

THE SCHEDULE
(Section 4(1) (a) and section 5 (1))

PROVISIONS TO BE COMPLIED WITH BY A LOCAL COMPANY
CARRYING ON BUSINESS IN THE ISLANDS.

Control.

1. (1) The local company shall be Caymanian controlled.

(2) Without prejudice to the generality of subparagraph (1), at least sixty per centum of the total voting rights in the local company shall be exercisable by Caymanians.

Percentage of
Caymanian
shareholders and

2. (1) The percentage of Caymanian directors, and the percentage of shares beneficially owned by Caymanians, in the local company shall not be less than sixty per centum in each case:

Provided that a local company shall not be deemed to be in breach of this paragraph in so far as, and so long as, it is acting in accordance with subparagraph (2).

(2) A local company shall act in accordance with this sub-paragraph if the percentage of shares beneficially owned by Caymanians in that company falls below sixty per centum by virtue of factors which are beyond the control of the company and the company gives notice in writing to the person who is not Caymanian and whose ownership of shares results in the percentage so falling, as soon as the directors of the company become aware of the fact, that —

(a) he must divest himself of his interest in those shares as soon as may be and, in any event, not later than three years from the date upon which he receives the notice; and

(b) he must not exercise any voting rights attaching to such shares from the date upon which he receives the notice,

and the three years calculated in accordance with (a) above have not elapsed:

Provided that the Board may in any particular case for good cause, extend the period of three years for a further period.

(3) For the purposes of sub-paragraph (2), the directors of a local company shall be deemed to become aware that the percentage of shares beneficially owned by Caymanians in that local company is less than the percentage specified in sub-paragraph (1) three days after the day upon which any director of the local company would, if acting with due diligence, have become aware of that fact.

CAYMAN ISLANDS



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THE LOCAL COMPANIES
(CONTROL) LAW
(Revised)

Consolidated and Revised this

day of

197 .

Clerk of the Executive Council.

THE LOCAL COMPANIES (CONTROL) LAW

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- (c) exceeding two thousand dollars, for a period not exceeding twelve months.

Offences by officers
etc. of corporate
bodies.

19. Where an offence under this Law which has been committed by a company is proved to have been committed with the consent or connivance of, or to be attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such person as well as that company shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Publication of or-
ders.

20. Every revocation made under subsection (4) of section 10 shall be published in the Gazette and shall take effect from the date of such publication or such later date as may be specified therein.

Regulations.

21. Subject to the approval of the Governor in Council, the Board may make such regulations as may be necessary for the purpose of carrying into effect the provisions of this Law and, without prejudice to the generality of the foregoing, such regulations may —

- (a) prescribe the method of giving notice under this Law and the date on which such notice shall be deemed to have effect; and
- (b) make provision for all matters consequential on the making of an order for the revocation of a licence under subsection (4) of section 10;
- (c) make provision for the notification of any change in relation to a shareholder in a local company becoming or ceasing to be Caymanian and the determination of any question of whether or not a shareholder is Caymanian.

Effect of in-
fringement on
business tran-
sactions.

22. For the avoidance of doubt it is hereby declared that no business transaction shall be void or voidable by reason only that, at the relevant time, any party thereto is in breach of any of the provisions of this Law.

Powers limited to
those set out in
incorporating Law.

23. Nothing in this Law or any licence shall confer on any company any power to do anything which it is not authorised to do by virtue of its Memorandum and Articles of Association or any other provision of law.

Application.

24. This Law shall apply to companies incorporated before, on or after the date of the coming into operation of this Law:

Provided however that notwithstanding the provisions of subsection (3) of section 10, any company which was carrying on business in the Islands at the time of the coming into operation of this Law shall, on making application for a licence under section 9 be entitled to the grant of a licence, subject to the provisions of subsection (2) of section 10.

Penal.

25. Whoever, being required to make any declaration or to supply information for the purpose of this Law —

- (a) fails to make such declaration; or
- (b) fails to supply such information; or
- (c) wilfully makes a declaration or supplies information that is —
 - (i) false; or
 - (ii) misleading; or
 - (iii) insufficient for the purpose required,

is guilty of an offence and liable upon summary conviction to a term of imprisonment not exceeding three years or to a fine not exceeding \$3000 or both.

company which the directors contend establish that the local company is Caymanian controlled and such facts shall specify the extent to which the company is vested in Caymanians.

(3) If the directors of a local company fail to comply with the requirements specified in a notice issued under this section, or fail to comply with the requirements thereof in such a manner as to establish, *prima facie*, that the company is Caymanian controlled, the company shall be deemed not to be Caymanian controlled, until the contrary is proved.

Appeal to the Grand Court.

14. (1) An appeal shall lie to the Grand Court against an order revoking a licence under section (4) of section 10.

(2) An appeal under this section shall lie at the instance of the company affected thereby and shall be commenced by notice in writing served upon the Attorney General within twenty-one days after the day on which revocation made under subsection (4) of section 10 takes effect.

(3) Subject to the provisions of subsection (2) the Judge of the Grand Court may make rules in the like manner and subject to the like formalities as he may make rules of procedure for the Grand Court, for the procedure on an appeal brought under subsection (1).

(4) The proceedings on an appeal brought under this section shall be held in camera unless any party thereto applies for the proceedings to be in open court.

(5) On an appeal brought under this section, the Grand Court may confirm, reverse, vary or modify the decision of the Board or remit the matter with the opinion of the Grand Court thereon to the Board.

(6) Unless the Grand Court otherwise orders, an appeal under this section shall not have the effect of suspending the execution of the decision against which the appeal is brought pending the determination of the appeal.

Onus of proof.

15. In any proceedings under this Law in which the right of any company to carry on business in the Islands is in issue, the onus of proving that the company had, at the relevant time, the right to carry on such business in the Islands, shall be on that company unless, at the relevant time, that company was licensed under this Law.

Proof by certificate.

16. A certificate purporting to be under the hand of the Chairman of the Board specifying that any particular company was or was not licensed under this Law during any period specified in the certificate shall be receivable in evidence in any proceedings under this Law without further proof and shall be *prima facie* evidence of the facts specified therein.

Attorney General's fiat.

17. No prosecution in respect of any offence committed under this Law shall be instituted except by or with the consent of the Attorney General.

Imprisonment in default of payment of fine.

18. Notwithstanding any provision in any other Law, a person upon whom a fine is imposed under this Law may be sentenced in default of payment thereof to imprisonment, in the case of a fine —

- (a) not exceeding one thousand dollars, for a period not exceeding three months;
 (b) exceeding one thousand dollars but not exceeding two thousand dollars for a period not exceeding six months;

THE LOCAL COMPANIES (CONTROL) LAW
(No. 24 of 1971)

(Consolidated with Law 16 of 1974 and revised under the authority of the Law Revision Law.)

Originally enacted

Law 24 of 1971 27th March, 1972
 Law 16 of 1974 14th January, 1975

A Law to prohibit save under licence the carrying on in the Cayman Islands of local businesses by companies which are not under Cayman control.

PART I — Preliminary

Short title.

1. This Law may be cited as the Local Companies (Control) Law (Revised).

Interpretation.

2. (1) In this Law, unless the context otherwise requires —
 “Board” means the Caymanian Protection Board established by the Caymanian Protection Law, 1971;

Law 23 of 1971.

“Caymanian” means a person who has Caymanian status within the meaning of the Caymanian Protection Law, 1971;

Law 23 of 1971.

“company” mean a company incorporated in the Islands by virtue of The Companies Law, and also a foreign company registered under that Law;

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“exempted company” has the meaning assigned to that expression by the Companies Law;

“licence” means a licence to carry on business in the Islands issued by the Board under section 10, and cognate expressions shall be construed accordingly;

Cap. 22.
 Law 14 of 1973.

“Local Company” means a company as so defined in section 2 of the Companies Law and includes a foreign company registered under that Law and a corporation as defined under section 2 of the Strata Titles Law but does not include an exempted company or a company which is declared by the Controller of Exchange by virtue of his powers under subsection 3 of section 3 of the Exchange Control Regulations Law, 1966, to be non-resident.

Law 4 of 1966.

“shares” means shares of every description and includes stock.

(2) The expression "carry on business in the Islands" in relation to a company, includes carrying on business of any kind or type whatsoever by that company, either alone or in partnership or otherwise, except —

- (a) carrying on, from a principal place of business in the Islands, business exterior to the Islands;
- (b) doing business in the Islands with any person, firm or corporation in furtherance only of the business of that company carried on exterior to the Islands;
- (c) buying or selling or otherwise dealing in shares, bonds, debenture stock, obligations, mortgages or other securities, issued or created by any exempted company, a foreign partnership or a resident corporation incorporated abroad;
- (d) transacting banking business in the Islands with and through a licensed bank;
- (e) effecting or concluding contracts in the Islands and exercising in the Islands all other powers, so far as may be necessary for the carrying on of the business of that company exterior to the Islands;
- (f) the business of an exempted company with another exempted company, a foreign partnership or a resident corporation incorporated abroad.

(3) For the purposes of this Law, a company shall be deemed to be a wholly owned subsidiary of another company if the latter company enjoys the beneficial interest in all the shares of the former company through beneficial ownership or as beneficiary under a trust, express or implied, or through a nominee shareholder, to the exclusion of any other person, and control in the former company cannot, by means of any arrangement, artifice or device, be exercised either directly or indirectly by persons who are not Caymanians.

Construction of
other expressions.

3. (1) No share shall be deemed to be beneficially owned by a Caymanian if —

- (a) that Caymanian is in any way under any obligation to exercise any right attaching to that share at the instance of, or for the benefit of, any person who is not Caymanian; or
- (b) that share is held jointly or severally with any person who is not Caymanian; or
- (c) that share is owned by a subsidiary company of the company concerned.

(2) For the purposes of this Law, a company shall be deemed to be Caymanian controlled if the Board is satisfied that effective control is not, either directly, or indirectly, or by reason of any arrangement, artifice or device vested in, or permitted to pass to, persons who are not Caymanians.

(3) Notwithstanding the provisions of subsection (1), a share shall be deemed to be beneficially owned by a Caymanian if —

- (a) it is owned by a Caymanian as trustee and every person having a beneficial interest in the trust is a Caymanian;
- (b) it is owned by a Caymanian as nominee for another who is also a Caymanian and no one is in any way under any obligation to exercise any right attaching to that share at the instance of, or for the benefit of, any person who is not a Caymanian;

Provided that the provisions of this subsection shall not apply to any ownership of shares to which the provisions of paragraph (c) of subsection (1) apply.

where any licensed company makes an arrangement or enters into an agreement for —

- (a) the sale or other disposal of its business by amalgamation or otherwise; or
- (b) the purchase or other acquisition of the business of any other company carrying on business in the Islands,

such company shall within three months after the occurrence of such reconstruction or after the implementation of such arrangement or agreement inform the Board in writing thereof.

(2) Where any particulars or information are received under this section, the Board, having regard to the nature of such particulars or information and notwithstanding the fact that the company concerned is a licensed company, may direct that company in writing to apply for another licence within such time and in such form as the Board may determine.

(3) The issue of a directive pursuant to subsection (2) shall not affect the validity of any Licence subsisting at the date of such directive and which was granted to the company to which such directive is issued.

(4) Every licence to which subsection (3) refers shall be of full force and effect until —

- (a) it is revoked by the Board by Order under subsection (4) of section 10; or
- (b) another licence is granted to the company concerned upon an application made pursuant to a directive under subsection (2), and thereafter the licence referred to in subsection (3) shall cease to have effect.

PART III — Supplementary provisions

Fee payable by
licensed company.

12. (1) Every company to which a licence is granted under this Law shall, upon the issue of such licence, pay to the Government a fee of two hundred dollars.

(2) On or before the thirty-first day of January of every year after the year in which a licence has been granted to a company, that company shall, during the subsistence of such licence, pay to the Government a fee of two hundred dollars.

(3) Any licensed company which fails to pay the fee provided by this section shall be guilty of an offence and liable on conviction by a court of summary jurisdiction to a fine not exceeding forty dollars for each month during which such fee remains unpaid.

(4) The Board shall publish annually by Government Notice the name of every licensed company that has paid the fee provided by this section.

Company to supply
information
relating to control.

13. (1) The Board may at any time by notice in writing require the directors of a local company to forward to it such information as to the directors of and shareholdings (including the classes of shares and the voting and other rights attached to each class) in the local company as the Board may specify.

(2) A notice under subsection (1) may require that the directors set out in writing within such period as may be specified in the notice the facts in relation to the directors, shareholdings and other matters relating to the control of the

accompanied by a copy of the Memorandum and Articles of Association of the company, or the bye-laws thereof, as the case may be; a statement setting out the nature of the business the company is carrying on and proposes to carry on, and such other information as the Board may require.

Granting and
revocation of
licence.

10. (1) Subject to the provisions of this Law, the Board may, in its discretion, grant a licence in respect of which application has been made under section 9, but, if the Board is of the opinion that it would not be in the public interest to grant a licence, it may refuse to grant one without giving any reason for so refusing, but an appeal shall lie from such refusal to the Governor in Council and the Board shall inform the applicant of its right of appeal.

(2) A licence issued under this section shall be for such duration, not being less than two years, and may be subject to such terms and conditions as the Board may see fit to specify therein; and the Board, upon the written application of the licensee may from time to time extend the scope of such licence.

(3) Subject to any general directions which the Governor may from time to time give in respect of the consideration of such applications the Board shall, in deciding whether or not to grant a licence, have regard, *inter alia* to the following matters —

- (a) the economic situation of the Islands and the due protection of persons already engaged in business in the Islands;
- (b) the nature and previous conduct of the company and the persons having an interest in that company whether as directors, shareholders or otherwise;
- (c) advantage or disadvantage which may result from that company carrying on business in the Islands;
- (d) the desirability of retaining in the control of Caymanians the economic resources of the Islands; and
- (e) the efforts made by the company to obtain Caymanian participation.

(4) Notwithstanding the provisions of subsection (2) the Board may at any time revoke a licence —

- (a) for a contravention of any condition subject to which the licence is granted;
- (b) if in the opinion of the Board the company concerned is carrying on business in a manner detrimental to the public interest;
- (c) if the company concerned ceases to carry on business in the Islands;
- (d) if the company concerned goes into liquidation or is wound up or otherwise dissolved; or
- (e) if the company concerned fails to comply with any directive or requirement issued by the Board under this Law.

(5) Before revoking a licence under subsection (4) the Board shall give the company concerned notice in writing of its intention to do so specifying therein the grounds on which it proposes to revoke the licence and shall afford the company concerned an opportunity of submitting to it a written statement of objections to the revocation of the Licence; and thereafter the Board shall advise the company concerned of its decision in the matter and of the company's right of appeal to the Grand Court under section 14 against a decision adverse to it.

11. (1) Where a reconstruction of any licensed company has occurred or

Reconstruction etc.
of licensed com-
pany.

(4) For the purposes of subsection (1), a company shall be deemed to be a subsidiary of another company (in this subsection referred to as "the parent company") if —

- (a) the parent company owns more than fifty per centum of the shares in that company;
- (b) the parent company is in a position to exercise more than fifty per centum of the voting rights in that company; or
- (c) by means of any agreement, artifice or device, effective control in that company can be exercised either directly or indirectly by the parent company.

Circumstances in
which local business
may be carried on.

4. (1) Subject to the provisions of subsection (3) no company shall carry on business in the Islands unless it is so empowered by its Memorandum of Association and —

- (a) it is a local company which, at the relevant time, complies with all the provisions of the Schedule or is a wholly owned subsidiary of such a local company; or
- (b) it is licensed under this Law and under the Trade and Business Licensing Law and, at the relevant time, is carrying on such business in accordance with the terms and conditions imposed in such licence, and not otherwise; or
- (c) it is licensed under the Banks and Trust Companies Regulation Law, 1966; or
- (d) it is a company operating under a Franchise granted by the Government.

Law 25 of 1971.

Law 8 of 1966.

(2) Any company which contravenes the provisions of subsection (1) shall be guilty of an offence and liable on conviction by a court of summary jurisdiction to a fine not exceeding two hundred dollars for each day the offence continues and on conviction on indictment to a fine not exceeding one thousand dollars for each day the offence continues.

(3) The Governor in Council may in exceptional circumstances having regard to the public interest exempt any company from all or any of the provisions of this Law subject to such terms and conditions as the Governor in Council may deem fit.

Penalty for im-
proper exercise of
voting rights etc.

5. (1) Any person who, after a notice has been served upon him under sub-paragraph (2) of paragraph 2 of the Schedule, exercises any voting rights or fails to divest himself of his shares within three years, or within such further period as the Board may allow under the proviso to that sub-paragraph, shall be liable to forfeit his shares to the Government upon it being proved to a court of summary jurisdiction that he has exercised such voting rights or failed so to divest himself within such period as aforesaid.

(2) The liability to forfeiture under subsection (1) shall not arise in any case where the owner can prove to the satisfaction of the court of summary jurisdiction that, by reason of the company concerned having ceased to carry on business in the Islands at the relevant time, it would be inequitable for forfeiture to ensue.

(3) Any shares forfeited under subsection (1) shall be vested in the Governor for the benefit of the Islands and may be disposed of in such manner as the Governor in Council may deem fit.

Return of
shareholdings to be
made before
commencing

nually.

6. (1) Before any local company first commences business the company shall forward to the Board a return of shareholdings in the company as at the date of making the return signed by the directors of the company.

(2) Every local company shall, in the month of January in each year after the year in which the company first commenced business, forward to the board a return of shareholdings in the company as at the 31st day of December of the immediately preceding year signed by two or more directors or one director and the secretary:

Provided that the Board may in any particular case grant an extension of time for compliance with this subsection if it is satisfied that non-compliance is not wilful or is due to circumstances beyond the control of the directors of the company.

(3) A return of shareholdings under this section shall contain the following particulars —

- (i) the number and par value of each class of shares issued by the company;
- (ii) the voting and other rights attached to each class of shares;
- (iii) a statement of the number and par value of each class of shares beneficially owned by Caymanians; and
- (iv) a statement of the number and par value of each class of shares held by other persons.

(4) Any local company which fails to comply with the provisions of this section shall be guilty of an offence and liable on conviction by a court of summary jurisdiction to a fine of twenty dollars for each day the offence continues.

(5) Any person who knowingly and wilfully signs a return made for the purposes of this section which is false in a material particular shall be guilty of an offence and liable on conviction by a court of summary jurisdiction to a fine not exceeding two hundred dollars and on conviction on indictment to a fine not exceeding two thousand dollars.

Allotment and
transfer of shares.

7. (1) No allotment of shares in a local company shall be made by the directors or officers of the company if such allotment will, to the knowledge or belief of them, or any of them, result in the number of shares beneficially owned by persons who are not Caymanians exceeding forty per centum of the total number of the shares issued by the company unless prior notice thereof is given to the Board in writing.

(2) The directors and officers of a local company shall decline to register any transfer of shares in the company if such transfer will, to the knowledge or belief of the directors, or any of them, result in the number of shares beneficially owned by persons who are not Caymanians exceeding forty per centum of the total number of the shares issued by the company unless prior notice thereof is given to the Board in writing.

(3) No allotment of shares in a local company shall be made to any person unless the application for those shares sets out whether or not the applicant is Caymanian.

(4) No transfer of shares in a local company shall be registered unless the instrument of transfer of those shares sets out with respect to both the transferor and transferee whether or not they are Caymanians.

(5) Any director or officer of a local company who is knowingly a party to any allotment of shares contrary to the provisions of subsection (1) or subsection (3) or who is knowingly a party to authorising or permitting any transfer, or registration of a transfer, of shares contrary to the provisions of subsection (2) or subsection (4), shall be guilty of an offence and liable on conviction by a court of summary jurisdiction to a fine not exceeding two hundred dollars and on conviction on indictment to a fine not exceeding two thousand dollars.

Directors may
make enquiries

8. (1) In any case where it is stated in an application for allotment, or in an instrument of transfer, of shares in a local company that an applicant, transferor or transferee is a Caymanian, the directors of the company may require that person to furnish such proof of the correctness of such statement as the directors consider necessary; and, in the absence of such proof, the directors may decline to allot any shares or register the transfer.

(2) The directors of a local company may at any time enquire in writing of any person who owns a share in the company —

- (a) whether or not he is Caymanian;
- (b) whether or not he is the beneficial owner of the shares;
- (c) whether or not he is in any way under any obligation to exercise any right attaching to that share at the instance of, or for the benefit of, another person, and, if so, the name of that other person and whether or not that other person is Caymanian; and
- (d) whether he owns that share jointly or severally with another person and, if so, the name of the other person who has such an interest and whether or not that other person is Caymanian,

and, if it is stated in any reply made to an enquiry under this subsection that any person is Caymanian, the directors may further require the person making that statement to furnish such proof of the correctness of that statement as the directors consider necessary.

(3) Any person of whom an enquiry is made, or to whom a requirement is addressed, under this section shall reply in writing, within fourteen days after the receipt of the enquiry or the requirement and shall give the information required; and no person shall be liable for breach of any contract, trust or other obligation which is binding on him in law for supplying such information.

(4) Any person who fails to reply in accordance with subsection (2) or subsection (3) or who makes a reply or furnishes information or purported proof which is false in a material particular shall be guilty of an offence and liable on conviction by a court of summary jurisdiction to a fine not exceeding two hundred dollars and on conviction on indictment to a fine not exceeding two thousand dollars.

PART II — Licensing of Companies to carry on business in the Islands.

Application for
licence.

9. (1) Any company, other than a company to which the provisions of paragraph (a) of subsection (1) of section 4 apply, may apply to the Board for a licence to carry on business in the Islands.

(2) An application for a licence under this Law shall be made to the Board in such form and in such manner as may be specified by the Board, and shall be