

CAYMAN ISLANDS



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**THE COMPANIES MANAGEMENT LAW, 1984
(LAW 12 OF 1984)**

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I Assent

PETER LLOYD

Governor

9th July, 1984

**A LAW TO LICENCE AND CONTROL THE BUSINESS
OF COMPANY MANAGEMENT AND TO PROVIDE FOR
CONNECTED AND RELATED MATTERS**

ENACTED by the Legislature of the Cayman Islands.

Short title.

1. This Law may be cited as the Companies Management Law, 1984.

Interpretation.

2. In this Law, unless the context otherwise requires —

“appointed day” means the day six months from the day when this Law comes into operation;

“auditor” means a person who has qualified as an accountant by examination of one of the Institutes of Chartered Accountants or Certified Accountants in England and Wales, Ireland or Scotland, or the Canadian Institute of Chartered Accountants or the American Institute of Certified Public Accountants and who is a current member in good standing of one of those institutes or a person of good standing with some other accountancy qualification who is recognized by the Governor as such for the purpose of this Law;

“business of company management” means the provision of managerial services for profit or reward in or from within the Islands, whereby a person is a director for or a shareholder of a company or when the control over the whole or substantial assets of the company is vested in the management company;

PROVIDED that services to a company which comprise only the maintenance of a registered office, the conduct of Directors' and General Meetings (including the preparation and recording of resolutions at, and the Minutes of, such Meetings) the preparation, filing and keeping of statutory returns, the provision of nominee shareholders for the purpose of the formation of a company, or where the shareholding of such nominee shareholders does not in aggregate exceed two per cent of the issued capital of the company, the forwarding of mail and services of a similar administrative nature shall not of themselves constitute the business of company management for the purposes of this Law:

Law 23 of 1971.

AND PROVIDED further that the holding, by any person who possesses Caymanian status within the meaning of the Caymanian Protection Law (Revised) or who is resident in the Cayman Islands of a directorship of not more than twelve companies all of which are registered in the Cayman Islands, and all of which either carry on business within the Cayman Islands, or are land holding corporations as defined in section 2 of the Land Holding Companies Share Transfer Tax Law and whose main business is the holding of land, shall not itself constitute the business of company management for the purposes of this Law:

AND PROVIDED further that a person shall not be deemed to be in the business of company management merely by virtue of being a director or shareholder in a company if such person has been issued with a certificate of exemption by the Financial Secretary, who may not issue more than ten such certificates in respect of any one person.

"financial year", in relation to a licensee, means the period not exceeding fifty-three weeks at the end of which the balance of his account is struck, or if no such balance is struck, or if a period in excess of fifty-three weeks is employed, then a calendar year;

Cap. 22

"formation of a company" means the period of time ending three months after a company has been registered under the Companies Law;

"Governor" means the Governor in Council;

"Inspector" means the Inspector of Company Managers appointed under section 5;

"licence" and its cognates, means a licence granted under this Law.

Application etc of Law

Law 16 of 1976.

3. (1) Subject to subsections (2) and (3), the provisions of this Law have effect in addition to and not in derogation of any other Law, and in particular shall, unless expressly so stated, not derogate from any of the provisions of the Confidential Relationships (Preservation) Law.

(2) No person who is licensed under this Law is required to be

Law 24 of 1971.

Law 8 of 1966.

Law 24 of 1979.

Business of Company
Management.

licensed under the Local Companies (Control) Law (Revised) or the Trade and Business Licensing Law (Revised).

(3) This Law has no application to a trust company which is the holder of a valid licence to carry on trust business granted under section 3(2) of the Banks and Trust Companies Regulation Law (Revised) or a holder of Underwriting Managers Licence under section 3(2) of the Insurance Law, 1979, in respect of insurance companies licensed under that Law.

4. (1) Subject to subsection (2), no business of company management shall be carried on after this Law comes into operation, except by a person to whom a licence has been granted under this Law.

(2) A person who is carrying on the business of company management at any time after this Law comes into operation shall make application on the prescribed form for a licence.

(3) A person desiring to commence the business of company management at any time after this Law comes into operation shall make application to the Governor for a licence in the prescribed form.

(4) Where the application for a licence under the provisions of this Law is made by a limited liability company, no licence shall be issued in respect of such company unless the paid up share capital of that company is not less than twenty-five thousand dollars:

PROVIDED that where the limited liability company has been carrying on the business of company management when this Law comes into operation the foregoing provision shall not apply but any licence granted to such limited liability company shall be cancelled if such limited liability company has not the specified minimum paid up capital within twelve months after the appointed day.

(5) An application under subsection (2) or (3) shall specify the particulars set out in the Schedule and shall be accompanied by a fee of five hundred dollars, and the Governor, if satisfied that the application is not against the public interest and that the applicant is suitably qualified, may grant a licence on and subject to such terms and conditions as appear to him necessary or desirable. Any decision to refuse to grant a licence other than an application under subsection (2) hereof is final and conclusive and shall not be subject to any appeal to, or review by, any court.

(6) The Governor shall cause the granting of a licence under this Law to be gazetted.

Inspector of Company
Managers.

(7) The holder of a licence under this Law shall, on or before every fifteenth day of January, commencing on the fifteenth day of January, 1985, pay:

- (a) a fee of three hundred dollars; and
- (b) a fee equivalent to ten dollars for each company for which management services are being provided on the date of payment.

(8) It is a condition of a licence that the holder of a licence under this Law shall, as soon as possible after any such change has occurred, inform the Governor of any changes made relating to any of the information furnished in accordance with the particulars set out in the Schedule.

5. (1) The Governor shall appoint a public officer to be the Inspector of Company Managers for the general administration of this Law.

(2) It is the duty of the Inspector —

- (a) to maintain a general review of company management in the Islands;
- (b) of his own motion or when so required by the Governor, to examine in such a manner as he may think necessary the affairs or business of any licensee for the purpose of satisfying himself that all provisions of this Law are being complied with and that the licensee is in a sound financial position and carrying on his business in a satisfactory manner, and to report to the Governor the results of such examination;
- (c) to examine and report on the several documents pursuant to section 9;
- (d) to examine and make recommendations to the Governor with respect to all applications for licences under section 4.

(3) In the performance of his duties under this Law and subject to the provisions of section 12, the Inspector may at all reasonable times—

- (a) require a licensee to produce for examination such of his books and records and any other documents;

- (b) require a licensee to supply such information or explanation,

as he may reasonably require for the purpose of enabling him to perform his duties under this Law:

PROVIDED that the Inspector shall have no right of access to any document of a company managed by a licensee or to any information, matter or thing relating to or concerning the affairs of any such company, without the written consent of that company, or without an order of the Grand Court made on the grounds that there are no other reasonable means of obtaining such documents, information, matter or thing.

(4) The Inspector, with the approval of the Governor, may authorize in writing any person to assist him in the performance of his duties under this Law.

6. No shares or other legal or equitable interest in a company, which is a licensee under this Law shall be issued, transferred or disposed of, without the prior approval of the Governor and no alterations in the directors of a company which is a licensee under this Law shall be made without the prior approval of the Governor:

PROVIDED that the Governor may, subject to such conditions as he may deem necessary, exempt a licensee from the provision of this section.

7. (1) No person, not being a licensee, shall —

- (a) use any word which in the opinion of the Governor connotes the business of company management, either in English or in any other language, in the description or title under which he carries on business in or from within the Islands; or
- (b) make any representation in any document or in any other manner that he is carrying on the business of company management.

(2) The Governor may require a licensee who carries on company management business under a name which —

- (a) is identical with that of any other person, whether within the Islands or not, or which so nearly resembles that name as to be calculated to deceive;

Shares, etc. not to be
issued or transferred
without approval.

Use of words,
"Company Manag-
ment Business".

(b) is calculated to suggest, falsely, the patronage of or connection with some person whether within the Islands or not; or

(c) calculated to suggest, falsely, that he has a special status in relation to or derived from the Government, or has the official backing of or acts on behalf of the Government or of any of its departments or officials,

forthwith to change its name and in default of compliance may revoke such licensee.

Duties of licensee.

8. A licensee shall maintain, in respect of his business of company management -

- (a) proper books and records as shall accurately reflect the business of such licensee;
- (b) separate accounts in its books for each managed company and shall segregate the funds and other property of such managed companies from its own; and
- (c) separate bank account or accounts into which it shall deposit all monies held by it on behalf of managed companies.

Annual returns, etc.

9. (1) A licensee shall, within six months of the end of his financial year -

- (a) prepare annual accounts in accordance with generally accepted accounting principles, audited by an independent auditor;
- (b) furnish written confirmation to the Inspector from an independent auditor that annual accounts have been prepared as required under paragraph (a) hereof and whether or not the auditors' certificate for such accounts is unqualified and if qualified, the nature of the qualification; and
- (c) furnish to the Inspector his annual accounts and a Certificate of Compliance by an independent auditor that the information set out in the application for a licence, as modified by any subsequent notification of change in accordance with section 4 (6), remains correct and gives an accurate summary of the business of the licensee.

(2) A licensee shall at any time when so required by the

Power of search.

Inspector, furnish to the Inspector a Certificate of Compliance in accordance with subsection (1)(c).

(3) A licensee shall, at any time, if so required by the Inspector, produce to the Inspector such evidence as may be required as to the solvency or otherwise of his licensed business and that he has maintained the required minimum paid up share capital.

10. (1) If a Judge of the Grand Court, a Magistrate or a Clerk of the Court is satisfied by information on oath, either parol or written, given by the Inspector -

- (a) that a licence has been suspended;
- (b) that there is reasonable ground for suspecting that an offence against this Law has been or is being committed and that evidence of the commission of the offence is to be found at any premises specified in the information, or in any vehicle, vessel or aircraft so specified; or
- (c) that any document, cash or security which ought to have been produced under section 5(3) and has not been produced is to be found at any such premises or in any such vehicle, vessel or aircraft,

he may grant a search warrant authorizing the Inspector together with any other person named in the warrant and any constable, to enter such premises or any premises upon which any such time within one month from the date of the warrant, and to search the premises, vehicle, vessel or aircraft.

(2) The Inspector or any other person authorized by such warrant to search any premises, vehicle, vessel or aircraft may search every person who is found in or whom he has reasonable ground to believe to have recently left or to be about to enter those premises, vehicle, vessel or aircraft, and may seize any document, cash or security found in the premises, vehicle, vessel or aircraft which he has reasonable ground for believing ought to have been produced under section 5(3):

PROVIDED that no female shall, in pursuance of any warrant issued under this section, be searched except by a female.

(3) Where by virtue of this section a person has any power to enter any premises, vehicle, vessel or aircraft, he may use such force as is reasonably necessary for the purpose of exercising that power.

(4) Whoever obstructs the Inspector or any other authorized

person in the exercise of any powers conferred on him by virtue of this section is guilty of an offence.

Power of Financial Secretary to require insurance.

11. Every holder of a licence under the provisions of this Law shall effect a policy of insurance with a reputable insurance company against losses arising out of claims of negligence or breach of duty by the licensee or any employee or against the dishonesty of employees or the licensee and against loss of documents and against such other risks as the Financial Secretary may from time to time stipulate in such amount and of such a nature as the Financial Secretary may determine to be fit and proper, having due regard to the nature and type of business carried on by the licensee, and in the event that such insurance shall be withdrawn, cancelled, or not renewed, the licensee shall immediately notify the Financial Secretary and shall cease to carry on his business until such insurance has been re-instated or replaced.

Preservation of secrecy.

12. Except for the purpose of the performance or exercise of his duties or functions under this Law or when lawfully required to do so by any court of competent jurisdiction within the Islands or under the provisions of any other law, neither the Inspector nor any person acting under his authority shall disclose any information relating to any application under the provisions of this Law, or to the affairs of a licensee or of a company managed by a licensee, which he has acquired in the performance or exercise of such duties or functions.

Suspension of licence.

13. (1) Where the Governor is of the opinion that a licensee is-
- (a) carrying on the business of company management in a manner detrimental to the public interest, or to the interest of the companies being managed by him or any of them; or
 - (b) in contravention of this Law or any other law,

the Governor may require him forthwith to take such steps as he may consider necessary to rectify the matter, or he may forthwith suspend the licence pending the receipt of information or any explanation under section 5(2) (b).

(2) Whenever the Governor suspends a licence under subsection (1), he shall cause notice of such suspension to be published in the Gazette.

(3) No suspension shall exceed a period of ninety days unless extended from time to time by an Order of the Grand Court on application of the Inspector that it is in the public interest that such suspension shall continue and specifying the duration of such period of further suspension, which shall not itself exceed ninety days each at any one time.

Revocation of licence.

14. (1) The Governor may revoke a licence -

- (a) if the licensee has ceased to carry on the business of company management;
- (b) if the licensee becomes bankrupt or goes into liquidation, is wound up or otherwise dissolved; or
- (c) if, having received a report from the Inspector upon the licensee under section 5(2) (b), he is of the opinion that it would be detrimental to the public interest for the licensee to continue to carry on the business of company management.

(2) Whenever the Governor revokes a licence under subsection (1), he shall cause notice of such revocation to be published in the Gazette.

Appeals.

15. (1) An appeal shall lie to the Grand Court against any -
- (a) refusal to grant a licence under section 4(2);
 - (b) order to revoke or suspend a licence under section 13 or 14;
 - (c) order requiring a licensee to take steps under section 13.

(2) An appeal under this section shall not without an Order of the Grand Court, operate as a stay of the Order appealed against.

(3) The Rules Committee constituted under the Grand Court Law may make rules of procedure governing the conduct of appeals under this section.

Law 8 of 1975.

Offences.

16. (1) Any person who with intent to deceive, for any purpose of this Law makes any representation in the truth of which he does not believe, is guilty of an offence and liable on summary conviction to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.

(2) Subject to subsection (1), a person who with intent to deceive, by any act or omission contravenes any provision or requirement of this Law is guilty of an offence and liable on summary conviction to a fine not exceeding twenty-five thousand dollars or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment.

(3) Any licensee who advertises inviting either directly or indirectly other parties to commit breaches of the laws of the country in

which such advertisement appears or to which such advertisement is directed shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment; and where a limited liability company is convicted of an offence against this subsection, every director and every office concerned with the management of the company shall also be liable to be convicted for that offence unless he satisfies the court that the offence was committed without his knowledge or consent and that he took all reasonable steps to prevent the commission of the offence.

Regulations.

17. The Governor may make regulations for carrying the purpose and provisions of this Law into effect, and without prejudice to the generality of this provision may make regulations -

- (a) prescribing anything by this Law required to be prescribed;
- (b) exempting any person or business, or class of person or business, from any provision of this Law.

Guidelines.

18. Without derogation of the regulation-making power conferred by section 17 the Inspector may, from time to time, issue by publication in the Gazette, guidelines with relation to such matters as he may think fit and appropriate and failure by any licensee to comply with such guidelines shall be taken into consideration when any action is proposed to be taken under section 13 or 14.

Amendment of Trade
and Business
Licensing Law
(Revised).

19. Item 6 under the heading "Professional" in the Schedule to the Trade and Business Licensing Law (Revised) is substituted by the following item -

- | | |
|--|---|
| "6. Corporate
Admini-
strative
Service. | being a person, firm
or company (other
than the holder of a
valid licence to carry
on banking or trust
business granted under
the Banks and Trust
Companies Regulation
Law (Revised)) providing
management services for
companies other than for
itself and its subsidiaries - |
|--|---|

where the services
are provided for ten
or more companies
but comprise only
the maintaining of
registered offices,
the conducting of
annual general
meetings (including
the preparation and
recording of resolu-
tions at, and the
minutes of, such
meetings) and filing
statutory returns, a
fee of \$2.00 for each
such company:

PROVIDED however that
a fee of \$50 shall be
the minimum fee payable
under this subparagraph."

SCHEDULE

(section 4(5))

Every person or company applying for a licence under the Law shall furnish in writing to the Governor the following particulars which shall accompany such application -

1. The name of the applicant or applicant company and the address of its principal or registered office, and the names and addresses of all the directors of such applicant company, together with the names and addresses of all persons who will provide such applicant company with advice of a specialised or technical nature as part of the carrying out of the functions of the company.
2. If the principal or registered office is situate outside the Islands -
 - (a) the name and address of one of its officers who is the authorized agent in these Islands to accept on behalf of the applicant service of process and any notices required to be served on it;

- (b) the name and address of another of its officers who in the absence or inability to act for the officer named in subparagraph (b) is the authorized agent in the Islands of the applicant for the purposes of subparagraph (b).
3. Evidence of the proper incorporation of the company pursuant to section 4 of the Companies Law or in the country of incorporation as the case may be.
4. Evidence in writing that the applicant himself or some person or company directly or indirectly connected with the applicant is possessed of solid and practical experience in company management.
5. (a) An undertaking in writing to provide and set apart a fully paid up capital before or at the time it commences business, such as the Governor may in his absolute discretion determine, or by a guarantee under seal of such sum given by a holding or parent or other company approved by the Governor;
(b) the guarantee hereinbefore referred to shall expressly provide that its formal validity, its essential validity, its interpretation and effect and the rights and obligations of the parties to it are governed exclusively by the law of the Islands, and that the Courts of the Islands only (which expression shall include the Court of Appeal) shall be the forum for these purposes aforesaid.
6. Character references in writing, together with such other evidence as the Governor may require, that neither the applicant nor if it is an applicant company any director or officer of the company has a criminal record either in the Islands or without.
7. Annual accounts of its holding or parent or other company (if any) for the last preceding two years and thereafter annually duly audited and certified by competent and reputable accountants.
8. Name, address and professional qualifications of applicant's Auditors.
9. Full name, addresses, nationalities and references, of all persons who are directors, partners, managers or officers.
10. Names, with addresses and nationalities, of all persons who are shareholders (if any).
11. Names of all subsidiary companies of the applicant with addresses of their registered offices.

12. Copy of the act, charter, certificate of incorporation or memorandum of association and articles of association or partnership agreement of the applicant, as may be appropriate verified by a statutory declaration made by a director, secretary or partner and duly authenticated as follows -

- (a) in the case of a company incorporated in the Islands, certified in accordance with the provisions of section 26 of the Companies Law;
- (b) in the case of a foreign company certified and authenticated under public seal of the country, city or place under the laws of which such company has been incorporated.

13. Reference, including one from a bank or trust company.

14. Statement of assets and liabilities at the end of the month prior to the submission of the application certified by a director or senior officer.

15. Statement of capital of any other company held, directly or through a subsidiary or a nominee, as an asset of the applicant.

Passed the Legislative Assembly this 9th day of May, 1984.

PETER LLOYD
President.

WENDY LAUER
Acting Clerk of the Legislative Assembly

(Price \$ 4.00)