

TURKS AND CAICOS ISLANDS

**THE COMPANY MANAGEMENT (LICENSING)
ORDINANCE 1999**

(Ordinance 1 of 1999)

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TURKS AND CAICOS ISLANDS

**THE COMPANY MANAGEMENT (LICENSING)
ORDINANCE 1999**

(Ordinance 1 of 1999)

Assent..... February 26, 1999

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Commencement..... September 9, 2000

AN ORDINANCE TO PROVIDE FOR THE LICENSING AND REGULATION OF THE BUSINESS OF COMPANY MANAGEMENT AND COMPANY AGENT; AND FOR CONNECTED PURPOSES.

ENACTED by the Legislature of the Turks and Caicos Islands.

PRELIMINARY

Citation and commencement

1. This Ordinance may be cited as the Company Management (Licensing) Ordinance 1999, and shall come into operation upon such day as the Governor may appoint by notice published in the *Gazette*.

Interpretation

2. In this Ordinance –

“accountant” means a person who –

- (a) is 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 is a current member of good standing of one of those institutes; or

(b) possesses such other qualifications in accountancy recognised by the Permanent Secretary, Finance for the purposes of this Ordinance;

“auditor” means an accountant or a firm of accountants holding a currently valid certificate under the hand of the Permanent Secretary, Finance certifying that in his opinion such person is of good standing and qualified to undertake the audit of a company;

“business of company agent” means the provision in or from within the Islands for profit or reward, of the following services for companies –

(a) the incorporation or registration of companies under the Companies Ordinance;

(b) the provision of agents and officers (including company secretary or resident representative), other than agents or officers having direction or control over the assets of a company, for companies wherever incorporated or registered; and

(c) the provision of registered office services for companies wherever incorporated or registered;

“business of company management” means the provision in or from within the Islands for profit or reward, of -

(a) directors;

(b) persons having direction or control over the assets; and

(c) shareholders,

of companies wherever incorporated or registered and includes the business of company agent;

“company agent” means a person who engages in the business of company agent;

“company manager” means a person who engages in the business of company management;

“Code of Conduct” means the Code of Conduct set out in Schedule 2 (as may be amended from time to time);

“Islands” means the Turks and Caicos Islands;

"licence" means a licence granted under section 6;

"licensee" means a person holding a company management licence or, as the case may be, a company agent's licence granted pursuant to this Ordinance; and when used in relation to the word "licensee" the words "it", "its" and "itself" shall include "him", "his" and "himself" respectively;

"Superintendent" means the Superintendent of Company Management.

3. For the purposes of an application for a licence under this Ordinance, a person has a controlling interest in a company in the following circumstances –

Controlling
interest defined

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

LICENSING OF COMPANY MANAGERS AND COMPANY AGENTS

4. No person shall carry on the business of company management or the business of company agent in or from within the Islands without being the holder of a licence issued under this Ordinance.

Restriction on
carrying on the
business of
company
management and
company agent

5. An application for a licence shall be made to the Permanent Secretary, Finance in the form set out in Schedule 1, and shall be accompanied with –

Application for a
licence
Schedule 1

- (a) the prescribed fee ;
- (b) a list of the names and addresses of the persons who it is proposed would act as directors, secretary or resident manager of the applicant;
- (c) particulars of the qualifications and experience of the applicant;

Permanent
Secretary
Finance may
grant licence

- (d) the documents in support of the application; and
- (e) such other documents and such further particulars as the Permanent Secretary, Finance may require to be furnished to him in any case for the purpose of determining the application.

6. The Permanent Secretary, Finance upon being satisfied that an applicant –

- (a) is in all respects, by virtue of integrity and solvency a fit and proper person to be issued with a licence ;
- (b) has adequate knowledge and practical experience in the management and administration of companies; or is a person qualified by his knowledge of company law and the management and administration of companies;
- (c) is capable of complying with the provisions of this Ordinance and the terms and conditions of any licence granted hereunder;
- (d) has paid the prescribed licence fee;
- (e) has a manager, being –
 - (i) an individual who is ordinarily resident in the Islands; and who has adequate knowledge and practical experience in the management and administration of companies or who is qualified by his knowledge of company law and the management and administration of companies ;
or
 - (ii) a company which has as a manager an individual as described in subparagraph (i); and
- (f) if a company, has articles of association which do not authorize the issue of any shares in the company as bearer shares,

may grant the applicant a licence in the prescribed form to carry on the business of company management or as the case may be, the business of company agent, and shall cause a notice to that effect

to be published in the Gazette within thirty days of the grant of the licence.

7. (1) A person applying for a licence under section 5 shall pay to the Permanent Secretary, Finance such fees as may be prescribed; and different fees may be prescribed for different circumstances;

Fees

(2) In the event of the application being refused the Permanent Secretary, Finance shall refund the fees to that person less an administrative charge of \$200.

(3) A licensee shall, not later than 31st March in each year following the year in which it was issued with a licence, pay to the Permanent Secretary, Finance such fees as may be prescribed.

8. (1) Subject to the provisions of this section, the Permanent Secretary, Finance may grant a licence upon such conditions as he thinks fit and may vary such conditions at any time during the currency of the licence.

Conditions of a licence

(2) Subject to subsection (3), it shall be a condition of every licence that –

(a) the licensee shall comply with paragraphs 1, 2, 4(2) and 6(a), (b), (c), (e) and (f) of the code of conduct set out in Schedule 2;

Schedule 2

(b) the licensee shall notify the Permanent Secretary, Finance within fourteen days of any change or proposed change in the information contained in, or supplied in connection with the application for a licence;

(c) the licensee shall maintain sufficient capital to meet liabilities as and when they fall due;

(d) the licensee shall send to the Permanent Secretary, Finance, not later than 31st March in each year –

(i) a certificate signed by a director or partner of or the sole proprietor where he is, the licensee or such other person as the Permanent Secretary, Finance may approve, stating that to the best of his knowledge and belief the licensee has conducted its business in compliance with the Ordinance and any conditions attached to its licence; and

- (ii) a list of all companies for which it has acted in the year ending 31st December of the immediately preceding year specifying the type of company and indicating any additions to or deletions from, the immediately previous list.
 - (e) the licensee shall pay the prescribed annual licensing fee;
 - (f) the licensee shall cause to be kept such books of accounts as are necessary to give a true and fair view of the licensee's affairs with respect to –
 - (i) all sums of money received and expended by the licensee and the manner in respect of which the receipt and expenditure take place;
 - (ii) all sales and purchases by the licensee; and
 - (iii) the assets and liabilities of the licensee; and
 - (g) the Permanent Secretary, Finance may at any time if he considers it desirable to do so, make an order requiring the licensee –
 - (i) to submit to him its accounts within such time as he may specify; and
 - (ii) to have its accounts audited by an auditor and sent to him within such time as he may specify.
- (3) It shall be a condition of every company manager's licence that the licensee shall –
- (a) comply with paragraphs 3, 4(1), 5, 6 (d) and 7 of the code of conduct set out in Schedule 2;
 - (b) effect a policy of insurance with a company approved by the Permanent Secretary, Finance against any or all of the following risks -
 - (i) losses arising out of claims of negligence or breach of duty by the licensee or by an employee of the licensee;
 - (ii) dishonesty of the licensee or employees of the licensee;
 - (iii) loss of documents,

in such amount and of such nature as the Permanent Secretary, Finance may determine to be fit and proper, having due regard to the nature and type of business carried on by the licensee; and

(c) notify the Permanent Secretary, Finance within fourteen days of –

(i) any change or proposed change to;

(ii) withdrawal or cancellation of ; or

(iii) failure to renew,

an insurance policy effected under paragraph (b).

9. A licence shall come into force on the day on which it is issued and, unless revoked under the provisions of this Ordinance, shall remain in force –

(a) if issued on or before 31st March in any year, until the expiration of 31st March in the immediately following year; or

(b) if issued on or after 1st April in any year, until the expiration of 31st March in the immediately following year.

10. (1) An application for renewal of a licence may be made to the Permanent Secretary, Finance before the expiry of a licence and he may renew the licence either upon the same or different conditions.

(2) An application for renewal of a licence under subsection (1) shall be made in such form as may be prescribed or, until a form is prescribed, in such form as the Permanent Secretary, Finance may require and shall be accompanied with –

(a) the documents in support of the application; and

(b) such other documents and such particulars as the Permanent Secretary, Finance may require to be furnished to him for the purpose of determining the application.

(3) If an application for renewal under subsection (1) is received by the Permanent Secretary, Finance before the expiry of the licence, the licensee shall be deemed to be licensed until the

Licence in force

Application for renewal of licence

decision on renewal takes effect notwithstanding that that decision may take effect after the expiry of the existing licence.

(4) Without prejudice to the generality of the discretion of the Permanent Secretary, Finance under subsection (1), the Permanent Secretary, Finance shall not renew a licence under this section unless he is satisfied that the licensee making the application has during the continuance of the existing licence, fulfilled and is, at the time the application is made, continuing to fulfill the requirements of this Ordinance.

Licence to be displayed

11. A licence shall be prominently displayed on the premises where the business of company management or company agent is being carried on.

Carrying on business detrimental to the public interest

12. (1) Where the Permanent Secretary, Finance is of the opinion that a licensee is-

- (a) carrying on the business of company management or company agent in a manner detrimental to the public interest, or to the interest of the companies for which it is providing services or to any of them;
- (b) acting in contravention of this Ordinance; or
- (c) acting in breach of any term or condition of its licence,

he may serve on the licensee a notice in writing requiring it to take such action as he considers appropriate within a specified period of time (being not less than fourteen days from the date of service of notice) to rectify the matter.

(2) Where the licensee fails to comply with a notice served under subsection (1), the Permanent Secretary, Finance may order an examination to be held by the Superintendent into the affairs of the licensee under section 18(3)(d), and shall inform it in writing of his decision.

(3) Where an examination has been ordered under the provisions of this section, the licensee shall not take on any new business until after the Permanent Secretary, Finance has made his decision on the report of the Superintendent.

13. (1) Subject to this section, the Permanent Secretary, Finance may revoke a licence -

Revocation of licence

- (a) if the licensee ceases to carry on the business in respect of which it has been issued with the licence;
- (b) if the licensee goes into liquidation, is wound up or dissolved, is made bankrupt or enters into an arrangement or a composition with its creditors;
- (c) if, having received a report from the Superintendent upon the licensee under section 18(3)(d), he is of the opinion that the licensee is no longer a fit and proper person to continue to be licensed under this Ordinance.

(2) If the Permanent Secretary, Finance proposes to revoke a licence, he shall before doing so, give the licensee notice in writing of his proposal and his reasons for it.

(3) A notice given under subsection (2) shall also state that within twenty-one days of service, the licensee may make representations in writing to the Permanent Secretary, Finance concerning the matter; and the Permanent Secretary, Finance shall not revoke the licence without considering any representations received within such period.

(4) If, after considering any representations made by the licensee, the Permanent Secretary, Finance nevertheless decides to revoke the licence, he shall-

- (a) serve on the licensee notice in writing of revocation of the licence and shall inform him of his right of appeal under section 16; and
- (b) cause to be published in the Gazette a notice of revocation of the licence.

(5) A licensee, on receipt of a notice of revocation under subsection (4) shall, not later than –

- (a) thirty days after service of notice of revocation; or
- (b) thirty days after the date of the lodging of an appeal against the decision of the Permanent Secretary, Finance,

whichever is later serve on the directors and beneficial owners of each of its client companies notice in the prescribed form.

(6) A licensee who fails to serve the notice required by subsection (5) is guilty of an offence and liable on summary conviction to a fine of \$1,000.00.

Transfer to
another licensee.

14. (1) A client company in respect of which notice was served upon its directors and beneficial owners pursuant to section 13(5) shall, within thirty days of receipt of the notice, make arrangements satisfactory to the Permanent Secretary Finance for another licensee to assume the duties formally undertaken by the licensee whose licence has been revoked.

(2) The Permanent Secretary, Finance may where a company has not made the arrangements required by subsection (1), apply to the Supreme Court for directions and may with the approval of and subject to the Order of, the Court, take such action as appears necessary in the interest of the client company and its creditors.

Surrender of
licence

15. (1) Subject to this section, a licensee may at any time surrender its licence to the Permanent Secretary, Finance.

(2) A licensee which intends to cease carrying on business shall, not less than thirty days before the cessation of the business, notify the Permanent Secretary, Finance in writing of its intention to do so and of the reasons for it.

(3) The licensee shall as soon as practicable but not later than seven days before the date of cessation of business, serve on the Permanent Secretary, Finance its proposals respecting the arrangements made -

(a) for the transfer of assets held or administered on behalf of companies managed by it, and of the repayment of deposits held by it;

(b) for the transfer of -

(i) the offices of directors, officers, agents and persons having direction or control over the assets;

(ii) shareholder services; and

(iii) the provision of registered office services presently provided by the licensee.

16. (1) Subject to subsection (2), an appeal lies to the Supreme Court from a decision of the Permanent Secretary, Finance –

Appeals against
decisions of
Permanent
Secretary,
Finance

(a) refusing the grant of a licence to an applicant who, on the commencement of this Ordinance, carried on the business of company management or company agent;

(b) revoking a licence under section 13.

(2) A decision of the Permanent Secretary, Finance refusing the grant of a licence in respect of an applicant who has not commenced business on the date of commencement of this Ordinance is final and is not subject to any appeal.

(3) An appeal under this section shall not, unless otherwise ordered by the Court, operate as a stay of the decision in respect of which the appeal is made.

(4) Schedule 3 has effect with respect to appeals made under this section.

Schedule 3

17. (1) Where any interest in the licensee is to be transferred from one person to another, or where a new or additional officer or agent of the licensee is to be appointed, the licensee shall notify the Permanent Secretary, Finance in writing of such proposed transfer or appointment.

Approval of
transfer of
interests, etc. in
licensee

(2) Notwithstanding any other Ordinance or rule of law to the contrary, and except for the transmission of an interest by operation of law -

(a) no transfer of any interest in a licensee; and

(b) no appointment of any new or additional officer or agent of the licensee,

shall have effect unless such transfer or appointment shall have first been approved by the Permanent Secretary, Finance.

SUPERINTENDENT OF COMPANY MANAGEMENT

Superintendent
of Company
Management; his
functions

18. (1) The Governor may by instrument in writing appoint a Superintendent of Company Management whose office shall be a public office.

(2) The appointment of the Superintendent of Company Management shall be published in the Gazette.

(3) The functions of the Superintendent shall be -

(a) to maintain a general review of the business of company management and company agents in the Islands;

(b) to ensure that the provisions of this Ordinance are complied with;

(c) to examine and make recommendations to the Permanent Secretary, Finance with respect to every application for a licence; and

(d) when he thinks fit or when so required by the Permanent Secretary, Finance, to examine in such manner as he considers necessary the affairs or business of any licensee for the purpose of satisfying himself that the licensee is complying with the terms and conditions of its licence and with the provisions of this Ordinance and report to the Permanent Secretary, Finance the results of such examination.

(4) The Superintendent, with the written approval of the Permanent Secretary, Finance, may authorise in writing any person to assist him, whether generally or in relation to a particular matter, in the performance of his functions under this Ordinance.

Duty of licensee
to furnish
documents, etc.

19. (1) A licensee shall, if so required by the Superintendent for the purpose of his functions under this Ordinance -

(a) furnish the Superintendent with a certificate of compliance signed by a director or partner or the sole proprietor where he is, the licensee certifying that to the best of his knowledge and belief the licensee is complying with the provisions of this

Ordinance and with the terms and conditions of its licence;

- (b) produce for examination such books, books of accounts, records and other documents which the licensee is required to keep pursuant to this Ordinance;
- (c) provide a sworn declaration of solvency to the effect that the licensee is able to meet its liabilities as and when they fall due, a balance sheet signed by a director or partner of or the sole proprietor where he is, the licensee and such further information as the Superintendent may require;
- (d) provide such other information or explanation as the Superintendent may reasonably require.

(2) Nothing in this section shall require a licensee to produce any documents relating to the affairs of a client of the licensee or documents which are subject to legal privilege.

20. If a judge is satisfied on information on oath given by the Superintendent that-

- (a) a licensee has failed to comply with a requirement of the Superintendent made under section 19 to produce such documents or evidence; or
- (b) there are reasonable grounds for suspecting that an offence against this Ordinance 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,

he may grant a search warrant authorising the Superintendent, together with any other person named in the warrant, to enter and search such premises, vehicle, vessel or aircraft and to seize any documents and evidence found therein for the purpose of the inquiry.

21. Except for the purpose of performing his functions under this Ordinance or when lawfully required to do so by a court of competent jurisdiction or under the provisions of any other law, neither the Superintendent nor any person acting under his authority nor a person performing duties under this Ordinance shall disclose any information relating to any application made

Powers of search

Confidentiality

under this Ordinance, or to the affairs of a licensee or of a company managed by a licensee, which he has acquired in the performance of his duties or the exercise of his functions under this Ordinance.

Request for assistance by overseas regulatory authority

22. (1) For the purpose of assisting an overseas regulatory authority which has requested information in connection with inquiries being carried out by it, the Superintendent acting in his discretion may disclose to it such information which he has acquired in connection with the performance of his duties or in the exercise of his functions under this Ordinance as he considers appropriate.

(2) An "overseas regulatory authority" means an authority which in a country or territory outside the Islands exercises any functions corresponding to the functions of the Superintendent under this Ordinance, the functions of Superintendent of Banking under the Banking Ordinance, the functions of Superintendent of Trustees under the Trustees (Licensing) Ordinance, the functions of Superintendent of Insurance under the Insurance Ordinance or the functions of the Superintendent of Mutual Funds under the Mutual Funds Ordinance.

(3) The Superintendent shall not disclose any such information to the authority unless he is satisfied -

- (a) that the information requested by the authority is for the purposes of its regulatory functions;
- (b) that the request is not for information that is related directly or indirectly to the imposition, calculation and collection of taxes or the enforcement of exchange control regulations; and
- (c) that the authority is subject to adequate legal restrictions on further disclosures.

(4) The Governor acting in his discretion may from time to time issue guidelines to the Superintendent concerning the discharge of his functions under this section; and the Superintendent shall have regard to any such guidelines in the discharge of his functions under this section.

(5) Before making any guidelines under subsection (4), the Governor shall consult Executive Council.

Immunity

23. No liability attaches to the Permanent Secretary, Finance, the Superintendent, or any person acting under authority of the Permanent Secretary, Finance or the Superintendent for an

act done in good faith in the discharge or purported discharge of his functions under this Ordinance.

SUPPLEMENTAL

24. (1) A person that with intent to deceive for any purpose of this Ordinance makes any representation that it knows to be false or does not believe to be true, commits an offence and is liable on summary conviction to a fine of \$20,000 or imprisonment for twelve months or both.

Offences

(2) A person that carries on the business of company management or the business of company agent in or from within the Islands –

(a) when not in possession of a valid licence issued under this Ordinance;

(b) in contravention of the provisions of this Ordinance or any term or condition of the licence;

commits an offence, and is liable on summary conviction to a fine of \$20,000.

(3) Except as otherwise provided by this Ordinance, a person that, not being the holder of a licence under this Ordinance or exempt from the requirement to hold a licence, in any matter holds itself out as or pretends to be or makes use of any words or description implying that it –

(a) is, licensed under this Ordinance to carry on the business of company management or company agent; or

(b) is, entitled, either alone or with others, to carry on such business

commits an offence, and is liable on summary conviction to a fine of \$20,000.

(4) Where a company commits an offence under this Ordinance, every director and every officer concerned with the management of the company is liable with the company to be convicted of 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.

Regulations

25. (1) The Governor in Council –

- (a) may make regulations prescribing anything which under this Ordinance is required to or may conveniently be prescribed; and
- (b) may, by Order published in the Gazette, amend Schedules 1 and 3 to this Ordinance.

(2) The Governor in Council after consulting with representatives of the financial services industry, may from time to time amend any provisions of the Code of Conduct set out in Schedule 2, and may repeal and replace the same.

Transitional

26. Notwithstanding section 4 a person who, immediately before the date of the coming into operation of this Ordinance, was carrying on the business of company agent or company manager and who would, but for this section, be required by virtue of section 4 to be licensed under this Ordinance on and after that date, shall be entitled to act as a company agent or company manager without a licence –

- (a) for the period of 90 days beginning with that date;
or
- (b) if before the expiration of that period he applies for a licence, until the licence is issued or finally refused or the application is withdrawn.

SCHEDULE 1

(Section 5)

**APPLICATION FOR LICENCE UNDER
THE COMPANY MANAGEMENT (LICENSING) ORDINANCE**

PART I: PRELIMINARY

1. Name and address of principal or registered office of company, partnership or individual proposed to be licensed .

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(Applicant to complete Part II or III as appropriate and to send the application to the Permanent Secretary, Finance accompanied by the appropriate fee (which is not refundable)).

2. Name and address of subsidiary companies, associates or individuals, to be included in the licence.

PART II: APPLICANTS THAT ARE COMPANIES

3. Address/es where applicant and (if applicable) its parent company carry on the business of company management or company agent.

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4. State whether applicant was incorporated or registered under the Companies Ordinance 1981 or incorporated and registered outside the Islands, giving in either case the date of incorporation or registration, and the registration number.

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(Attach (i) copy of the memorandum and articles of association, charter or statutes of the applicant or other instrument constituting the applicant, certified under the seal of the Registrar of Companies or the public seal of the country where the applicant was incorporated and if the instrument is not written in the English language, a certified translation thereof and (ii) proof of incorporation and registration in or outside the Islands).

10.5. Names and addresses of directors, managers or other persons who control the company.

Formatted: Bullets and Numbering

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(Attach proof by way of certificates, references, CVs or otherwise that each person herein named is sufficiently experienced and knowledgeable in the business of company management or company agent and is a fit and proper person (by virtue of integrity, solvency and competence) to conduct the business).

6. Names, addresses, nationalities and proportions of shares held by individuals –

(a) who are registered shareholders holding ten per-cent or more of the issued share capital of the applicant:

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(Attach annexes if necessary)

(b) who are beneficial owners of ten per-cent or more of the issued share capital of the applicant but are not registered as shareholders

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(Attach annexes if necessary)

7. State names, addresses, registered or head offices, countries or places of incorporation and proportion of shares held by companies –

(a) that are registered shareholders holding ten per-cent or more of the issued share capital of the applicant

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(Attach annexes if necessary)

(b) that are beneficial owners of ten per-cent or more of the issued share capital of the applicant but are not registered as shareholders

knowledgeable in the business of company management or company agent and fit and proper to conduct the business, and (iii) a certified copy of the partnership agreement in the case of partnership).

10. Does the applicant intend to employ a person as a manager or senior officer with responsibility for the management of the companies in respect of which the applicant proposes to act as company manager or provide it with company services? Yes/No. *(If "Yes", give that person's name and address, attaching the appropriate references and proof required by paragraph 2 and proof of the person's status as a Belonger or of his right of residence in the Islands).*

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11. Date for drawing up the annual accounts of the applicant *(Attach a statement of assets and liabilities, duly certified, at the end of the month immediately preceding this application)*

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SCHEDULE 2

(Sections 8 and 25)

CODE OF CONDUCT

All licensees are required to comply with the provisions of paragraphs 1, 2, 4(2) and 6(a), (b), (c), (e) and (f) of this Code of Conduct. The remainder of this Code applies to company managers only. Breaches of this Code may lead the Permanent Secretary, Finance to take enforcement action. A series of breaches, which may be minor in themselves, may indicate that a licensee is not a fit and proper person to hold a licence.

PROPER MANAGEMENT OF YOUR BUSINESS

1. A licensee should ensure that at all times –
 - (a) it has a resident manager of its business in the Islands;
 - (b) it maintains sufficient capital to enable it to meet its liabilities as they fall due.

KNOW YOUR CUSTOMER

2. (1) A licensee should use its best endeavours, including taking up references to identify –
 - (a) the beneficial owners of all voting or dividend earning shares of the companies for which it acts (where those shares comprise more than five per-cent of the issued capital) or persons who exercise control over such shares;
 - (b) in the case of bearer shares, the person or persons in accordance with whose instructions the licensee is accustomed to act;
 - (c) shadow directors;
 - (d) persons to whom the directors have granted a power of attorney;

and shall ensure that the information is kept up to date.

(2) For the purposes of this paragraph, “shadow director” in relation to a company, means a person in accordance with whose directions or instructions the directors of the company are accustomed to act but so that a person is not deemed a shadow director by reason only that the directors act on advice given by him in a professional capacity.

RECORDS OF CLIENTS

3. A licensee should keep at its offices the following records in respect of each of its client companies in respect of which it acts as a company manager –

- (a) names and addresses of directors and other officers and agents of the company;
- (b) name and address of beneficial owner; and where the business is done through a professional intermediary, name and contact address of the professional intermediary;
- (c) name and address of the principal requesting formation or registration of the company;
- (d) powers of attorney and other instruments relating to the control of the company.

MONITOR THE ACTIVITIES OF YOUR COMPANIES

4. (1) A licensee should use its best endeavours and set up any system necessary, to enable it to monitor the activities of the companies it manages, to ensure that the companies are not being used for purposes which would be illegal if carried out in the Islands.

(2) A licensee should use its best endeavours to ensure that the companies in respect of which it acts as a company manager or in respect of which it acts as a company agent, are not used for the purposes of holding assets arising from or facilitating the commission of criminal activity, or for any acts which would infringe the law of the Islands.

(3) A licensee should maintain board meeting minute books and general meeting minute books or keep copies of board meeting and general meeting, minutes in its offices;

(4) A licensee should set up any system necessary to ensure that the licensee is made aware of the transactions effected through bank, brokerage and other accounts of the companies in respect of which it acts as a company manager.

POWERS OF ATTORNEY

5. A licensee should ensure that powers of attorney are -

- (i) granted for specific purposes;
- (ii) limited in time;
- (iii) not capable of being further delegated by the grantee; and
- (iv) granted only where the licensee regards the donee to be particularly trustworthy by virtue of long-standing relationship or similar connections.

CUSTOMER AGREEMENT

6. A customer agreement should be entered into between a licensee and each of the companies managed by it or for which it provides company services. The agreement should specify –

- (a) the nature of the services to be provided;
- (b) the fees to be charged and how such fees may be collected;
- (c) how instructions can be given;
- (d) any bank account arrangement made or administered by the licensee;
- (e) provisions for terminating the agreement and the implications for the client company of such termination;
- (f) a requirement for the client to notify the licensee of any changes in its business activities.

AVOIDANCE OF CONFLICT OF INTEREST

7. A licensee should ensure that it avoids a conflict of interest between it and its client companies and between one client company and another. A licensee should in respect of each company for which it provides services –

- (a) maintain separate accounts in its books;
- (b) segregate the funds and other property of each company;
- (c) maintain one or more separate bank accounts into which it shall deposit all moneys held by it on behalf of each company.

SCHEDULE 3

(Section 16)

PROCEDURE ON APPEAL

1. The appellant, within twenty-one days after the day on which the Permanent Secretary, Finance has given the decision which is the subject of the appeal, shall serve a notice in writing, signed by the appellant or his attorney, on the Attorney General of his intention to appeal and of the general grounds of his appeal.
2. The Attorney General shall, within twenty-one days of receiving the notice of appeal, obtain a copy of the decision of the Permanent Secretary, Finance and transmit to the Registrar of the Supreme Court without delay a copy thereof, together with all papers relating to the appeal.
3. 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.
4. The court may adjourn the hearing of any appeal and may, upon the hearing thereof, confirm, reverse, vary or modify the decision of the Permanent Secretary, Finance or remit the matter with the opinion of the court thereon to the Permanent Secretary, Finance.