Registration) Regulations 2024

S.R.O. 15 of 2024

- (a) voting rights in the 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
 - (b) 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.
- (3) In applying these Regulations, the voting rights in a company are to be reduced by any rights held by the company itself.

12 Rights to appoint or remove directors

A reference to the right to appoint or remove a majority of the directors of a 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.

13 Holding a share or right indirectly

- (1) 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.
- (2) A person holds a right indirectly if the person has a majority interest in a legal entity and that 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 holds that right.
- (3) In the application of this regulation 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—

Montserrat
Persons with Significant Control (Registration) Regulations 2024
S.R.O. 15 of 2024

- (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.

14 Shares held by nominees

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.

15 Rights treated as held by person who controls their exercise

- (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.

16 Rights exercisable only in certain circumstances

- (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 subregulation (1), rights that are exercisable by a third party 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 Montserrat during which a legal entity's assets and affairs are subject to the control or supervision of a third party or creditor.

Montserrat
Persons with Significant Control (Registration) Regulations 2024
S.R.O. 15 of 2024

17 Rights attached to shares held by way of security

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.

18 Significant influence or control

- (1) Without limiting section 86(2)(d) of the Act, a person is considered to have the legal right to exercise significant influence or control over a 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 384 of the Act concerning the meaning of “significant influence or control” for the purposes of section 86 of the Act and regard must be had to any guidance issued in accordance with this regulation in interpreting references in the Act or these Regulations to “significant influence or control”.

19 Persons considered not to exercise significant influence or control

- (1) A person does not exercise significant influence or control over a company merely because the person—
 - (a) provides advice or direction in a professional capacity to the company, including by acting as—
 - (i) a lawyer;
 - (ii) an accountant;
 - (iii) a financial advisor; or
 - (iv) an investment manager;
 - (b) deals with the company under a third party commercial or financial agreement;

Montserrat

Persons with Significant Control (Registration) Regulations 2024

S.R.O. 15 of 2024

- (c) has the benefit of a security interest over shares or voting rights in a company;
 - (d) has commercial exposure to the financial performance of a 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 as a managing director, a sole director and a non-executive director; or
 - (g) exercises a function under an enactment, including as the liquidator or receiver of a company.
- (2) Subregulation (1) does not set out an exhaustive list of circumstances in which a person does not exercise significant influence or control over a company.

20 Foreign limited partnerships

- (1) An individual does not meet the conditions for being a person with significant control over a company specified in section 86(2)(a), (b) or (c) of the Act merely because the person—
- (a) is a foreign limited partner; or
 - (b) directly or indirectly holds shares or holds rights, in or in relation to a foreign limited partner which, in its capacity as such, would meet the condition if it were an individual.
- (2) Subregulation (1) does not apply for the purposes of determining whether the requirement specified in section 86(2)(e) of the Act is met.

21 Registrable persons

- (1) For the purposes of section 87 of the Act, a person who has significant control over a relevant company or who is a relevant legal entity in relation to the company is not a registrable person with respect to the company if subregulation (2) applies to the person.
- (2) This subregulation applies if the person concerned does not hold an interest in the relevant company except through one or more legal entities over each of which the person has significant control,

Montserrat
Persons with Significant Control (Registration) Regulations 2024
S.R.O. 15 of 2024

and with respect to any share or right in the relevant 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.

PART 3—PSC INFORMATION AND VERIFICATION OF IDENTITY

22 Prescribed PSC information

- (1) The prescribed PSC information with respect to an individual who is a registrable person comprises—
 - (a) the individual’s—
 - (i) full legal name and any former names;
 - (ii) date of birth;
 - (iii) place of birth;
 - (iv) nationality; and
 - (v) country of usual residence; and
 - (vi) usual residential address;
 - (b) an address for service of notices under the Act or these Regulations;
 - (c) information identifying the individual from the individual’s passport, driver’s licence or other government-issued document, including the—
 - (i) identifying number;
 - (ii) country of issue; and
 - (iii) date of issue and of expiry;

Montserrat

Persons with Significant Control (Registration) Regulations 2024

S.R.O. 15 of 2024

- (c) in the case of a foreign listed company—
 - (i) the country in which it is incorporated, formed or otherwise constituted;
 - (ii) its legal form and the law under which it is incorporated or formed;
 - (iii) the date on which it was incorporated, formed or otherwise constituted; and
 - (iv) its registration number, if applicable;
 - (d) in the case of a listed company or a foreign listed company, the exchange on which the company's shares are listed;
 - (e) the registered office of the company or foreign listed company;
 - (f) the date on which the company or foreign listed company became or ceased to be a registrable person in relation to the company in question; and
 - (g) the nature of the control that the company or foreign listed company has over the relevant company.
- (4) A person who was a registrable person in relation to a company on the company's incorporation or continuation under the Act is considered to have become a registrable person on the date that the company was incorporated or continued, as the case may be.

23 Verification of identity

- (1) For the purposes of the definition of "PSC verification evidence" in section 2(1) of the Act—
 - (a) the PSC information that is required to be verified with respect to a registrable person is the person's identity; and
 - (b) a person's identity shall be verified using documentation, data or information that is obtained from a reliable source that is acceptable to the Commission.
- (2) The Commission shall issue guidance specifying types or descriptions of documentation, data or information that are acceptable to the Commission for the purposes of verifying the identity of a registrable person.

Montserrat
Persons with Significant Control (Registration) Regulations 2024
S.R.O. 15 of 2024

24 Notice in relation to change in PSC information

- (1) A notice given by a relevant company under section 89 of the Act shall require the addressee—
 - (a) to confirm whether or not the change specified in the notice has occurred; and
 - (b) if the change under paragraph (a) has occurred—
 - (i) state the date of the change; and
 - (ii) confirm or correct the information included in the notice and supply any PSC information that is missing from the notice.
- (2) A notice referred to in subregulation (1) shall state that the addressee must comply with the notice by no later than the end of the period of four weeks of receipt of the notice.

25 Inaccurate PSC information filed

- (1) If a relevant company becomes aware of an inaccuracy in any PSC information that it has filed, it shall file a notice correcting the inaccuracy within 14 days of discovering the inaccuracy.
- (2) A relevant company that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$50,000.

26 Retention of information on PSC Register

The Registrar shall retain information recorded on the PSC Register in relation to a company for a period of twenty years after the dissolution of the company.

PART 4—PROTECTION FROM DISCLOSURE

27 Protected PSC information

- (1) A person inspecting the PSC Register is entitled to access the following PSC information concerning a registrable person who is an individual—
 - (a) the individual's full name;
 - (b) the individual's month and year of birth;
 - (c) the individual's nationality and usual country of residence;

- (d)* the date on which the individual became or ceased to be a registrable person in relation to the relevant company; and
 - (e)* the nature of the individual's control over the relevant company.
- (2) A person inspecting the PSC Register is entitled to access all the PSC information filed in relation to a registrable person who is—
 - (a)* a person or body to be treated as an individual, as specified in regulation 6; or
 - (b)* a company or a foreign listed company.
- (3) PSC information not specified in subregulation (1) is protected PSC information.

28 Company not to use or disclose protected PSC information

- (1) A company shall not use or disclose protected PSC information about any individual who is a registrable person in relation to the company except—
 - (a)* for communicating with the person concerned;
 - (b)* in order to comply with any requirement of the Act or these Regulations to provide information to the Registrar or the Commission;
 - (c)* in order to comply with an obligation under any other enactment;
 - (d)* where required to do so by an order of a court of competent jurisdiction in Montserrat.
- (2) A company that contravenes subregulation (1) commits an offence and is liable on summary conviction to a fine of \$50,000.

29 Request by Financial Intelligence Unit for disclosure of confidential PSC information

A request by the Financial Intelligence Unit for the disclosure of PSC information that is confidential information under section 97(3) of the Act is made in accordance with these Regulations if made in the approved form.

30 Designated credit bureaus

- (1) The Registrar may enter into a memorandum of association or agreement with a designated credit bureau for the provision of protected PSC information to the credit bureau.
- (2) A designated credit bureau that has entered into a memorandum of association or agreement with the Registrar under subregulation (1) is a person to whom a disclosure of protected PSC information may be made under section 97(3)(c) of the Act.
- (3) A request by a designated credit bureau under section 98 of the Act for the disclosure of PSC information in relation to a company is made in accordance with these Regulations if made in accordance with the memorandum of understanding or agreement entered into in accordance with subregulation (1).

31 Application for non-disclosure of PSC protected residential address information

- (1) Application may be made to the Commission for a determination that PSC information specified in the application relating to the person should not be disclosed to members of the public or to a designated credit bureau on the grounds that—
 - (a) the registrable person is a minor or lacks legal capacity; or
 - (b) the access to the information would expose the registrable person or a person who lives with the registrable person to the serious risk of—
 - (i) fraud;
 - (ii) kidnapping;
 - (iii) blackmail;
 - (iv) extortion;
 - (v) harassment;
 - (vi) violence;
 - (vii) intimidation; or
 - (viii) other similar harm.
- (2) An application under subsection (1) may be made by—
 - (a) an individual who is, or proposes to become, a registrable person in relation to a company; or

(b) with the consent of an individual specified in paragraph (a), by a company in relation to which the individual is, or proposes to become, a registrable person.

- (3) A person who makes an application under subsection (1) must inform the Commission in writing without delay upon becoming aware of any change to any information or evidence provided to the Commission in connection with the application.

32 Determination of application by Commission

- (1) The Commission shall not grant an application under regulation 30(1)(b) unless it is satisfied that there are reasonable grounds for believing that the individual person concerned would be at serious risk of one or more of the harms specified in regulation 30(1)(b) if the PSC information is disclosed.
- (2) For the purpose of determining an application under subregulation (1), the Commission may—
- (a) request the applicant to provide further information or evidence; or
- (b) refer any question relating to an assessment of the nature or extent of any risk of violence or intimidation to a relevant body or to any other person the Commission considers may be able to assist in making the assessment.
- (3) The Commission may determine that the individual's full name should be subject to disclosure but that one or more other types of PSC information should not be subject to disclosure.
- (4) The Commission shall determine an application for non-disclosure under subregulation (1) and, within seven days beginning with the date that the determination is made, send notice of the determination to the—
- (a) individual who made the application; or
- (b) company that made the application on the individual's behalf.
- (5) If the application for non-disclosure is not granted the Commission shall, in the determination notice—
- (a) give reasons for the refusal to grant the application;
- (b) inform the individual or company of their right to apply for permission to appeal against the determination within the period specified in regulation 34.

33 Duration of determination

- (1) A determination made under regulation 32 that an application is successful has effect until—
 - (a) either—
 - (i) the person to whom the determination relates; or
 - (ii) that person’s personal representative,
notifies the registrar in writing that he or she wishes the determination to cease to have effect; or
 - (b) the Commission revokes the determination under regulation 33 and the period for appealing the Registrar’s revocation of the determination has not passed.
- (2) If the applicant appeals the Commission’s revocation of the determination, the determination granting an application for non-disclosure continues to have effect until the appeal has been withdrawn or determined by the Court.

34 Revocation of determination

- (1) The Commission may revoke a determination made under regulation 31 if there are reasonable grounds for believing that the grounds for the application are not established or are no longer established.
 - (2) Before revoking a determination under this regulation, the Commission shall send a notice to the applicant in relation to the determination and, if different, the person to whom the determination relates stating—
 - (a) the Commission’s intention to revoke the determination and the grounds for the intended revocation;
 - (b) that the addressee may, within twenty-eight days beginning with the date of the notice, provide written representations to the Commission as to why it should not revoke the determination; and
 - (c) that if the Commission receives representations within that period, the Commission will have regard to them in deciding whether to revoke the determination.
 - (3) After the expiration of the time specified in the notice, unless the addressee of the notice has shown cause to the contrary, the Commission may revoke the determination.
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Montserrat

Persons with Significant Control (Registration) Regulations 2024

S.R.O. 15 of 2024

- (4) The Commission shall send notice of its decision as to whether to revoke a determination to the applicant in relation to the determination and, if different, the person to whom the determination relates within seven days beginning with the date of the decision.

35 Appeal against determination of Commission

- (1) If the Commission rejects an application for non-disclosure or revokes a determination under regulation 33, the applicant may, within 28 days of the date of rejection or revocation notice, appeal to the Court on the grounds that the determination is—
 - (a) unlawful or irrational; or
 - (b) in the circumstances, unreasonable or unjust to the applicant or, in the case of an application by a company, to the individual to whom the PSC information relates.
- (2) The Court shall not extend the time for appeal unless it is satisfied that there was good reason for the failure of the applicant to appeal within the twenty-eight day period.
- (3) An applicant who appeals the Commission's determination or revocation shall serve notice of the appeal on the Commission within seven days of lodging the appeal with the Court and the Commission is entitled to attend and be heard at the hearing of the appeal.
- (4) On the hearing of an appeal under this regulation, the Court may—
 - (a) dismiss the appeal; or
 - (b) set the Commission's determination or decision to revoke its determination aside.
- (5) If the Court sets the Commission's determination or decision to revoke aside, it may refer the matter back to the Commission with a direction to reconsider it and make a determination or decision in accordance with the directions of the Court.

36 Non-disclosure by Registrar

- (1) If the Commission makes a non-disclosure determination with respect to specified PSC information relating to a registrable person that it has not revoked, the Commission shall not disclose that PSC information to a member of the public or to a designated credit bureau, as the case may be.

Montserrat
Persons with Significant Control (Registration) Regulations 2024
S.R.O. 15 of 2024

- (2) The Commission shall not disclose—
- (a) that an application has been made under regulation 30;
 - (b) any documents provided in support of the application;
 - (c) that a determination notice has been issued or the contents of the determination notice; or
 - (d) any evidence or information provided under regulation 31.

PART 5—MISCELLANEOUS

37 Fees

The following fees are payable to the Registrar—

- (a) for each inspection of the PSC Register, \$50 for each company inspected; and
- (b) for the issue by the Registrar of an extract or copy of any entry in the PSC Register, \$100.

Made by the Governor acting on the advice of Cabinet, after consultation with the Commission, this 21st day of March, 2024.

(Sgd.) Tanisha Christopher
CLERK OF CABINET

Published by exhibition by the Clerk of Cabinet at the Office of the Legislature, Farara Plaza, Brades, Montserrat, MSR1110, this 22nd day of March, 2024.

(Sgd.) Tanisha Christopher
CLERK OF CABINET