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THE COMPANIES MANAGEMENT LAW (12 OF 1984)

(1998 Revision)

Consolidated with Laws 13 of 1993 (part), 21 of 1993, 16 of 1996 (part) and 4 of 1997 (part).

Revised under the authority of the Law Revision Law (19 of 1975).

Originally enacted-

Law 12 of 1984-9th May, 1984
Law 13 of 1993-28th June, 1993
Law 21 of 1993-24th September, 1993
Law 16 of 1996-20th September, 1996
Law 4 of 1997-24th March, 1997.

Consolidated and revised this 6th day of January, 1998.

Note (not forming part of the Law): This revision replaces the 1996 Revision which should now be discarded.

COMPANIES MANAGEMENT LAW

(1998 Revision)

ARRANGEMENT OF SECTIONS

1. Short title
 2. Definitions
 3. Application, etc., of Law
 4. Business of company management
 5. Powers and duties of Authority
 6. Shares, etc., not to be issued or transferred without approval
 7. Use of names
 8. Duties of licensee
 9. Annual returns, etc.
 10. Power of search
 11. Power of Authority to require insurance
 12. Suspension of licence
 13. Revocation of licence
 14. Appeals
 15. Offences
 16. Regulations
 17. Guidelines
- Schedule: Licence application particulars

COMPANIES MANAGEMENT LAW

(1998 Revision)

1. This Law may be cited as the Companies Management Law (1998 Revision). Short title

2. In this Law- Definitions

“appointed day” means the 6th February, 1985;

“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, 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 recognised by the Governor as such for the purposes of this Law;

“Authority” means the Cayman Islands Monetary Authority established under section 3(1) of the Monetary Authority Law, 1996 and includes any employee of the Authority acting under the Authority’s authorisation; Law 16 of 1996

“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:

And provided further that the holding, by any person who possesses Caymanian status within the meaning of the Immigration Law (1997 Revision) or who is resident in the Islands of a directorship of not more than twelve companies all of which are registered in the Islands, and all of which either carry on business 1997 Revision

within the Islands, or are land holding corporations as defined in section 2 of the Land

1995 Revision Holding Companies Share Transfer Tax Law (1995 Revision) 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;

1995 Revision “formation of a company” means the period of time ending three months after a company has been registered under the Companies Law (1995 Revision);

“Governor” means Governor in Council; and

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

~~Application~~ of Law 3. (1) Subject to subsections (2) and (3), this Law has effect in addition to and not in derogation of any other law, and in particular shall, unless expressly so stated, not derogate from any provision of the Confidential Relationships (Preservation) Law (1995 Revision).

1995 Revision
1997 Revision (2) No person who is licensed under this Law is required to be licensed under the Local Companies (Control) Law (1995 Revision) or the Trade and Business Licensing Law (1997 Revision).

(3) This Law has no application to-

- 1995 Revision
- (a) a trust company which is the holder of a valid licence to carry on trust business granted under section 5 of the Banks and Trust Companies Law (1995 Revision);
 - (b) a holder of an Insurance Manager’s Licence granted under section 4(2) of the Insurance Law (1997 Revision), in respect of insurance companies licensed under that law;

- (c) the holder of a Mutual Fund Administrators Licence granted under section 12 of the Mutual Funds Law (1996 Revision) in respect of mutual fund administration; or
- (d) a regulated mutual fund, as defined in the Mutual Funds Law (1996 Revision).

1996 Revision

4. (1) No business of company management shall be carried on except by a person to whom a licence has been granted under this Law.

Business of company management

(2) A person desiring to commence the business of company management shall make application to the Governor for a licence in the prescribed form.

(3) Where the application for a licence under 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.

(4) An application under subsection (2) shall be sent to the Authority, specify the particulars set out in the Schedule and be accompanied by a fee of five hundred dollars which shall be forwarded by the Authority to the Financial Secretary for the benefit of the revenue, 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 is final and conclusive and shall not be subject to any appeal to, or review by, any court.

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

(6) The holder of a licence under this Law shall, on or before every fifteenth day of January pay to the Financial Secretary for the benefit of the revenue-

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

Provided that the Governor may, from time to time, waive or reduce either or both such fees in relation to any person or group of persons in Cayman Brac or Little Cayman.

(7) It is a condition of a licence that the holder shall, as soon as possible after any such change has occurred, inform the Authority of any changes made relating to any of the information furnished in accordance with the Schedule.

Powers and duties of Authority

5. (1) The Authority shall-
- (a) maintain a general review of company management in the Islands;
 - (b) of its own motion or when so required by the Governor, examine in such a manner as it may think necessary the affairs or business of any licensee for the purpose of satisfying itself that this Law is being complied with, that the licensee is in a sound financial position and carrying on his business in a satisfactory manner, and report to the Governor the results of such examination;
 - (c) examine and report on the several documents pursuant to section 9; and
 - (d) examine and make recommendations to the Governor with respect to-
 - (i) the qualifications of auditors;
 - (ii) all applications for approval of the issue or transfer of shares under section 6;
 - (iii) the conditions to be attached to all exemptions from the requirements of section 6;
 - (iv) the use of words which might infringe section 7(1);
 - (v) the use of names by licensees and requirements to be imposed in respect thereof under section 7(2);
 - (vi) all proposals for the suspension of licences under section 12;
 - (vii) all proposals for the revocation of licences under section 13;
 - (viii) all proposals for regulations to be made under section 16; and
 - (ix) all proposals by applicants in respect of capital under paragraph 5(1) of the Schedule.
- (2) The Authority may-
- (a) examine and make recommendations to the Governor with respect to applications for licences under section 4; and
 - (b) act as the adviser to the Governor and take all necessary action to ensure the proper and just implementation of this Law:
- (3) The Authority, with the approval of the Governor, may authorise in writing any person to assist it in the performance of its duties.

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

6. No shares or other legal or equitable interest in a company which is a licensee 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 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 this provision.

7. (1) No person, not being a licensee, shall- Use of names

- (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 is-

- (a) 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;
- (b) 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's licence.

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

- (a) such 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.

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

- (a) prepare annual accounts in accordance with generally accepted accounting principles, audited by an independent auditor;

- (b) furnish written confirmation to the Authority from an independent auditor that annual accounts have been prepared as required under paragraph (a) 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 Authority 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(7), 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 Authority, furnish to the Authority a certificate of compliance in accordance with subsection (1)(c).

(3) A licensee shall, at any time, if so required by the Authority, produce to the Authority 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.

Power of search

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

- (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(2) 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 authorising the Authority, together with any other person named in the warrant and any constable, to enter such premises or any premises at any such time within one month from the date of the warrant, and to search the premises, vehicle, vessel or aircraft.

(2) A person authorised by such warrant to search any premises, vehicle, vessel or aircraft may search every person who is found in or whom it 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 it has reasonable ground for believing ought to have been produced under section 5(2):

Provided that no female shall, in pursuance of any warrant issued under subsection (1), 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 an authorised person in the exercise of any powers conferred on him under this section is guilty of an offence.

11. Every holder of a licence under 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 Authority may from time to time stipulate in such amount and of such a nature as the Authority 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 Authority and shall cease to carry on his business until such insurance has been reinstated or replaced.

Power of Authority to require insurance

12. (1) Where the Governor is of the opinion that a licensee is-

Suspension of licence

- (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 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(1)(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 by the Authority 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 13. (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 Authority upon the licensee under section 5(1)(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 14. (1) An appeal shall lie to the Grand Court against any-
- (a) order to revoke or suspend a licence under section 12 or 13; or
 - (b) order requiring a licensee to take steps under section 12.
- (2) An appeal under subsection (1) shall not without an Order of the Grand Court, operate as a stay of the Order appealed against.
- 1995 Revision (3) The Rules Committee constituted under the Grand Court Law (1995 Revision) may make rules of procedure governing the conduct of appeals under this section.
- Offences 15. (1) Whoever, 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 of fifty thousand dollars and to imprisonment for two years.
- (2) Subject to subsection (1), whoever 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 of twenty-five thousand dollars and to imprisonment for one year.
- (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 is guilty of an offence and liable on summary conviction to a fine of one thousand dollars and to imprisonment for six months; and where a limited liability company is convicted of such an offence, every director and every officer concerned with the management of the company is also 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.

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

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

17. Without derogation of the regulation-making power conferred by section 16 the Authority may, from time to time, issue, by publication in the Gazette, guidelines with relation to such matters as it 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 12 or 13. Guidelines

SCHEDULE

(Section 4(4))

Licence application particulars

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

1. The name of the applicant or applicant company, 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 a registered office is situate outside the Islands-

- (a) the name and address of one of its officers who is the authorised agent in these Islands to accept on behalf of the applicant any service of process and any notices required to be served on it; and
- (b) the name and address of another of its officers who in the absence or inability to act of the officer named in subparagraph (a) is the authorised agent in the Islands of the applicant for the purposes of subparagraph (a).

1995 Revision

3. Evidence of the proper incorporation of the company pursuant to section 4 of the Companies Law (1995 Revision) 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. (1) 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.

(2) The guarantee referred to in subparagraph (1) 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 section 26 of the Companies Law (1995 Revision); or
 - (b) in the case of a foreign company, certified and authenticated under the public seal of the country, city or place under the laws of which such company has been incorporated.
 13. References, 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.
- Publication in consolidated and revised form authorised by the Governor in Council this 6th day of January, 1998.

1995 Revision

