

BRITISH VIRGIN ISLANDS

COMPANY MANAGEMENT ACT, 1990

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SCHEDULE

Short title

1. This Act may be cited as the Company Management Act, 1990.

PART I - Preliminary

Interpretation

2.(1) In this Act,

"auditor" means a person who

(a) is qualified as an accountant by examination conducted by 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 is a current member in good standing of one of those institutes; or

(b) possesses such other qualification in accountancy as the Governor in Council, by order, approves and is in good standing with respect to such qualification;

"business of company management" means the provision of company management services for profit or reward in or from within the Virgin Islands;

"Certificate of Compliance" means the Certificate of Compliance issue under paragraph (c) of subsection (1) of section 17;

"company management" means

(a) the registration of companies under the Companies Act or the International Business Companies Act;

(b) the provision of registered agent services for companies incorporated under the International Business Companies Act;

(c) the provision of registered office services for companies incorporated under the Companies Act or the International Business Companies Act;

(d) the provision of directors or officers for companies; and

(e) the provision of nominee shareholders of companies;

"financial year" means, in relation to a licensee under this Act,

(a) the period not exceeding 53 weeks at the end of which the balance of the licensee's account is struck; or

(b) if no such balance is struck, or if a period in excess of 53 weeks is used, then a calendar year;

"Governor" means the Governor in council;

"Inspector" means the Inspector of Company Managers appointed under section 14;

"licence" means a licence granted under subsection (3) of section 4;

"licensee" means a person holding a licence under this Act;

"Registrar" means the Registrar of the High Court.

(2) For the purposes of this Act and subject to subsection (5), a company is deemed to be a subsidiary of another if

(a) that other either

(i) is a member of it and controls the composition of its board of directors, or

(ii) holds more than half in nominal value of its equity share capital; or

(b) the first-mentioned company is a subsidiary of any company that is the other's subsidiary.

(3) For purposes of subsection (2), the composition of a company's board of directors is deemed to be controlled by another company if that other company by the exercise of some power exercisable by it without the consent or concurrence of any other person can appoint or remove the holders of all or a majority of the directorships.

(4) For purposes of subsection (3), the other company is deemed to have power to appoint to a directorship with respect to which any of the following conditions is satisfied:

(a) that a person cannot be appointed to it without the exercise in his favour by the other company of such a power as is mentioned in subsection (3);

(b) that a person's appointment to the directorship follows necessarily from his appointment as a director of the other company; or

(c) that the directorship is held by the other company itself or by a subsidiary of it.

(5) In determining whether one company is a subsidiary of another

(a) any shares held or power exercisable by the other

in a fiduciary capacity are to be treated as not held or exercisable by it;

(b) subject to paragraphs (c) and (d), any shares held or power exercisable

(i) by any person as nominee for the other except where the other is concerned only in a fiduciary capacity, or

(ii) by, or by a nominee for, a subsidiary of the other not being a subsidiary which is concerned only in a fiduciary capacity, are to be treated as held or exercisable by the other;

(c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned company or of a trust deed securing any issue of such debentures are to be disregarded; and

(d) any shares held or power exercisable by, or by a nominee

for, the other or its subsidiary, not being held or exercisable as mentioned in paragraph (c), are to be treated as not held or exercisable by the other if the ordinary business of the other or its subsidiary, as the case may be, includes the lending of money and the shares are held or the power is exercisable as above-mentioned by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

(6) For purposes of this Act

(a) a company is deemed to be another's holding company if the other is its subsidiary; and

(b) a body corporate is deemed the wholly-owned subsidiary of another if it has no members except that other and that other's wholly owned subsidiaries and its or their nominees.

PART II - Licences

Requirement for licence

3. No person shall carry on the business of company management in or from within the Virgin Islands unless he has obtained a licence under this Act for the purpose.

Application for licence

4.(1) A licence is obtainable by making application therefor to the Governor in the prescribed form.

(2) An application under subsection (1) shall contain the particulars set out the

Schedule and shall be accompanied by the fee set forth in section 5.

(3) If the Governor is satisfied that an application is not against the public interest and that the applicant is qualified to carry on the business of company management, he may grant the application and issue to the applicant a licence subject to such terms and conditions as appear to the Governor necessary.

(4) Any decision to refuse to grant a licence, other than a licence in respect of a business in existence at the date of the commencement of this Act, is final and is not subject to any appeal.

(5) The Governor shall cause notice of the grant of a licence under this Act to be published in the Gazette.

Fees

5.(1) An application under section 4 shall be accompanied by a fee of \$200 which is not refundable.

(2) The issue of a licence under section 4 shall be subject to payment of

(a) a fee of \$500 if the licence is issued on or before the 30th day of June in any year; or

(b) a fee of \$250 if the licence is issued on or after the 1st day of July in any year.

Duration of licence

6. A licence issued under this Act is valid until the 31st December of the year in which it is issued but is renewable during the month of January in the following year for a further period of one year upon payment of

(a) a fee of \$500; and

(b) a fee equivalent to \$10 for each company registered under the Companies Act or International Business Companies Act, 1984, for which the licensee provides the registered office.

Exemptions from licences

7.(1) A person who is licensed under this Act is not required to be licensed under the Business, Professions and Trade Licences Act, 1989 to carry on the business of company management.

(2) This Act does not apply to a company licensed under the Banks and Trust Companies Act, 1990.

Existing businesses

8. A person who at the date of the commencement of this Act is carrying on the business of company management has a period of three months from that date within which to comply with the provisions of this Act.

Notification of change in particulars of licensee

9. Where a change occurs in the particulars of a licensee, as set out in the application for the licence, the licensee shall, as soon as possible thereafter, inform the Governor of the change.

Capitalization of company management companies

10. No licence shall be issued in respect of a company the paid up share capital of which is less than \$25,000.

Display of licence

11. A licence issued under this Act shall be prominently displayed on the premises where the business of company management is carried on.

Surrender of licence

12.(1) A licensee who has ceased to carry on the business in respect of which the licence was granted may apply to the Governor to surrender his licence if the licensee

(a) produces evidence that he has repaid all deposits and has transferred all assets held or administered on behalf of companies managed by him; or

(b) being a company, is being wound up voluntarily and produces evidence that the company is solvent and is able on demand to repay all deposits held by it and all its other creditors and has transferred all assets held or administered on behalf of companies managed by it, and the Governor may thereupon approve the surrender.

(2) In the case of an application under paragraph (b) of subsection (1), the Attorney General may apply to the court for an order that the licensee be wound up either by the court, or be subject to the supervision of the court, and where the court so orders the provisions of the Companies Act relating to the winding up of a company by or subject to the supervision of the court, mutatis mutandis, apply.

PART III - Transferability of Shares and Changes in Directors

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

13.(1) No shares or other interests, whether legal or equitable, in a company or partnership licensed under this Act shall be issued, transferred or otherwise disposed of without the prior written approval of the Governor except that the Governor may exempt any company or partnership from the provisions of this section without approval subject to such terms and conditions as the Governor thinks fit.

(2) No appointment of directors of a company licensed under this Act shall be made without the prior written approval of the Governor.

PART IV - Administration

Inspector of Company Managers

14.(1) The Governor shall appoint a public officer to be known as the Inspector of Company Managers for the purpose of ensuring the proper administration of this Act.

(2) The functions of the Inspector are

(a) to maintain a general review of company management in the Virgin Islands;

(b) where he thinks fit or when required by the Governor, to examine in such manner as he considers for the purpose of satisfying himself that all provisions of this Act are being complied with and that the licensee is in a sound financial position and is carrying on his business in a satisfactory manner, and to report to the Governor the results of such examination;

(c) to report to the Governor regarding any documents or records examined by or produced to the Inspector in the course of the performance of his functions; and

(d) to examine and make recommendations to the Governor with respect to all applications for licences.

(3) In the performance of his duties under this Act and subject to the provisions of section 20, the Inspector may at all reasonable times

(a) require a licensee to produce for examination such of his books, records and other documents that the licensee is required to maintain pursuant to section 16; and

(b) require a licensee 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.

(4) Notwithstanding subsection (3), the Inspector does not have 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 first having obtained

(a) the written consent of that company; or

(b) an order of the court made on the grounds that there are no other reasonable means of obtaining such document, matter or thing.

(5) The Inspector, with the written approval of the Governor, may authorize in writing any person to assist him in the performance of his functions under this Act.

Restrictions in use of certain terms

15.(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 the Virgin Islands that, in the opinion of the Governor, suggests the business of company management;

or

(b) make any representation in any document or in any other manner that is likely to suggest that he is carrying on the business of company management.

(2) The Governor may require a licensee who carries on the business of company management a name which is

(a) identical with that of any other person, whether within or outside the Virgin Islands, 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 or outside the Virgin Islands; or

(c) calculated to suggest falsely that he has a 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 his name and in default of compliance may revoke his licence.

Duties of licensee

16. A licensee shall maintain in respect of his business of company management

(a) such books and records as shall accurately reflect the business of the licensee;

(b) separate accounts in his books for each company the licensee manages and shall segregate the funds and other property of every such company from his own; and

(c) one or more separate bank accounts into which he shall deposit all monies held by him on behalf of each company he manages.

Annual returns, etc.

17.(1) A licensee shall within 6 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 to the Inspector his annual accounts together with written confirmation from an independent auditor that the annual accounts have been prepared as required under paragraph (a) hereof and whether or not the auditor's

certificate for such 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 information set out in the application for a licence, as modified by any subsequent notification of change in accordance with section 9, remains correct and gives an accurate summary of the business of the licensee.

(2) A licensee shall, at any time, if required by the Inspector furnish to the Inspector a Certificate of Compliance issued in accordance with paragraph (c) of subsection (1).

(3) A licensee shall, at any time, if 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.

Power of search

18.(1) If a Judge or a magistrate is satisfied by information on oath, whether oral or written, given by the Inspector or a person authorized by the Inspector

(a) that a licence has been suspended under section 21;

(b) that there is reasonable ground for suspecting that an offence against this Act has been or is being committed and that evidence of the commission of the offence is to be found at

any premises or in any vehicle, vessel or aircraft specified in the information; or

(c) that any documents, cash or securities that ought to have been produced under subsection (3) of section 14 and have not been produced are to be found at any premises or in any vehicle, vessel or aircraft specified in the information he may grant a search warrant authorizing the Inspector, together with any other person named in the warrant, 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 or the vehicle, vessel or aircraft.

(2) The Inspector or any other person authorized by a warrant to search any premises or any 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, or that vehicle, vessel or aircraft, and may seize any document, cash or security found in the premises, or in the vehicle, vessel or aircraft which he has reasonable grounds for believing ought to have been produced under subsection (3) of section 14, except 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 or a vehicle, vessel or aircraft, he may use such force as is reasonably necessary for the purpose of exercising that power.

PART V - Miscellaneous

Power of Inspector to require insurance

19. The Inspector may require a licensee to effect a policy of insurance with a reputable insurance company against to require

(a) losses arising out of claims of negligence or breach of duty

by the licensee or by any 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 a nature as the Inspector 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 the insurance is withdrawn, cancelled or not renewed, the licensee shall immediately notify the Inspector and shall cease to carry on his business until the insurance has been reinstated or replaced.

Preservation of secrecy

20.(1) Except for the purpose of the performance or exercise of his duties or functions under this Act or when lawfully required to do so by the court 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 Act, 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.

(2) Any person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding \$2,500 or to imprisonment for a term not exceeding one year or both.

Suspension of licence

21.(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) contravention of this Act or any other law, the Governor may require him forthwith to take such steps as may be necessary necessary to rectify the matter, and may forthwith suspend the licence pending the receipt of information or any explanation under paragraph (b) of subsection (3) of section 14.

(2) A suspension shall not exceed a period of 30 days, unless extended from time to time by an order of the court on application of the Inspector on the grounds that it is in the public interest that the suspension continue and specifying the duration of such period of further suspension, which shall not itself exceed 30 days each at any one time.

Revocation of licence

22.(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

(i) becomes bankrupt,

(ii) goes into liquidation,

(iii) is wound up, or

(iv) is otherwise dissolved; or

(c) if, having received a report from the Inspector regarding the licensee under paragraph (b) of subsection (2) of section 14, 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) An appeal under this section shall not operate as a suspension of the revocation.

Offences

23.(1) Any person who with intent to deceive, for any purpose of this Act makes any representation that he knows to be false or does not believe to be true, is guilty of an offence and is liable on summary conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 2 years or both.

(2) Subject to subsection (1), a person who with intent to deceive, by any act or omission contravenes any provision or requirement of this Act, is guilty of an offence and is liable on summary conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding one year or both.

(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 is liable on summary conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding 6 months or both.

(4) Where a limited liability company is convicted of an offence under subsection (3), 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 or that he took all reasonable steps to prevent the commission of the offence.

(5) Any person who

(a) assaults or obstructs the Inspector or other person in the performance of his functions under this section;

(b) uses any insulting language to an Inspector or other person in the performance of his functions under this section;

(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 section; or

(d) contravenes any provision of this Act for which no punishment is specifically provided, is guilty of an offence and is liable on summary conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding one year or both.

Appeals

24.(1) An appeal lies to the High Court from any decision of the Governor

(a) revoking a licence under subsection (2) of section 15 or under subsection (1) of section 22; or

(b) suspending a license or requiring a licensee to take certain steps which the Governor may specify under subsection (1) of section 21.

(2) An appeal against the decision of the Governor shall be by motion.

(3) The following procedure applies to appeals from the Governor.

(a) the appellant within 21 days after the day on which the Governor has given his decision, shall serve a notice in writing, signed by the appellant or his solicitor, on the Attorney General of his intention to appeal and of the general grounds of his appeal, except that any person aggrieved by a decision of the Governor may upon serving notice on the Attorney General apply to the court within 14 days after the day on which the Governor has given his decision for leave to extend the time within which notice of appeal prescribed by this section may be served, and the court upon hearing of the application may extend the time prescribed by this section as it deems fit;

(b) the Attorney General shall within 21 days of receiving the

notice of appeal, obtain a copy of the Governor's decision and transmit to the Registrar without delay a copy thereof together with all papers relating to the appeal, except that the Governor is not compelled to disclose any information if he considers that the public interest would suffer by such disclosure and a certificate given by the Governor under the Public Seal is conclusive that disclosure is not in the public interest;

(c) the Registrar shall set down the appeal for hearing on such day as is convenient, and shall cause notice of the hearing to be published, in such manner, as the court may direct; and

(d) the court may adjourn the hearing of any appeal and may, upon the hearing thereof, confirm, reverse, vary or modify the decision of the Governor or remit the matter with the opinion of the court thereon to the Governor.

(4) An appeal against a decision of the Governor shall not operate as a suspension of the decision of the Governor.

Immunity

25. 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

26. The Governor may make regulations generally for carrying the purpose and provisions of this Act into effect, and specifically

(a) prescribing anything by this Act authorized or required to be prescribed; and

(b) exempting any person or business, or class of person or business, from any provision of this Act.

Directions

27. Without limiting or affecting section 26, the Inspector may, from time to time, issue by publication in the Gazette, directions in relation to such matters as he may think fit and appropriate and failure by any licensee to comply with the directions shall be taken into consideration when any action is proposed to be taken under section 21 or 22.

Commencement

28. This Act comes into operation on such date as the Governor by proclamation published in the Gazette appoints.

Schedule

(Section 4(2))

Particulars To Be Specified In Applications

Every person or company applying for a licence under this Act shall furnish in writing to the Governor the following particulars which shall accompany the application:

(1) Name of applicant.

(2) Address in the Virgin Islands of principal office of applicant and, in the case of a company, its registered office.

(3) In the case of a company, the names and addresses of all directors.

(4) In the case of a company, the names and addresses of all shareholders.

(5) In the case of a partnership, the names and addresses of all partners.

(6) In the case of a company, the names and addresses of all officers and managers.

(7) Names and addresses of solicitors, if any, to the applicant, together with a letter from the solicitors confirming that they act for the applicant.

(8) Names and addresses of auditors of the applicant, together with a letter from auditors confirming that they act for the applicant.

(9) In the case of a company,

(a) the name and address of one of its officers who is the authorized agent in the Virgin Islands to accept on behalf of the applicant 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 for the officer named in subparagraph (a) is the authorized agent in the Virgin Islands of the applicant for the purposes of subparagraph (a).

(10) In the case of a company, evidence of the proper incorporation of the company in the Virgin Islands or in the country of incorporation, as the case may be.

(11) 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.

(12) The following:

(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; and

(b) The guarantee referred to in subparagraph (a) 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 Virgin Islands and that the court of the Virgin Islands only shall be the forum for these purposes.

(13) 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 Virgin Islands or elsewhere.

(14) Annual accounts of its holding company (if any), for the preceding 3 years and thereafter annually duly audited and certified by an independent auditor.

(15) Names of all subsidiary companies of the applicant with addresses of their

registered offices.

(16) In the case of a company or partnership, a 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 an affidavit sworn by a director, secretary or partner and duly authenticated as follows:

(a) in the case of a company incorporated in the Virgin Islands, notarised; and

(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.

(17) References, including one from a bank or trust company.

(18) 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.

(19) Statement of capital of any other company held, directly or through a subsidiary, as an asset of the applicant.