Revised Regulations of Anguilla: S13-11

SECURITIES ACT (R.S.A. c. S13)

UNCERTIFICATED SECURITIES REGULATIONS

Note: These Regulations are enabled under section 174 of the Securities Act, R.S.A. c. S13.

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Interpretation

1. In these Regulations—

"Act" means the Securities Act;

"Agreement" means the Agreement establishing the Eastern Caribbean Securities Regulatory Commission made on the 24th day of November 2000, the text of which is set out in the Schedule to the Securities Act;

"approved form" means a form approved by the Commission pursuant to section 17;

"articles" means articles within the meaning of section 1 of the Company Act;

"broker dealer" means a broker dealer within the meaning of section 1 of the Act;

"certificate" means any certificate, instrument or other document of, or evidencing, title to securities;

"charge" includes any mortgage, assignment, pledge or lien (other than a lien of a company on shares issued by it) on any security for securing money or money's worth;

"clearing agency" means the holder of a licence to operate a clearing agency granted by the Commission or a company which is deemed by the Act to be the holder of such licence;

"Commission" means the Eastern Caribbean Securities Regulatory Commission established by Article 3 of the Agreement;

"Companies Act" means the Companies Act[*];

"company" means a company within the meaning of section 1 of the Act;

"corporate debt" means a debt security issued by a company;

"court" means the Eastern Caribbean Supreme Court or any court with similar jurisdiction established in succession to that Court;

"custodian" means the holder of a licence to operate as a custodian granted by the Commission or a company which is deemed by the Act to be the holder of such licence;

"debt securities" means securities other than shares;

"dematerialised instruction" means an instruction sent or received by means of a registry system pursuant to these Regulations;

"enactment" means a statute or regulation having the force of law;

"holder", in relation to securities, means the person who is recorded on a register of securities as holding title to those securities and "hold" shall be construed accordingly;

"intermediary" includes a broker dealer, a clearing agency and a custodian;

"issuer" means an issuer within the meaning of section 1 of the Act;

[*] Business Companies Act, 2022 (Act 2/2022) *repealed* the Companies Act, R.S.A. c. C65.

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"listed" means listed on a securities exchange and 'list' shall be construed accordingly;

"member" means the holder of shares of a company;

"officer", in relation to a company, means a director or liquidator;

"on-line issue service" means a service provided by electronic means by a share registry to a company to enable the company to access its register of members;

"person" includes a company and an individual;

"private transfer" means a transfer of a security or units of that security by a member or holder of a security to another person effected directly without the services of a securities exchange;

"register of debt securities" means the register of holders of listed debt securities maintained by a share registry;

"register of members", in relation to a listed company or a company which proposes to list, means the register of members of a company maintained by a share registry;

"register of securities" means either a register of members or a register of debt securities;

"registry account number" means a number issued by a share registry to a holder in respect of securities held by him whether solely or jointly with another person or persons;

"registry system" means a computer based system, and procedures, operated by a share registry which enables title to units of a security to be evidenced and transferred without a written instrument and which facilitates supplementary and incidental matters;

"securities" has the meaning assigned to it under section 1 of the Act;

"securities exchange" means the holder of a securities exchange licence granted by the Commission under the Act or a company which is deemed by the Act to be the holder of such licence;

"share" means a share (or stock) in the capital of a company;

"share registry" means the holder of a licence to operate a share registry granted by the Commission or a company which is deemed by the Act to be the holder of such licence;

"trustee in bankruptcy" means a trustee in bankruptcy of a debtor's estate appointed under the Bankruptcy Act or any enactment which replaces the Bankruptcy Act, or any enactment which replaces that Act;

"uncertificated", in relation to a unit of a security, means that title to the unit which is recorded on a register of securities and may, pursuant to these Regulations, be transferred by means of a registry system;

"unit", in relation to a security, means the smallest possible transferable unit of the security (for example, a single share).

Keeping of registers of members

2. (1) In respect of every listed company, there shall be a register of members, kept and entered up by a share registry on its registry system in accordance with these Regulations.

(2) Any company which proposes to list may, before listing, if its articles permit, contract with a share registry for its register of members to be kept and entered up by the share registry on its registry system in accordance with these Regulations.

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(3) References in the Companies Act[†] to a company's register of members shall, unless the context otherwise requires, be construed in relation to a listed company or a company to which subsection (2) applies as referring to the company's register of members kept pursuant to these Regulations.

(4) When a register of members is established pursuant to subsection (1) or (2), the title to shares of the company shall thereafter be evidenced and transferred in the manner stipulated by these Regulations and, subject to section 23, share certificates issued by the company shall cease to have effect.

(5) In relation to every listed company and every company to which subsection (2) applies, the share registry shall enter on the register of members—

(a) in alphabetical order, the full name and address of each member who is an individual, or in the case of a corporate body its full name, the place where it is incorporated and the address of its registered or principal office;

(b) with the names and addresses referred to in paragraph (a), a statement of the shares held by the member and, where the company has more than one class of issued shares, distinguishing each share by its class;

(c) an identification number distinguishing each member from the other members;

(d) the registry account number of each member; and

(e) the total amount paid up on the shares.

(6) Where the company has converted any of its shares into stock, the register of members shall show the amount and class of stock held by each member, instead of the amount of shares, and the particulars specified in paragraph (5)(b).

(7) Where any share of the company is held by 2 or more persons, the register of members shall contain the names and addresses of all such persons.

(8) An entry relating to a member of a company who has ceased to hold any shares in the company may be removed from the register of members after the expiration of 10 years beginning with the day on which the member ceased to hold any such shares.

(9) No notice of any trust, expressed, implied or constructive, shall be entered on a register of members, or a part of such a register, or be receivable by a share registry, but this provision shall not prohibit the entry of liens and charges pursuant to sections 7 and 8.

(10) Every listed company shall within 30 days of its acceptance for listing on a securities exchange enter into a contract with a share registry for the share registry to keep its register of members pursuant to these Regulations.

(11) On entering into a contract with a share registry for the keeping by the share registry of its register of members pursuant to subsection (2) or (8), the company shall immediately close its register of members and transfer it to the share registry.

(12) The company and the share registry shall complete the transfer of the register of members within 30 days and the register shall be re-opened by the share registry within 7 days after the transfer is completed.

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

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(13) The share registry shall—

(a) within 30 days of the opening of a register of members pursuant to this section at its cost provide each member whose name appears on the register of members with a written statement sent by ordinary mail containing—

(i) the member's identification number,

(ii) the member's registry account number,

(iii) the name and address of the member as it appears on the registry of members, and

(iv) the amount and class of shares or stock held by the member; and

(b) at any time on the written request of a member and on payment by the member of a fee (of an amount approved by the Commission), provide the member with a written statement containing the information set out in paragraph (a).

(14) A statement provided pursuant to subsection (13) shall be effective only as a record of its contents as at its date.

Keeping of register of debt securities

3. (1) In respect of every listed issue of debt securities, there shall be a register kept and entered up by a share registry on its registry system in accordance with these Regulations.

(2) Each register of debt securities shall comprise the following particulars which the share registry shall enter on it, namely—

(a) in alphabetical order, the full name and address of each holder who is an individual, or in the case of a corporate body its full name, the place where it is incorporated and the address of its registered or principal office;

(b) the number of units of that security each person referred to in paragraph (a) holds;

(c) an identification number distinguishing each holder from the other persons;

(d) the registry account number of each holder.

(3) Where any relevant debt security is held by 2 or more persons, the register of debt securities shall contain the names and addresses of all such persons.

(4) No notice of any trust, expressed, implied or constructive, shall be entered on a register of debt securities, or a part of such register, or be receivable by a share registry, but this provision shall not prohibit the entry of charges pursuant to section 8.

(5) An entry in a register of debt securities relating to a person who no longer holds the securities which are the subject of the entry may be removed from the register after the expiration of 10 years beginning with the day on which the person ceased to hold any of those securities.

(6) The Commission shall give such directions as it considers necessary for the opening of a register of debt securities pursuant to this section.

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Effect of entries on registers

4. (1) A register of members is *prima facie* evidence of any matters which are by these Regulations directed or authorised to be inserted in it.

(2) A register of debt securities is *prima facie* evidence of any matters which are by these Regulations directed or authorised to be inserted in it.

(3) A register of debt securities or an extract thereof shall be admissible in evidence in any court by means of a document printed from the registry system and certified by a director or authorised officer of the share registry which keeps the relevant register.

Rectification of registers

5. (1) A share registry who rectifies a register of securities kept by him shall immediately notify the issuer of the securities and any member or other person concerned of the change to the entry.

(2) Without prejudice to any lesser period of limitation or prescription, liability incurred by a share registry from the making or deletion of any entry in a register of securities, or from failure to make or delete any such entry, is not enforceable more than 10 years after the date on which the entry was made or deleted or the failure first occurred.

(3) Without affecting the generality of section 3(5), section 268(2)(g) of the Companies Act[‡] shall apply to any register of members kept pursuant to these Regulations.

(Am in L.R. 15/12/2014)

Recording by a share registry of transfers of securities

6. (1) Upon completion of a transfer of units of a security in accordance with this section and subject to subsections (2) to (6), a share registry shall record on the relevant register of securities the transfer of title to those units of that security.

(2) Subject to the provisions of this section, a transfer of units of a security may be effected by either—

(a) a private transfer; or

(b) through an intermediary, by way of a trade on a licensed securities exchange.

(3) A private transfer shall be effected by the transferor and the transferee completing and executing an approved form in accordance with section 17 and (if stamp duty is chargeable on the transfer) paying such stamp duty which shall be duly recorded on the approved form and if a transfer which complies with this subsection is presented to a share registry, the share registry shall, subject to subsections (5) to (8), enter the transferee on the relevant register of securities as the holder of the security.

(4) The holder of a security may contract with an intermediary for sale of units of the security on a securities exchange, and where—

(a) such contract is made, the intermediary shall, by dematerialised instructions, notify the share registry of the following details of the contract—

(i) the identification number of the holder of the security,

(ii) the registry account number of the holder of the security, and

[‡] This section has been corrected to reflect the renumbering of the Companies Act, R.S.A. c. C65 *(15/12/2014)*. Business Companies Act, 2022 (Act 2/2022) *repealed* the Companies Act, R.S.A. c. C65.

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(iii) the number of units to be sold,

subject to subsections (5) to (8), the share registry shall enter on the relevant register the intermediary as holder of the security (or the units thereof to be sold);

(b) the security (or units thereof) is sold by the intermediary, the intermediary shall, by dematerialised instructions, notify the share registry of the sale and subject to subsections (5) to (8), the share registry shall enter on the relevant register the transferee (or an intermediary holding the security for the transferee) as holder of the security (or the units thereof sold);

(c) before a sale of units of a security is effected, the contract referred to in paragraph (a) is for any reason terminated, the intermediary shall promptly notify the share registry, who shall enter the name of the prior holder on the register in place of the intermediary in respect of the security (or the relevant units thereof).

(5) A share registry shall refuse to record a transfer of title to a security if the share registry has actual notice that—

(a) the transfer is prohibited by order of a court;

(b) the transfer is prohibited or avoided by or under an enactment;

(c) the transfer is a transfer to a deceased person;

(d) in the case of a share, the company which issued the share has a lien thereon pursuant to the articles of the company;

(e) a charge is recorded in respect of the security in the relevant register of securities; or

(f) on transfer, the security is to be held jointly in the names of more persons than is permitted under the terms of the issue of the security.

(6) A share registry shall refuse to record a transfer of title to a security—

(a) if the transfer is to an entity which is not a natural or legal person; or

(b) where, in respect of a dematerialised instruction received or purportedly received from an intermediary pursuant to subsection (4)(a), the share registry has actual notice of any of the following facts or matters—

(i) that any information contained in the instruction is incorrect,

(ii) that the intermediary expressed to have sent the instruction did not send the instruction,

(iii) where relevant, that the person on whose behalf it was expressed to have been sent did not give to the intermediary his authority to send the instruction on his behalf, or

(iv) that the instruction was not properly authenticated in accordance with the specifications of the share registry.

(7) A share registry shall not record a transfer of title to a security otherwise than in accordance with subsection (1) unless he is required to do so by order of a court or by or under an enactment.

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(8) Nothing in subsection (7) shall be construed as preventing a share registry from entering on a register of securities as a holder of a security—

(a) a person to whom title to units of a security has been transmitted by operation of law;

(b) a company which has enforced its lien on a security in compliance with section 7;

(c) a chargee who has enforced his charge on a security in compliance with section 8.

(9) For the purpose of determining under subsection (5) or paragraph (6)(b) or section 7(4), 8(3), 8(9) or 8(13) whether a share registry has actual notice of a matter listed, the share registry shall not under any circumstances be taken to be concerned to establish whether or not the fact or matter exists or has occurred.

Recording of company liens on shares

7. (1) A share registry shall enter in the registry system, in respect of any share, a lien held by the issuing company on the share of which lien the company has notified the share registry by delivery of an approved form, executed by the company under its common seal and witnessed by a notary public.

(2) The share registry shall remove the entry of any lien entered pursuant to subsection (1) if the share registry—

(a) receives from the issuing company an approved form of release of lien executed by the company under its common seal; or

(b) receives an order of the court requiring him to remove the lien.

(3) Where under the provisions of its articles a company becomes entitled to sell any shares in respect of which a lien has been entered on its register of members, the company may make and present a statutory declaration in a form approved by the Commission to the share registry who shall (unless prohibited by an order of the court) enter the company on the register of members as the holder of the shares in place of the previous holder of the shares.

(4) A company which is entered on the register of members pursuant to subsection (3) may sell and transfer the shares in any manner provided in section 6 and the transferee shall thereby obtain clear title to the shares without becoming concerned to ascertain whether or not the company was entitled to sell the shares unless he has actual notice that the company was not so entitled.

(5) If a purchaser obtains clear title to shares pursuant to subsection (4), any right which the previous holder of the shares may have to any part of the proceeds of sale of the shares shall be a right *in personam* against the company.

(6) A share registry shall not be—

(a) concerned to inquire whether a company has the right to sell the shares on which the company has a lien where the company has complied with the provisions of subsection (3); or

(b) liable to the previous holder of the shares or to any other person if the share registry enters a company on a register of members as holder of any shares where the company has complied with the provisions of subsection (3).

Recording of charges on securities

8. (1) A share registry shall, subject to subsections (2), (3) and (4), enter in the relevant register in the registry system, in respect of any security, a charge held by any person on the security.

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(2) The authorisation for the entry of a charge under subsection (1) shall be the delivery to the share registry of an approved form, duly executed in accordance with section 17 by the holder of the security and the chargee.

(3) A share registry shall refuse to record a charge pursuant to subsection (1) if the share registry has actual notice that—

(a) the charge is prohibited by order of a court;

(b) the charge is prohibited or avoided by or under an enactment;

(c) the chargee is a deceased person; or

(d) in the case of a share, the company which issued the share has a lien thereon recorded under section 7 or has presented an approved form of lien to the share registry prior to the presentation of the approved form of charge.

(4) A share registry may refuse to record a charge if the charge is to an entity which is not a natural or legal person.

(5) Subject to any provisions to the contrary contained in the document creating any charge, charges shall have priority in order of their entry in the relevant register.

(6) The share registry shall remove the entry of any charge entered pursuant to subsection (1) if the share registry—

(a) receives from the chargee an approved form of release of charge, duly executed by the chargee in accordance with section 17;

(b) receives an order of the court requiring him to remove the charge.

(7) An approved form of charge shall contain an acknowledgment by the chargor that—

(a) entry of the charge on the relevant register of securities will preclude any transfer by the chargor of the charged security;

(b) the charge may not be removed without the consent of the chargee or without an order of the court; and

(c) if the chargee enforces the charge, he may be entered on the relevant register of securities as holder of the security in place of the chargor.

(8) Where under the terms of his agreement with the chargor a chargee becomes entitled to enforce his charge in respect of any security, the chargee may make and present a statutory declaration in a form approved in accordance with section 17 to the share registry who shall (unless prohibited by an order of the court) enter the chargee on the relevant register of securities as the holder of the security in place of the chargor.

(9) A chargee who is entered on a register of securities pursuant to subsection (8) may sell and transfer the security in any manner provided in section 6 and the transferee shall thereby obtain clear title to the security without becoming concerned to ascertain whether or not the chargee was entitled to enforce the charge unless he has actual notice that the chargee was not so entitled.

(10) If a purchaser obtains clear title to shares pursuant to subsection (9), any right which the chargor may have to any part of the proceeds of sale of the security shall be a right *in personam* against the chargee.

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(11) A share registry shall not be—

(a) concerned to inquire whether a chargee has the right to enforce his charge where the chargee has complied with the provisions of subsection (8); or

(b) liable to the chargor or to any other person if the share registry enters a chargee on a securities register as holder of any security where the chargee has complied with the provisions of subsection (8).

(12) A chargee may, subject to subsections (13) and (14), transfer a subsisting charge, and the authorisation for the entry of a transfer of a subsisting charge shall be the delivery to the share registry of an approved form, executed in accordance with section 17, by the holder of the charge and the transferee.

(13) A share registry shall refuse to record a transfer of a charge pursuant to subsection (12) if the share registry has actual notice that—

(a) the transfer is prohibited by order of a court;

(b) the transfer is prohibited or avoided by or under an enactment; or

(c) the transferee is a deceased person.

(14) A share registry may refuse to record the transfer of a charge if the transfer is to an entity which is not a natural or legal person.

Transmission of securities

9. (1) On the death of a holder of securities, his personal representative shall be the only person recognised by the share registry as having any title to the securities.

(2) The personal representative of the deceased holder of securities shall, on production to the share registry of a Grant of Probate or Letters of Administration issued by the court, be entitled to—

(a) elect to become the holder of the securities; or

(b) transfer the securities to another person.

(3) A person who becomes entitled to securities in consequence of the bankruptcy of a holder of the securities shall, on production to the share registry of an order of the court appointing him as trustee in bankruptcy, be entitled to—

(a) elect to become the holder of the securities; or

(b) transfer the securities to another person.

(4) If the personal representative of a deceased holder of securities or trustee in bankruptcy elects to become the holder of the securities, the share registry shall enter the name of such personal representative or trustee on the relevant register of securities in place of the deceased or bankrupt holder of securities as the case may be.

(5) If the personal representative of a deceased holder of securities or trustee in bankruptcy transfers the securities, all provisions of these Regulations relating to the transfer of securities shall apply to the transfer as if the death or bankruptcy of the holder of the securities had not occurred and that transfer were a transfer executed by the holder.

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(6) A person becoming entitled to a security in consequence of the death or bankruptcy of a holder of the security shall have the rights to which the person would be entitled if he were the holder of the security except that, in the case of shares or corporate debt, the person shall not (before being recorded by the share registry as the holder of the security) be entitled in respect of that security to attend or vote at any meeting of the company or at any separate meeting of the holders of any class of shares in the company or at any meeting of the holders of corporate debt of the company, as the case may be.

Joint holders of securities

10. (1) The rights of survivorship and other rights of joint shareholders given by the articles of a company shall be binding on a share registry.

(2) If the articles of a company are silent as to the rights *inter se* of joint shareholders, the rights shall be those provided by the Companies Act[§] or, if no provision is made by the Companies Act[**], by the common law.

(3) Subject to subsection (5), any dealing with, or instructions in respect of, shares which are jointly held may be effected only by all joint shareholders unless one or more of them is empowered by Power of Attorney (executed by each grantor in the presence of a notary public and duly stamped) to issue instructions and to deal with the shares on behalf of the others.

(4) A notarised copy of any Power of Attorney made pursuant to subsection (3) shall be delivered to the share registry and shall have no effect in relation to this section until it is so delivered.

(5) Where one or more joint shareholders or joint holders of any other security is a minor, no dealings may be effected with the security save pursuant to and in accordance with an order of a court.

Notices of meetings

11. (1) For the purposes of determining which persons are entitled to attend or vote at a meeting of holders of a security and how many votes such persons may cast, the issuer may specify in the notice of the meeting a time, not more than 48 hours before the time fixed for the meeting, by which a person must be entered on the relevant register of securities in order to have the right to attend or vote at the meeting.

(2) Notwithstanding any provision in any enactment, articles or other instrument to the contrary, changes to entries in the relevant register of securities after the time specified under subsection (1) shall be disregarded in determining the right of any person to attend or vote at the meeting.

(3) For the purposes of serving notices of meetings, whether under section 110 of the Companies Act[††], any other enactment, a provision in the articles or any other instrument, an issuer may determine that persons entitled to receive such notices are those persons entered on the relevant register of securities at the close of business on a day determined by him.

(4) The day determined by the issuer under subsection (3) may not be more than 7 days before the day on which the notices of the meeting are sent out.

Rematerialisation

12. (1) This section applies to—

(a) any company which for any reason ceases to be listed (hereinafter referred to as "a delisted company");

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

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(b) any company which proposes to list and whose register of members is kept by a share registry and which thereafter decides not to list.

(2) A delisted company or a company referred to in paragraph (1)(b) shall, within 3 months from the date of its delisting or the date of its decision not to list (as the case may be), and notwithstanding any provision in its articles, establish a register of members and issue a share certificate to each member of the company at the date of delisting or the date of its decision not to list (as the case may be) for the shares of the company held by the member.

(3) The register of members of a company kept by the share registry shall be used for the purposes of compliance with subsection (2) and all entries recorded on that register of members shall be recorded on the register of members established by the company pursuant to this section.

(4) A company to which this section applies shall, notwithstanding any provision of its articles, comply with the provisions of the Companies Act[‡‡] in respect of shares.

(5) The Commission shall monitor and verify the establishment by the company of its register of members pursuant to subsections (2) and (3) and shall, when in its opinion the process is complete, notify the share registry who shall then close the register of members kept by it.

Duties of intermediaries

13. (1) Every intermediary shall, in relation to securities in his custody or control or securities which he is authorised to sell or to purchase, maintain such records and follow such procedures as the Commission may from time to time direct or authorise.

(2) The Commission may impose conditions for the accounting and payment, by intermediaries, of monies held by them for the account of holders of securities on whose behalf they act.

Access by issuers to records of a share registry

14. (1) Every issuer shall contract with a share registry which maintains a register of securities issued by it for on-line issue service.

(2) Any right given under the Companies Act[§§] to a member or officer of a company or the Registrar of Companies appointed under the Companies Act[***] to inspect the register of members of the company shall be exercised by means of access through the on-line issue service at the registered office of the company.

Keeping of records of approved forms

15. (1) A share registry shall retain each approved form and each Power of Attorney delivered to him pursuant to these Regulations for a period of 10 years from the date on which the form or document ceases to have effect and shall note on each such form or document the date and time of its delivery to the share registry.

(2) Where a company transfers its register of securities from one share registry to another, the transferee share registry shall take possession of and retain the documents and forms referred to in subsection (1); but where any document or form has already ceased to have effect, the transferee share registry shall only be required to retain such document or form for the unexpired portion of the 10 year period, and the obligations of the share registry who previously held the register of securities shall cease as soon as the transferee share registry takes possession of the documents and forms.

(3) A share registry shall record in the relevant register the date and time of receipt of every document and form by the share registry, as shown on the approved form.

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

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Opening times of a share registry

16. (1) A share registry shall remain open to the public for a minimum of 3 hours on each day which is not a Saturday, Sunday or public holiday.

(2) A notice of the opening hours determined by the share registry pursuant to this section and any changes thereto shall be published in the *Gazette*.

Approved forms

17. (1) A share registry shall submit to the Commission all forms which the share registry proposes to use for the purposes of sections 6, 7 and 8 and shall notify the Commission from time to time of any changes which the share registry proposes to make to any such form and the share registry shall not use any such form unless the form is approved by the Commission.

(2) Unless otherwise provided in these Regulations, execution by each party of an approved form shall be witnessed by—

(a) an employee of a share registry;

(b) a notary public; or

(c) a principal licensed by the Commission.

(3) The witness to the signature of each party shall sign the form below the signature of the party and shall write below his signature his full name, address and occupation and, in the case of a notary public, shall affix his seal of office to the form.

Power of Commission to issue directions regarding the transfer of registers of securities

18. If the Commission suspends or revokes the licence of a share registry or if a share registry fails to comply with any direction given to the share registry by the Commission under section 66 of the Act, the Commission may, (without prejudice to any other power which it may have under the Act) by notice in writing, require the share registry to transfer any register of securities to any other person and the Commission may give such incidental and consequential directions as may appear to the Commission as necessary for the protection of the integrity, safety and accuracy of the register of securities.

Registry system security and capabilities

19. (1) A registry system must enable the share registry to comply with its obligations under these Regulations and, without affecting the generality of the foregoing, the registry system must be constructed and operated in such a way so as to—

(a) ensure the ongoing integrity, safety and accuracy of all entries made in it;

(b) minimise the possibility of unauthorised access to, or modification of, any programme or data held in any computer forming part of the registry system;

(c) ensure that each dematerialised instruction is properly authenticated in accordance with the specifications of the share registry, which shall provide that each dematerialised instruction—

(i) is identifiable as being from the computers of a particular intermediary, and

(ii) is designed to minimise fraud and forgery;

(d) minimise the possibility for an intermediary to send a dematerialised instruction on behalf of a person from whom he has no authority;

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(e) ensure that each dematerialised instruction, in accordance with the specifications of the share registry—

(i) expresses by whom it was sent and, where relevant, on whose behalf it has been sent,

(ii) indicates, where it is sent to an intermediary or the share registry, that it is addressed to that intermediary or the share registry.

(2) A registry system must ensure that the system can send and respond to properly authenticated dematerialised instructions in sufficient volume and speed.

(3) Before a registry records a transfer of title to uncertificated units of a security, the registry system must be able to establish that the transferor has title to such number of units of the security as is in aggregate at least equal to the number to be transferred.

(4) A registry system must maintain adequate records of all dematerialised instructions.

(5) A registry system must include an on-line issue service.

(6) A registry system must be able to make correcting entries in such records as are maintained in order to comply with subsections (3) and (4) which are inaccurate.

(7) A registry system must comprise procedures which provide that it responds only to properly authenticated dematerialised instructions which are attributable to an intermediary.

(8) A registry system must comprise procedures which enable it to amend a register of securities kept by the share registry if necessary to correct an error and if in accordance with the rules and practices of the share registry instituted in order to comply with this section.

(9) A registry system must comprise procedures which—

(a) enable intermediaries to notify the share registry of an error in or relating to a dematerialised instruction; and

(b) ensure that, where the share registry becomes aware of an error in or relating to a dematerialised instruction, the share registry takes appropriate corrective action.

(10) A share registry shall institute and maintain such back-up facilities, including but not limited to daily back-up to disk and additional back-up to tape stored offsite, and such other procedures and measures as are necessary to ensure the ongoing integrity, safety and accuracy of entries in every register of securities kept by the share registry.

(11) A share registry shall report to the Commission in writing within 24 hours of the occurrence of a system problem or failure, as well as such problem or failure which affects or may affect the integrity, safety and accuracy of entries in any register of securities kept by the share registry.

(12) The Commission may give to a share registry such directions as the Commission considers necessary to maintain the security of his registry system or the capabilities of such system as required by this section.

(13) The Commission may at any time conduct a regulatory audit of a share registry system to ensure its compliance with this section.

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Defaults and contraventions

20. (1) A company which fails to comply with any provision of section 2 or 12 and every officer of the company who knowingly and wilfully authorises or permits the failure commits an offence and each is liable on summary conviction—

(a) in the case of an individual, to a fine of $100,000 and in the case of a continuing offence, to a further penalty of $500 for every day that the offence continues after the conviction;

(b) in the case of a company, to a fine of $300,000 and in the case of a continuing offence, to a further penalty of $500 for every day that the offence continues after the conviction.

(2) An offence referred to in subsection (1) shall be actionable at the suit of a person who suffers loss as a result of the breach of statutory duty by the company or officer of the company, or at the suit of a person who is otherwise affected by such breach of statutory duty, subject to the defences and other incidents applying to actions for breach of statutory duty.

(3) A default by a share registry in complying with, or a contravention of, any provision of section 2, 3, 6, 7, 8, 9, 15, 16, 17 or 19 shall be actionable at the suit of a person who suffers loss as a result of the default or contravention, or who is otherwise affected by it, subject to the defences and other incidents applying to actions for beach of statutory duty.

(4) Any person who, within 3 months of the opening by a share registry of a register of members pursuant to section 2 or the opening of a register of debt securities pursuant to section 3, transfers or attempts to transfer a security entered on the relevant register in respect of which there is a valid and subsisting transfer or charge of the security given by him commits an offence and is liable on summary conviction to a fine of $100,000.

Fees

21. The Commission shall approve a list of fees which may be charged by a share registry for its services pursuant to these Regulations and may from time to time change the fees so charged.

Citation

22. These Regulations may be cited as the Uncertificated Securities Regulations, Revised Regulations of Anguilla, S13-11.

Transitional provisions

23. (1) This section shall, unless otherwise stated, apply to any person who—

(a) has, prior to the closing of a company's register of members pursuant to subsection 2(11), contracted to purchase from a member any shares of the company (or units thereof) and has obtained from the member a signed share transfer (in a form which complies with the company's articles) and the member's original share certificate or certificates for the shares but whose transfer has not been recorded by the company;

(b) has, prior to the closing of a company's register of members pursuant to subsection 2(11), taken from a member of the company a charge (in written form) which subsists over the member's shares of the company (or units thereof) supported by a deposit of the member's original certificate or certificates for the shares; or

(c) has, prior to the opening of a register of debt securities pursuant to section 3, taken from a holder of a debt security a charge (in written form) which subsists over the security supported by a deposit of the holder's title document to the security.

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(2) A person to whom this section applies may, within 3 months of the opening by the share registry of the relevant register of securities, notify the share registry of the transfer of shares or of such charge held by him, as the case may be, and deposit with the share registry the share transfer or charge document, duly stamped, together with the original share certificate or certificates held by him or the document of title to the debt security, as the case may be.

(3) On receipt of the documents listed in subsection (2), the share registry shall, subject to subsection (5), enter on the relevant register of securities the transferee as holder of the shares (or units thereof) or the chargee as chargee of the shares or debt security (or units thereof) as the case may be.

(4) After making an entry pursuant to subsection (3) the share registry shall—

(a) in the case of a transfer of shares, retain the original share transfer and the original share certificate or certificates presented to him; or

(b) in the case of a charge of shares or securities, retain the original charge document and the original share certificate or certificates or documents of title as the case may be.

(5) The share registry shall not make an entry pursuant to subsection (3) in any of the following cases if—

(a) the person who gave the transfer or charge is not, at the time of its receipt of the documents referred to in subsection (2), entered on the register of members as the holder of the shares transferred or charged as the case may be;

(b) a lien has been noted pursuant to section 7 in respect of the shares transferred or charged, as the case may be;

(c) a charge has been entered respecting the shares or debt security (or any units thereof) pursuant to section 8 in respect of the shares or debt security transferred or charged, as the case may be;

(d) the share registry is prohibited by order of a court from making the entry;

(e) the transfer or charge is prohibited or avoided by or under an enactment;

(f) in the case of a transfer, the shares are to be held jointly in the names of more persons than is permitted under the company's articles.

(6) Nothing contained in this section shall preclude a person who has not complied with the provisions in subsection (2) from applying to the court for an order to have his transfer or charge entered and the court may, on such application, order the entry on the register of members or the register of debt securities concerned if the person who gave the transfer or charge is entered on the register of members as holder of the shares transferred or charged or the securities charged or if any person other than a purchaser for value without notice of the transfer or charge is so registered.

(7) A company whose register of members is transferred to a share registry pursuant to section 2 shall notify the public of the transfer by notice, in such form as approved by the Commission, published in a newspaper of general circulation in Anguilla on 4 consecutive weekends immediately following the transfer of the register of members.

(8) A company whose register of securities is transferred from one share registry to another shall notify its members or other holders of its securities at least 4 weeks prior to the transfer of the register of securities.

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