



ANGUILLA

REVISED STATUTES OF ANGUILLA

CHAPTER C75

COMPANY MANAGEMENT ACT

Showing the Law as at 15 December 2008

This Edition was prepared under the authority of the Revised Statutes and Regulations Act, R.S.A. c. R55 by the Attorney General as Law Revision Commissioner.

This Edition consolidates—

Act 14/2005, in force 9 December 2005

Act 4/2008, in force 27 February 2008

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COMPANY MANAGEMENT ACT

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COMPANY MANAGEMENT ACT**PRELIMINARY PROVISIONS****Interpretation**

1. (1) In this Act—

“Anti-Money Laundering Regulations” means the Anti-Money Laundering Regulations under the Money Laundering and Reporting Authority Act;

“attorney-at-law” means an attorney admitted to practise before the Eastern Caribbean Supreme Court in Anguilla;

“auditor” means a person who is in good standing as a member of an association of chartered or public accountants or other similar body approved by the Governor as a reputable auditing association;

“certificate of compliance” means a certificate of compliance issued under section 20(1)(c);

“Commission” means the Anguilla Financial Services Commission established under section 2 of the Financial Services Commission Act;

(Act 14/2005 s.1)

“company”, when used in relation to a company managed in a company management business, means—

- (a) a company incorporated or continued under the Companies Act;
- (b) an international business company incorporated or continued under the International Business Companies Act; or
- (c) a limited liability company formed or continued under the Limited Liability Company Act;

“company”, when used in relation to a company that carries on company management business, means a company incorporated or continued under the Companies Act or a foreign company registered under Part 4, Division 3 of that Act;

“company management business” means, subject to subsection (3), the business of—

- (a) incorporating or forming companies;
- (b) providing the registered office for companies;
- (c) acting as registered agent for companies;
- (d) preparing and filing statutory documents on behalf of companies;
- (e) acting as director, manager or officer of companies or foreign companies; or

(f) acting as nominee shareholder of companies or foreign companies;

and includes offering or agreeing to carry out any of the activities referred to in paragraphs (a) to (f) with the intent to carry on business;

“Court” means the High Court;

“dollar” or “\$” means a dollar in the currency of the United States of America;

“foreign company” means a company incorporated, formed or registered in a jurisdiction outside Anguilla;

“foreign regulatory authority” means an authority in a jurisdiction outside Anguilla that exercises functions corresponding or similar to the functions exercised by the Commission;

(Act 14/2005 s.1)

“Inspector” means the Inspector of Company Management appointed under section 17;

“licence” means a licence issued under this Act;

“licensee” means a person licensed under this Act;

“Minister” means the Minister responsible for finance;

“prescribed” means prescribed by regulation made by the Governor in Council under section 25.

(2) For greater certainty, a body corporate—

(a) that is incorporated or continued under the Companies Act, the International Business Companies Act or the Limited Liability Company Act; and

(b) that carries on company management business outside Anguilla;

carries on company management business from within Anguilla.

(3) Notwithstanding subsection (1), an individual does not carry on company management business by reason only of the fact that he acts as a director, manager or officer—

(a) of not more than 12 companies in which he does not have a significant interest;

(b) of any company in which he has a significant interest; or

(c) of not more than one company by which he is employed under a contract of service.

(4) For the purposes of subsection (3), an individual has a significant interest in a company if he is the holder and beneficial owner of shares in the company that entitle him—

(a) to exercise 25% or more of the voting rights of the company at a general meeting of the company;

(b) to a share of 25% or more in dividends declared and paid by the company; and

- (c) to a share of 25% or more in any distribution of the surplus assets of the company.

Meaning of “controlled”, “holding company”, etc.

2. For the purposes of this Act—

- (a) a body corporate is controlled by a person if any shares of the body corporate carrying voting rights sufficient to elect a majority of the directors of the body corporate are, except by way of security only, held directly or indirectly by or on behalf of that person;
- (b) a body corporate is the holding body corporate of another if that other body corporate is its subsidiary; and
- (c) a body corporate is a subsidiary of another body corporate if it is controlled by that other body corporate.

Application

3. This Act does not apply to a company licensed under the Trust Companies and Offshore Banking Act.

LICENCES

Licence required

4. (1) No person shall carry on company management business in or from within Anguilla unless he holds a licence that is not suspended under section 9.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$25,000 or to imprisonment for a term of 1 year or to both.

Application for licence

5. (1) A company or an attorney-at-law may apply to the Governor for a licence to carry on company management business.

(2) An application under subsection (1) must—

- (a) contain the information and be in the form prescribed; and
- (b) be accompanied by the documentation prescribed.

Issue of licence

6. (1) If the Governor is satisfied—

- (a) that an applicant—
- (i) is a fit and proper person, and

- (ii) is qualified,
to carry on company management business;
- (b) that the persons having any share or other interest, whether legal or equitable, in the applicant and its directors and officers are fit and proper persons to have an interest in or be concerned with the management of a licensee, as the case may be;
- (c) that the applicant satisfies the requirements of this Act in respect of the application and will, upon issuance of the licence, be in compliance with this Act in respect of licensing; and
- (d) that issuing the licence is not against the public interest;

he may issue a licence to the applicant subject to such terms and conditions as he thinks fit.

- (2) The Governor shall cause notice of the issue of a licence to be published in the *Gazette*.
- (3) The Governor may, upon giving reasonable notice to the licensee—
 - (a) vary or cancel any terms or conditions imposed under subsection (1); or
 - (b) impose new terms or conditions.

Maintenance of capital

7. (1) A company holding a licence must ensure that its paid-up share capital is maintained in an amount not less than \$25,000 or the equivalent in another currency.

(2) A company that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$10,000.

(3) Where an offence under this section is committed by a company, a director or officer of the company who knowingly authorised, permitted or acquiesced in the commission of the offence also commits an offence and is liable on summary conviction to a fine of \$10,000.

Annual fee

8. A licensee shall pay the prescribed annual fee on or before 15th January of each year and any penalties for late payment of such fee as may be prescribed by regulation.

(Act 4/2008 s.1)

Revocation or suspension of licence

- 9.** (1) The Governor may at any time revoke or suspend a licence if it appears to him—
- (a) that the licensee—
 - (i) is not a fit and proper person to carry on company management business,

- (ii) is carrying on company management business in a manner detrimental to the public interest or to the interests of one or more of the companies being managed by him,
 - (iii) is insolvent,
 - (iv) has contravened or is in contravention of any provision of this Act or of the Anti-Money Laundering Regulations,
 - (v) has breached or is in breach of any term or condition of his licence,
 - (vi) has ceased to carry on company management business, or
 - (vii) has furnished the Governor or the Inspector with any false, inaccurate or misleading information whether on making his application for a licence or subsequent to the issue of the licence; or
- (b) that, in the case of a company, any person having a share or interest in the licensee, whether equitable or legal, or any director or officer is not a fit and proper person to have an interest in, or to be concerned with, the management of a licensee, as the case may be.

(2) The Governor shall revoke a licence if the licensee fails to pay the prescribed annual fee together with the appropriate late payment penalty in full on or before 30th June in the year in which the annual fee was due.

(Act 4/2008 s.2)

(3) Subject to subsection (4), the period of suspension of a licence under subsection (1) shall not exceed 90 days.

(Act 14/2005 s.2)

(4) If it is satisfied that it is in the public interest to do so, the Court may, on the application of the Inspector, extend the period of suspension of a licence under this section for one or more further periods not exceeding 90 days each.

(Act 14/2005 s.2)

(5) The annual fee and any late payment penalty payable by a licensee under section 8 remains payable notwithstanding that his licence has been suspended.

Appeals

10. (1) An appeal lies to the Court from a decision of the Governor to suspend or revoke a licence under section 9.

(2) Unless the Court otherwise orders, an appeal does not operate to suspend the decision of the Governor.

Appointment of administrator by the Court

11. (1) If a licence is or is about to be suspended or revoked under section 9, the Inspector may apply to the Court—

- (a) for the appointment of an administrator to take over and manage the company management business then carried on by the licensee or carried on by him immediately prior to the revocation or suspension of his licence, as the case may be; or
- (b) in the case of a company, for an order that the company be wound up by the Court or subject to the supervision of the Court under the Companies Act.

(2) An application made under subsection (1) may be made on an *ex parte* basis.

(3) On an application made under subsection (1), the Court may make such order as it considers necessary to safeguard the interests of companies that are then managed or that were managed by the licensee immediately before the revocation or suspension, including—

- (a) granting an administrator the powers of a licensee under this Act;
- (b) requiring the administrator to provide security;
- (c) fixing the remuneration of the administrator;
- (d) requiring such persons as it considers necessary to appear before the Court for the purposes of giving information concerning the company management business; and
- (e) making any order that could be made by the Magistrate on an application made under section 21.

Directions for reporting of information

12. (1) The Inspector may, by notice published in the *Gazette*, issue directions to licensees for the making of returns, or the furnishing of documentation, to him for regulatory purposes.

(2) A notice under subsection (1) must specify the period within which returns must be made or documentation filed.

(3) Directions issued under subsection (1) may make different provision in relation to different persons, circumstances or cases.

(4) A licensee that fails, within the period specified, to make a return or furnish documentation to the Inspector in accordance with directions issued under subsection (1) commits an offence and is liable on summary conviction to a fine of \$5,000.

Display of licence

13. (1) A licence issued under this Act must be prominently displayed on the premises where company management business is carried on.

(2) A licensee that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$1,000.

Surrender of licence

14. (1) A licensee who ceases to carry on company management business may surrender his licence upon production of—

- (a) evidence that he has repaid all deposits and has transferred all assets held or administered on behalf of companies managed by him to or at the direction of those companies; or
- (b) if the licensee is a company being wound up, evidence that it is solvent and is able on demand to repay all deposits held by it and to pay all its other debts in full, and has transferred all assets held or administered on behalf of companies managed by it to or at the direction of those companies.

(2) An insolvent licensee may apply to the Inspector to surrender his licence and the Inspector may, in his absolute discretion, approve the surrender by the licensee of his licence on such terms as he considers appropriate.

(3) In the case of the surrender of a licence under paragraph (1)(b) or subsection (2), the Inspector may apply to the Court for an order that the licensee be wound up by the Court or subject to the supervision of the Court under the Companies Act.

TRANSFER OF SHARES AND APPOINTMENT OF DIRECTORS**Transfer of shares**

15. (1) No share or other interest, whether legal or equitable, in a company licensed under this Act shall be issued, transferred or otherwise disposed of without the prior written approval of the Governor.

(2) The Governor may exempt any company from the provisions of subsection (1), subject to such terms and conditions as he thinks fit.

Appointment of directors

16. No appointment of a director of a company licensed under this Act shall be made without the prior written approval of the Governor.

ADMINISTRATION**Inspector**

17. (1) There is established the office of Inspector of Company Management as a public office to which appointments are to be made in accordance with section 66 of the Constitution of Anguilla.

(2) Under the general supervision of the Governor, the Inspector is responsible for ensuring the proper administration of this Act.

(3) The functions of the Inspector include—

- (a) the monitoring of company management business;
- (b) where he thinks fit or when required by the Governor, the examination in such manner as he considers necessary, of the affairs or business of any licensee for the purpose of satisfying himself that the provisions of this Act, the Code of Practice issued under section 26 and the Anti-Money Laundering Regulations are being complied with and the licensee is in a sound financial position and is carrying on its business in a satisfactory manner;
- (c) reporting to the Governor regarding the examination of any documents produced to the Inspector in the course of the performance of his functions; and
- (d) examining and making recommendations to the Governor with respect to all applications for licences.

(4) In the performance of his functions under this Act, the Inspector may at all reasonable times require a licensee—

- (a) to produce for examination such books, records and other documents that the licensee is required to maintain under section 19; and
- (b) to supply such information or explanation, as the Inspector may reasonably require for the purpose of enabling him to perform his functions under this Act.

(5) Where in the conduct of an examination of the affairs or business of a licensee carried out under paragraph (3)(b) the Inspector, or a person acting under his authority, obtains access to any document of, or any information concerning, a company managed by the licensee, he must not disclose the document or information to any other person unless authorised to do so by an order of the Court made on the application of the Inspector.

(6) Notice of an application by the Inspector for an order permitting disclosure under subsection (5) must be served on the licensee from whom the Inspector obtained the document or information at least 5 days prior to the hearing, or such shorter period as the Court may allow, and the licensee shall be entitled to be heard at the hearing of the application.

(7) The Court may make an order under subsection (5) if it is satisfied that—

- (a) the Inspector has adduced *prima facie* evidence of illegal activity; and
- (b) there are reasonable grounds for believing that the document or information sought to be disclosed will be of value in the investigation of that illegal activity.

(8) With the written approval of the Governor, the Inspector may authorise in writing any person to assist him in the performance of his functions under this Act.

Restrictions on use of certain terms

18. (1) No person, other than a licensee, shall—

- (a) use any word, either in English or in any other language, in the description or title under which he carries on business in or from within Anguilla that, in the opinion of the Governor, suggests company management business; or
 - (b) make any representation in any document or in any other manner that is likely to suggest that he is carrying on company management business.
- (2) The Governor may prescribe words that, in his opinion, suggest company management business.
- (3) The Governor may, by written notice, require a licensee who carries on company management business under a name that is—
- (a) identical to that of any other person, whether within or outside Anguilla, or which so nearly resembles that name as to be likely to deceive;
 - (b) likely to suggest falsely the patronage of or connection with some person whether within or outside Anguilla; or
 - (c) likely to suggest falsely that he has special status in relation to or derived from the Government or has the official approval of, or acts on behalf of, the Government or of any of its departments or officials;

forthwith to change the name and in default of compliance may revoke the licence.

- (4) A person, other than a licensee, who—
- (a) contravenes paragraph (1)(b); or
 - (b) uses a word prescribed by the Governor under subsection (2), either in English or in any other language, in the description or title under which he carries on business in or from within Anguilla;

commits an offence and is liable on summary conviction to a fine of \$10,000 and to a daily default fine of \$100.

(5) A licensee who fails to change his name within 7 days of the date of receipt of a written notice under subsection (3) commits an offence and is liable on summary conviction to a fine of \$10,000 and to a daily default fine of \$100.

Duties of licensee

- 19.** (1) A licensee shall, in respect of its company management business—
- (a) maintain and keep within Anguilla such books or records as accurately reflect the business of the licensee;
 - (b) maintain separate accounts in the books or records in respect of each company the licensee manages and shall separate the funds and other property of the companies he manages from his own; and

- (c) maintain such books and records as may be required by the Code of Practice issued under section 26.

(2) A licensee that contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$10,000, to imprisonment for a term of 6 months or to both.

Annual accounts, certificate of compliance

20. (1) Within 6 months of the end of the financial year, a licensee shall—

- (a) in accordance with generally accepted accounting principles, prepare annual accounts audited by an independent auditor;
- (b) furnish to the Inspector the annual accounts together with written confirmation from an independent auditor that the annual accounts have been prepared as required under paragraph (a) and a statement as to whether or not the auditor's certificate for the accounts is unqualified and, if qualified, the nature of the qualification; and
- (c) furnish to the Inspector a certificate of compliance issued by an independent auditor that the licensee is in compliance with his obligations under section 12.

(2) A licensee shall, without delay on demand by an Inspector, furnish to the Inspector a certificate of compliance issued in accordance with paragraph (1)(c).

(3) A licensee shall, when required by the Inspector, produce to the Inspector such evidence as may be required as to the solvency or otherwise of his business and that the licensee has, in the case of a company, maintained the required minimum paid-up share capital.

(4) A licensee who contravenes this section commits an offence and on summary conviction is liable—

- (a) in the case of a contravention of paragraph (1)(a), to a fine of \$10,000 or to imprisonment for a term of 1 year or to both;
- (b) in the case of a contravention of paragraph (1)(b) or subsection (2), to a fine of \$10,000; or
- (c) in the case of a contravention of paragraph (1)(c) or subsection (3), to a fine of \$5,000.

Power of search

21. (1) If the Magistrate is satisfied by information on oath given by the Inspector or by a person authorised by him—

- (a) that a licence has been revoked or suspended under section 9;
- (b) that there are reasonable grounds for believing that an offence under this Act has been or is being committed and that evidence of the commission of the offence is to be found on any premises or in any vehicle, vessel or aircraft specified in the information; or

- (c) that any document that ought to have been produced under section 17(4) and has not been produced is to be found at any premises or in any vehicle, vessel or aircraft specified in the information;

he may grant a search warrant authorising the Inspector, together with any other person named in the warrant, to enter the premises or any premises upon which the vehicle, vessel or aircraft may be located at any time within 1 month from the date of the warrant and to search the premises or the vehicle, vessel or aircraft.

(2) The Inspector or any other person authorised by a warrant to search any premises or any vehicle, vessel or aircraft—

- (a) may search every person who is found in, or whom he has reasonable grounds to believe to have recently left, or to be about to enter, those premises or that vehicle, vessel or aircraft; and
- (b) may seize any document found on the premises or in the vehicle, vessel or aircraft that he has reasonable grounds for believing ought to have been produced under section 17(4).

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

MISCELLANEOUS

Insurance

22. (1) The Inspector may by written notice require a licensee to effect a policy of insurance with an approved insurance company and maintain it.

(2) The policy of insurance shall insure against—

- (a) losses arising out of claims of negligence or breach of duty by the licensee or by an employee;
- (b) the dishonesty of employees or of the licensee;
- (c) loss of documents; and
- (d) such other risks as the Inspector may stipulate;

in such amount and of such nature as the Inspector determines having due regard to the nature and type of business carried on by the licensee.

(3) The licensee shall effect the policy of insurance within the time specified in the notice or any extension of the time given by the Inspector.

(4) The licensee shall without delay give notice to the Inspector in writing if—

- (a) he is unable to obtain insurance as required by the Inspector; or

(b) he ceases to maintain the insurance.

(5) A licensee who contravenes this section commits an offence and is liable on summary conviction to a fine of \$10,000 or to imprisonment for a term of 1 year or to both.

Confidentiality

23. (1) For the purposes of this section, “protected person” means—

- (a) a person who has applied for a licence under this Act;
- (b) a licensee;
- (c) a customer of a licensee; or
- (d) a company managed by a licensee.

(2) Subject to subsections (3) and (4), the Inspector and a person acting under the Inspector’s authority shall not disclose to any person information concerning the affairs of a protected person that the Inspector or the person acting under the Inspector’s authority has acquired in the course of his duties or in the exercise of his functions under this Act.

(3) Subsection (2) does not apply to a disclosure—

- (a) required or permitted by any court of competent jurisdiction in Anguilla;
- (b) to the Governor;
- (c) to any person for the purpose of discharging any duty or exercising any power under this Act;
- (d) in respect of the affairs of a protected person made with the consent of that person;
- (e) if the information disclosed is or has been available to the public from any other source;
- (f) where the information disclosed is in a summary or in statistics expressed in a manner that does not enable the identity of a protected person to which the information relates to be determined; or
- (g) made by the Inspector to a foreign regulatory authority upon the written request of that authority.

(4) The Inspector may not disclose information concerning the affairs of a protected person to a foreign regulatory authority under paragraph (3)(g) unless he is satisfied—

- (a) that the foreign regulatory authority is subject to adequate legal restrictions on further disclosure; and
- (b) that the information disclosed is reasonably required by the authority for the purposes of its regulatory functions.

(5) The Governor may issue guidelines to the Inspector concerning the discharge of his functions under this section.

(6) Paragraph (3)(g) does not apply to information to which section 17(5) applies.

(7) Any person who contravenes this section commits an offence and is liable on summary conviction to a fine of \$10,000.

Immunity

24. No liability attaches to the Governor, the Inspector or any person acting under the authority of the Governor or the Inspector for an act done in good faith in the discharge or purported discharge of his functions under this Act.

Regulations

25. The Governor in Council may make regulations generally for giving effect to the provisions of this Act and specifically—

- (a) requiring the payment of fees under this Act and prescribing them, including—
 - (i) fees for filing an application,
 - (ii) fees for the issuance of a licence, and
 - (iii) annual fees;
- (b) exempting any person or business, or class of person or business, from the provisions of—
 - (i) section 7,
 - (ii) section 16,
 - (iii) section 18, or
 - (iv) section 20; and
- (c) prescribing anything required or permitted to be prescribed by this Act.

Code of Practice

26. (1) The Inspector may issue a Code of Practice with respect to the procedures to be followed by and the conduct expected of, a licensee in the operation of his company management business.

- (2) The Code of Practice may include—
 - (a) due diligence procedures;
 - (b) record keeping requirements; and
 - (c) audit requirements.

(3) The Code of Practice may make different provision in relation to different persons, circumstances or cases.

(4) The Inspector must publish the Code of Practice and any amendments thereto in the *Gazette*.

Offences

27. (1) Any person who with intent to deceive, or for any purpose of this Act, makes any representation that he knows to be false or does not believe to be true commits an offence and is liable on summary conviction to a fine of \$25,000 or to imprisonment for a term of 1 year or to both.

(2) Any person who—

- (a) assaults or obstructs the Inspector or other person in the performance of his functions under this Act;
- (b) uses any insulting language to an Inspector or other person in the performance of his functions under this Act;
- (c) by the offer of any gratuity, bribe or other inducement, prevents or attempts to prevent an Inspector or other person from performing his functions under this Act; or
- (d) contravenes any provision of this Act or regulations, for which no penalty is specifically provided;

commits an offence and is liable on summary conviction to a fine of \$5,000 or to imprisonment for a term of 1 year or to both.

(3) Where an offence under this Act is committed by a company, a director or officer of that company who knowingly authorised, permitted or acquiesced in the commission of the offence also commits the offence and is liable on summary conviction to—

- (a) a fine of the amount specified for the offence;
- (b) to a term of imprisonment as specified for the offence, if any; or
- (c) to both a fine and imprisonment.

(4) Notwithstanding that the offence is punishable only on summary conviction, the Proceeds of Criminal Conduct Act applies to the following offences—

- (a) section 4(2);
- (b) section 19(2);
- (c) section 20(4);
- (d) section 22(5);
- (e) section 27(1);

(f) section 27(2);

(g) section 27(3), where the offence committed by the company is an offence referred to in paragraphs (a) to (f).

Citation

28. This Act may be cited as the Company Management Act, Revised Statutes of Anguilla, Chapter C75.
