

CAYMAN ISLANDS



Supplement No. 5 Published with Extraordinary Gazette Dated Wednesday,
18th November, 1992

**THE LOCAL COMPANIES
(CONTROL) (AMENDMENT) LAW, 1992
(LAW 22 OF 1992)**

Michael Gore
Governor

17th November, 1992

**A LAW TO AMEND
THE LOCAL COMPANIES (CONTROL) LAW (REVISED)**

ENACTED by the Legislature of the Cayman Islands.

- | | |
|--------------------|--|
| Short title. | 1. This Law may be cited as the Local Companies (Control) (Amendment) Law, 1992. |
| Commencement. | 2. This Law shall commence, or shall be deemed to have commenced, as the case may be, on the day proclaimed by the Governor under section 1 of the Immigration Law for the commencement of that Law. |
| Interpretation. | 3. In this Law the "principal Law" means the Local Companies (Control) Law (Revised). |
| Section 2 amended. | 4. Section 2(1) of the principal Law is amended –
<div style="margin-left: 40px;">(a) by omitting the definition "Board" and substituting the following definition –
<div style="margin-left: 40px;">""Board" means the Immigration Board established under section 4 of the Immigration Law;"</div>
(b) by omitting the definition "Caymanian" and substituting the following definition –
<div style="margin-left: 40px;">""Caymanian" means a person who has Caymanian status within</div></div> |

the meaning assigned to that expression by section 13 of the Immigration Law;".

Section 4 amended.

5. Section 4(1) of the principal Law is amended –

- (a) by omitting paragraph (a) and substituting the following paragraph –

"(a) it is a local company which, at the relevant time, is complying with section 4A or is a wholly owned subsidiary of such a company;";

- (b) by omitting paragraph (c) and substituting the following paragraph –

"(c) it is licensed under the Banks and Trust Companies Law, 1989;".

New section 4A.

6. The principal Law is amended by inserting after section 4 the following section –

"Provisions to be complied with by local companies.

4A. (1) For the purpose of section 4(1)(a) a local company is complying with this section if –

- (a) it is Caymanian controlled; and
- (b) at least 60% of its shares are beneficially owned by Caymanians; and
- (c) at least 60% of its directors are Caymanians.

(2) If, for reasons beyond its control, more than 60% of the shares in a local company cease to be beneficially owned by Caymanians, the company shall be taken to be complying with this section until –

- (a) a director becomes aware of the cessation; or
- (b) a director should, with reasonable diligence, have become aware of the cessation,

whichever is the sooner, and shall then continue to be taken to be complying with this section if –

- (c) the directors immediately act in accordance with subsection (3); and

power of disposition exercisable by a person who is not a Caymanian.

Penalty: Fine not exceeding \$30,000 or imprisonment for a term not exceeding 3 years.

(4) A Caymanian, being a director of a local company must not enter into any agreement or arrangement, whether binding in law or in honour only, with a person who is not a Caymanian where the purpose, or one of the purposes, of the agreement or arrangement is to satisfy the Board in accordance with section 3(2) that the company is Caymanian controlled when in fact it is not so controlled.

Penalty: Fine not exceeding \$30,000 or imprisonment for a term not exceeding 3 years."

New section 27.

12. The principal Law is amended by inserting after section 26 the following section –

"Duty of confidentiality. 27. (1) The provisions of section 7(1) of the Immigration Law apply in respect of this Law.

(2) References in section 7(1) of the Immigration Law to the proper performance by a member of the Board of his duties under that Law included the proper performance of his duties under this Law."

Schedule repealed.

13. The Schedule to the principal Law is repealed.

Saving.

14. A local company which immediately before the commencement of this Law was deemed not to be in breach of clause 2(1) of the Schedule to the principal Law by virtue of the proviso to that clause is deemed to comply with section 4A(1)(b) of the principal Law until the end of the period that would have applied had the Schedule to the principal Law not been repealed.

Passed by the Legislative Assembly the 11th day of September, 1992.

Georgette Myrie
Clerk of the Legislative Assembly.

(d) adding the following paragraphs –

"(d) prescribe the forms, notices, licences books, registers and other documents to be used and the information and particulars to be given for the purposes of, and in connection with, this Law;

(e) provide for the giving of public notice of an application or other matter or under, or pursuant to, this Law."

11. Section 25 of the principal Law is repealed and the following section is substituted –

"Penal. 25. (1) A person required to make a declaration or to supply information for the purpose of this Law must not –

- (a) fail to make the declaration; or
- (b) fail to supply the information; or
- (c) wilfully make a declaration or supply information that is –
 - (i) false; or
 - (ii) misleading; or
 - (iii) insufficient for the purpose required.

Penalty: Fine not exceeding \$30,000 or imprisonment for a term not exceeding 3 years.

(2) A person summoned to appear before the Board must not, without lawful excuse, fail to appear before the Board in accordance with the summons.

Penalty: Fine not exceeding \$30,000 or imprisonment for a term not exceeding 3 years.

(3) A Caymanian must not, with intent to deceive, in any way represent himself to be the beneficial owner of a share in a local company if, whether at law or in honour only –

- (a) he holds the share in trust for, or on behalf of a person who is not a Caymanian; or
- (b) he holds the share subject to a

(d) the period mentioned in subsection (4) has not expired.

(3) For the purpose of subsection (2)(c) the Directors must serve written notice on the person who is not a Caymanian and whose beneficial ownership of shares in the company results in the percentage of shares in the company owned by Caymanians falling below 60 percent requiring him to divest himself of at least so many of those shares as will result in at least 60% of the shares in the company being beneficially owned by Caymanians.

(4) The period referred to in subsection (2)(d) is –

- (a) the period of 3 years starting on the date of the service of the notice under subsection (3); or
- (b) such longer period as the Board allows."

Section 5 amended.

7. Section 5 of the principal Law is amended by omitting subsection (1) and substituting the following subsection –

"(1) If a person, after being served with a notice under section 4A(3) –

- (a) exercises any voting right; or
- (b) fails to divest himself of his shares in accordance with the notice within the period referred to in section 4A(4),

he shall be liable to forfeit those shares to the Government if a court of summary jurisdiction is satisfied that he –

- (c) exercised those voting rights; or
- (d) failed to divest himself of his shares in accordance with the notice within the period referred to in section 4A(4)."

Section 10 amended.

8. Section 10 of the principal Law is amended –

- (a) by omitting from subsection (3)(d) "Islands; and" and substituting "Islands;";
- (b) by omitting from subsection (3)(e) "participation." and substituting "participation;";
- (c) by adding at the end of subsection (3) the following paragraphs –

4

- "(f) the number of additional people from outside the Islands who would be required to reside in the Islands were the application to be granted;
- (g) whether the company, its directors and employees have and are likely to continue to have the necessary professional, technical and other knowledge to carry on the business proposed by the company;
- (h) the finances of the company and the economic feasibility of its plans;
- (i) whether the true ownership and control of the company have been satisfactorily established; and
- (j) the environmental and social consequences that could result from the carrying on of the business proposed to be carried on by the company.";

(d) by adding at the end the following subsection –

"(6) The Board shall publish notice of the granting or revocation of a licence under this section in the *Gazette*."

Section 13 amended.

9. Section 13 of the principal Law is amended –

- (a) by omitting everything after "establish that the local company is" in subsection (2) and substituting "complying with section 4A or is a wholly owned subsidiary of such a company.";
- (b) by omitting subsection (3) and substituting the following subsections –

"(3) The Board may –

- (a) by written notice summons a director of a local company to appear before the Board at the time specified in the notice, being a time during normal working hours; and
- (b) on the appearance of the director in accordance with the notice, put to him questions in respect of the directors, shareholders and other matters relating to the operation, financing and control of the company.

(4) The Board may at any time by notice in writing require a Caymanian who claims to be the beneficial owner of shares in a local company to forward to it such information as to his ownership of the shares as the Board may specify.

(5) The Board may –

- (a) by written notice summons a Caymanian who

claims to be the beneficial owner of shares in a local company to appear before the Board at the time specified in the notice, being a time during normal working hours; and

- (b) on the appearance of the shareholder in accordance with the notice, put to him questions in respect of his ownership of the shares.

(6) If –

- (a) the directors or a shareholder of a local company fails to comply with all or any of the requirements specified in a notice issued under subsection (1) or (4); or
- (b) a director or a shareholder in a local company –
 - (i) fails to appear before the Board when summoned to do so in accordance with subsection (3)(a) or (5)(a); or
 - (ii) fails to answer any question put to him in accordance with subsection (3)(b) or (5)(b) fully and truthfully,

and by reason of such failure the Board is unable to establish that the local company is continuing to comply with section 4A or is a wholly owned subsidiary of a company that is continuing to comply with that section, the Board shall by, notice in the *Gazette*, declare that, for the purposes of section 4(1)(a), the company is not to be taken to be a local company complying with section 4A or a company that is a wholly owned subsidiary of such a company.

(5) Where a declaration has been published under subsection (4), the company shall not, for the purposes of section 4(1)(a), be taken to be a company that is complying with section 4A or the wholly owned subsidiary of such a company until such time as the Board publishes a further notice in the *Gazette* stating that it is satisfied that the company is so complying or is such a subsidiary."

Section 21 amended.

10. Section 21 of the principal Law is amended –

- (a) by omitting "Subject to the approval of the Governor in Council, the Board may" and substituting "The Governor in Council may".
- (b) by omitting from paragraph (a) "have effect; and" and substituting "have effect";
- (c) by omitting from paragraph (c) "Caymanian." and substituting "Caymanian";

5