ANGUILLA

REVISED STATUTES OF ANGUILLA

CHAPTER C75

COMPANY MANAGEMENT ACT

Showing the Law as at 31 December 2022

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
Act 4/2013, in force 25 September 2013
Act 2/2021, in force 1 February 2021

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COMPANY MANAGEMENT ACT

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COMPANY MANAGEMENT ACT

PRELIMINARY PROVISIONS

Interpretation

1. (1) In this 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 Commission as a reputable auditing association;

(Act 4/2013, s. 53)

"certificate of compliance" means a certificate of compliance issued under section 17(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 Business Companies Act;

(b) a foreign company incorporated or continued under the 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 Business Companies Act or a foreign company registered under Part 14 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,

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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;

(Act 4/2013, s. 53)

"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 19;

"Regulatory Code" means a Regulatory Code issued under section 62 of the Financial Services Commission Act.

(Act 4/2013, s. 53)

(2) For greater certainty, a body corporate—

(a) that is incorporated or continued under the 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.

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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.

(Act 4/2013, s. 53)

(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 one year or to both.

Application for licence

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

(Act 4/2013, s. 53)

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

(a) contain such information as the Commission may direct and be in the approved form; and

(Act 4/2013, s. 53)

(b) be accompanied by the documentation specified in the approved form or prescribed.

(Act 4/2013, s. 53)

Issue of licence

6. (1) If the Commission is satisfied—

(a) that an applicant—

(i) is a fit and proper person, and

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(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;

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

(Act 4/2013, s. 53)

(2) The Commission shall cause notice of the issue of a licence to be published in the *Gazette*.

(Act 4/2013, s. 53)

(3) The Commission 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.

(Act 4/2013, s. 53)

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 15 January of each year and any penalties for late payment of such fee as may be prescribed by regulation.

(Act 4/2008, s. 1)

Directions for reporting of information

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

(Act 4/2013, s. 53)

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(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 Commission in accordance with directions issued under subsection (1) commits an offence and is liable on summary conviction to a fine of $5,000.

(Act 4/2013, s. 53)

Display of licence

10. (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

11. (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;

(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; or

(c) evidence that all books or records of each company managed by him, and such books and records as may be required by the Regulatory Code, have been transferred to and are retained by a custodian located in Anguilla and acceptable to the Commission.

(Act 2/2021, s. 2)

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

(Act 4/2013, s. 53)

(3) In the case of the surrender of a licence under subsection (1)(b) or (2), the Commission 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[*].

(Act 4/2013, s. 53)

[*] Business Companies Act, 2022 (Act 2/2022) *repealed* the Companies Act, R.S.A. c. C65.

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Revocation of licence

12. Where the Commission revokes a licence pursuant to section 36 of the Financial Services Commission Act, the former licensee is required to produce evidence that all books or records of each company managed by him, and such books and records as may be required by the Regulatory Code, have been transferred to and are retained by a custodian located in Anguilla and acceptable to the Commission.

(Act 2/2021, s. 3)

TRANSFER OF SHARES AND APPOINTMENT OF DIRECTORS

Transfer of shares

13. (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 Commission.

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

(Act 4/2013, s. 53)

Appointment of directors

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

(Act 4/2013, s. 53)

ADMINISTRATION

Restrictions on 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 Anguilla that, in the opinion of the Commission, 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 Commission may prescribe words that, in its opinion, suggest company management business.

(3) The Commission 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;

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(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.

(Act 4/2013, s. 53)

(4) A person, other than a licensee, who—

(a) contravenes subsection (1)(b); or

(b) uses a word prescribed by the Commission 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

16. (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 Regulatory Code.

(Act 4/2013, s. 53)

(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 one year or to both.

(Act 4/2013, s. 53)

Annual accounts, certificate of compliance

17. (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 Commission the annual accounts together with written confirmation from an independent auditor that the annual accounts have been prepared as required under

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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

(Act 4/2013, s. 53)

(c) furnish to the Commission a certificate of compliance issued by an independent auditor that the licensee is in compliance with his obligations under section 9.

(Act 4/2013, s. 53)

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

(Act 4/2013, s. 53)

(3) A licensee shall, when required by the Commission, produce to the Commission 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.

(Act 4/2013, s. 53)

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

(a) in the case of a contravention of subsection (1)(a), to a fine of $10,000 or to imprisonment for a term of one year or to both;

(b) in the case of a contravention of subsection (1)(b) or (2), to a fine of $10,000; or

(c) in the case of a contravention of subsection (1)(c) or (3), to a fine of $5,000.

MISCELLANEOUS

Insurance

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

(Act 4/2013, s. 53)

(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 Commission may stipulate,

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

(Act 4/2013, s. 53)

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(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 Commission.

(Act 4/2013, s. 53)

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

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

(Act 4/2013, s. 53)

(b) he ceases to maintain the insurance.

(Act 4/2013, s. 53)

(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 one year or to both.

Regulations

19. 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 14,

(iii) section 15, or

(iv) section 17; and

(c) prescribing anything required or permitted to be prescribed by this Act.

(Act 4/2013, s. 53)

Offences

20. (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 one year or to both.

(2) Any person who contravenes any provision of this Act or the 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 one year or to both.

(Act 4/2013, s. 53)

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(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) a term of imprisonment as specified for the offence, if any; or

(c) both a fine and imprisonment.

Citation

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

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