



## CHAPTER 11.26

# COMPANY MANAGEMENT ACT and Subsidiary Legislation

### Revised Edition

showing the law as at 1 January 2008

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Act.

This edition contains a consolidation of the following laws—

### **COMPANY MANAGEMENT ACT**

Act 23 of 1998 .. in force 17 January 2000 (S.R.O. 12/2000)

Amended by Acts: 3 of 2002 .. in force 5 September 2002

7 of 2002 .. in force 11 February 2003 (S.R.O. 30/2003)

5 of 2005 .. in force 1 May 2005 (S.R.O. 76/2005)

8 of 2007 .. in force 30 November 2007

### **COMPANY MANAGEMENT (FEES) REGULATIONS – Section 23**

S.R.O. 19/2000 .. in force 20 January 2000

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## CHAPTER 11.26

### COMPANY MANAGEMENT ACT

*(Acts 23 of 1998, 3 of 2002, 7 of 2002, 5 of 2005 and 8 of 2007)*

AN ACT TO MAKE PROVISION FOR THE REGULATION OF COMPANY MANAGERS  
IN MONTSERRAT.

#### Commencement

*[17 January 2000]*

#### Short title

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

### PART I

#### PRELIMINARY

#### Interpretation

2. (1) In this Act—

“**accountant**” 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 accounting association;

“**business of company management**” means the provision of company management services for profit or reward in or from within Montserrat;

“**certificate of compliance**” means the Certificate of Compliance issued under paragraph (b) of subsection (1) of section 18;

“**Code of Practice**” means the Code of Practice issued by the Commission under section 23A;

“**Commission**” means the Financial Services Commission established under the Financial Services Commission Act;

“**company management**” means—

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

Act or acting as an agent under section 177(7) of the Companies Act; or

- (c) the provision of registered office services for companies incorporated under the Companies Act or the International Business Companies Act; or
- (d) acting as director, manager or officer of companies or foreign companies, provided an individual does not carry on company management business by reason only of the fact that he acts as a director, manager or officer—
  - (i) of not more than twelve companies incorporated under the Companies Act in which he does not have a significant interest; or
  - (ii) of any company in which he has a significant interest; or
  - (iii) of not more than one company by which he is employed under a contract of service, and
- (e) the provision of nominee shareholders of companies or foreign companies;

**“competent authority”** means the Commission;

**“court”** means the High Court of the Eastern Caribbean Supreme Court or a judge thereof;

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

**“licence”** means a licence granted under subsection (2) of section 5;

**“licensee”** means a person licensed under this Act;

**“Regulations”** means the Regulations made under section 23.

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

- (a) that other company, either—
  - (i) is a member of it and controls the composition of its board of directors; or
  - (ii) holds more than half in nominal value of its equity share capital; or
- (b) the first-mentioned company is a subsidiary of any company that is the other’s subsidiary.

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

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

- (a) that a person cannot be appointed to it without the exercise in his favour by the other company of such a power as is mentioned in subsection (3);
- (b) that a person's appointment to the directorship follows necessarily from his appointment as a director of the other company; or
- (c) that the directorship is held by the other company itself or by a subsidiary of it.

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

- (a) any shares held or power exercisable by the other in a fiduciary capacity are to be treated as not held or exercisable by it;
- (b) subject to paragraphs (c) and (d), any shares held or power exercisable—
  - (i) by any person as nominee for the other except where the other is concerned only in a fiduciary capacity; or
  - (ii) by, or by a nominee for, a subsidiary of the other not being a subsidiary which is concerned only in a fiduciary capacity,  
are to be treated as held or exercisable by the other;
- (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned company or of a trust deed securing any issue of such debentures are to be disregarded; and
- (d) any shares held or power exercisable by, or by a nominee for, the other or its subsidiary, not being held or exercisable as mentioned in paragraph (c), are to be treated as business of the other or its subsidiary, as the case may be, includes the lending of money and the shares are held or the power is exercisable as above-mentioned by way of security only for the purposes of a transaction entered into in the ordinary course of that business.

*(Amended by Acts 3 of 2002, 7 of 2002, 5 of 2005 and 8 of 2007)*

### **Corporate relationship**

3. For the purposes of this Act—

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

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

## PART II

### LICENCES

#### Requirement for licence

4. (1) No person shall carry on the business of company management in or from within Montserrat unless he holds a licence that is not suspended under section 8. *(Amended by Act 7 of 2002)*

(2) A person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding one year or both. *(Inserted by Act 7 of 2002)*

#### Application for licence

5. (1) Subject to section 6, a licence may be issued to an applicant which makes application therefor to the Commission and satisfies the requirements specified in the Schedule to this Act.

(2) If the Commission is satisfied that—

(a) that the applicant—

(i) is a fit and proper person, and

(ii) is qualified,

to carry on the business of company management;

(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 the requirements of this Act; and

(d) that issuing the licence is not against the public interest;

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

(3) Any decision to refuse to issue a licence, other than a licence in respect of a business in existence at the date of the commencement of this Act, is final.

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

*(Amended by Act 7 of 2002)*

### **Maintenance of capital**

6. (1) A company holding a licence must ensure that its paid-up share capital is maintained in an amount not less than \$65,000 or the equivalent in another currency.

(2) A company that contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding \$10,000.

*(Inserted by Act 7 of 2002)*

### **Duration of licence**

7. Subject to sections 8 and 9 a licence issued under this Act is valid until the 31st December of the year in which it is issued but is renewable in the following year for a further period of one year upon payment of the prescribed annual fee.

### **Suspension of licence**

8. (1) Where the Commission is of the opinion that a licensee—

- (a) is carrying on the business of company management in a manner detrimental to the public interest, or to the interest of the companies being managed by him or any of them; or
- (b) has contravened or is in contravention of this Act, or the Code of Practice; or
- (c) has contravened or is in contravention of the Regulations made under section 49 of the Proceeds of Crime Act or of such other Acts, Guidelines or Codes relating to money laundering or the financing of terrorism as may be prescribed;

the Commission may require him forthwith to take such steps as may be necessary to remedy the matter, and may forthwith suspend the licence pending the receipt of information or any explanation under paragraph (b) of subsection (3) of section 15.

(2) A suspension shall be for a period of up to 60 days in the first instance but may be extended for a further period not exceeding 30 days.

*(Amended by Acts 7 of 2002 and 5 of 2005)*

## Revocation of licence

### 9. The Commission may revoke a licence—

- (a) if the licensee has ceased to carry on the business of company management upon the occurrence of any of the following—
  - (i) bankruptcy;
  - (ii) going into liquidation;
  - (iii) being otherwise dissolved or wound up.
- (b) has contravened or is in contravention of this Act, the Regulations or the Code of Practice; or
- (c) if having examined the affairs or business of the licensee under paragraph (b) of subsection (2) of section 15, it is of the opinion that it would be detrimental to the public interest for the licensee to continue to carry on the business of company management; or
- (d) has contravened or is in contravention of the Regulations made under section 49 of the Proceeds of Crime Act or of such Acts, Regulations, Guidelines or Codes relating to money laundering or the financing of terrorism as may be prescribed.

*(Amended by Acts 7 of 2002 and 5 of 2005)*

## Appointment of administrator by the Court

**9A. (1)** If a licence is or is about to be suspended under section 8 or revoked under section 9, the Commission may apply to the Court—

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

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

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

- (a) granting an administrator the powers of a licensee under this Act;
- (b) requiring the administrator to provide security;

- (c) fixing the remuneration of the administrator;
- (d) requiring such persons as it considers necessary to appear before the court for the purposes of giving information concerning the company management business; and
- (e) making any order that a court of summary jurisdiction could make on an application made under section 19.  
*(Inserted by Act 7 of 2002)*

### **Appeals**

**10.** An appeal lies to the court from any decision of the Commission to suspend or revoke a licence under section 8 or 9, and such an appeal shall not operate to suspend the decision of the Commission.

*(Amended by Act 7 of 2002)*

### **Change in particulars of licensee**

**11.** Where a change occurs in the particulars of a licensee, specified in the Schedule, the licensee shall, as soon as possible thereafter, inform the Commission of the change. *(Amended by Act 7 of 2002)*

### **Display of licence**

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

### **Surrender of licence**

**13. (1)** A licensee who has ceased to carry on the business in respect of which the licence was granted may surrender his licence upon production of—

- (a) in the case of a licensee who is an individual, evidence that he has repaid all deposits and has transferred all assets held or administered on behalf of companies managed by him; or
- (b) in the case of a licensee which is a company, evidence that it is being wound up voluntarily and that the company is solvent and is able on demand to repay all deposits held by it and all its other creditors, and has transferred all assets held or administered on behalf of companies managed by it.

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

## PART III

## TRANSFERABILITY OF SHARES, ETC.

**Transfer of shares**

**14. (1)** No shares 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, except that the Commission may exempt any company from the provisions of this section, subject to such terms and conditions as it thinks fit.

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

*(Amended by Act 7 of 2002)*

## PART IV

## ADMINISTRATION

**Commission**

**15. (1)** *Repealed by Act 7 of 2002.*

**(2)** The functions of the Commission include—

*(a)* the monitoring of the business of company management in Montserrat;

*(b)* where it thinks fit, the examination in such manner as it considers necessary, the affairs or business of any licensee for the purpose of satisfying itself that the provisions of this Act are being complied with and the licensee is in a sound financial position and is carrying on its business in a satisfactory manner;

*(c)* *Repealed by Act 7 of 2002;*

*(d)* considering and determining applications for licences.

**(3)** In the performance of its duties under this Act, the Commission may at all reasonable times—

*(a)* require a licensee to produce for examination such books, records and other documents that the licensee is required to maintain pursuant to section 17; and

*(b)* require a licensee to supply such information or explanation, as the Commission may reasonably require for the purposes of enabling it to perform its functions under this Act.

**(4)** *Repealed by Act 7 of 2002.*

(5) The Commission may authorize in writing any person to assist it in the performance of its duties under this Act.

*(Amended by Act 7 of 2002)*

### **Restrictions on use of certain terms**

**16. (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 Montserrat that, in the opinion of the Commission, suggests the business of company management; or
- (b) make any representation in any document or in any other manner that is likely to suggest that he is carrying on the business of company management.

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

- (a) identical to that of any other person, whether within or outside Montserrat, or which so nearly resembles that name as to be calculated to deceive;
- (b) calculated to suggest falsely the patronage of or connection with some person whether within or outside Montserrat; or
- (c) calculated to suggest falsely that he has special status in relation to or derived from the Government or has the official approval of, or acts on behalf of, the Government or of any of its departments or officials,

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

*(Amended by Act 7 of 2002)*

### **Duties of licensee**

**17.** A licensee shall maintain in respect of the business of company management—

- (a) such books or records as accurately reflect the business of the licensee;
- (b) separate accounts in the books or records in respect of each company the licensee manages and shall separate the funds and other property of every such company from his own; and
- (c) one or more separate bank accounts into which shall be deposited all moneys held on behalf of each company which is managed.

**Annual returns, etc.**

**18. (1) (a)** Subject to paragraph (b) hereof, a licensee who either directly or indirectly, carries on the business of company management shall prepare and furnish to the Commission annual accounts prepared in accordance with generally accepted accounting principles, audited by an independent auditor, within 6 months of the end of the licensee's financial year.

(b) Where a licensee provides company management services for less than 50 companies such licensee shall be exempt from the requirement of providing annual audited accounts, but shall instead prepare and furnish to the Commission a certificate of compliance confirming that the information set out in the application for a licence, as modified by any subsequent notification of change in accordance with section 11, remains correct and gives an accurate summary of the business of the licensee and that such licensee provides company management service for less than 50 companies.

(c) The number of companies in respect of which a licensee is required to provide company management services to qualify for an exemption under paragraph (b) may be varied by regulations.

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

*(Amended by Acts 3 of 2002, 7 of 2002 and 8 of 2007)*

**Power of search**

**19. (1)** If a court of summary jurisdiction is satisfied by information on oath, given by the Commission or a person authorized by it—

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

(b) that any documents that ought to have been produced under subsection (3) of section 15 and have not been produced are to be found at any premises or in any vehicle, vessel or aircraft specified in the information,

it may grant a search warrant authorising the Commission, together with any other person named in the warrant, to enter such premises or any premises at any such time within one month from the date of the warrant, and to search the premises or the vehicle, vessel or aircraft.

(2) The Commission or any other person authorized by a warrant to search any premises or any vehicle, vessel or aircraft may search every person who is found in or whom he has reasonable grounds to believe to have recently left or to be about to enter those premises, or that vehicle, vessel or aircraft, and may seize any document found on the premises, or in the vehicle, vessel or aircraft which he has reasonable grounds for believing would be evidence of the commission of an offence under paragraph (a) of subsection (1) or ought to have been produced under subsection (3) of section 15.

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

*(Amended by Act 7 of 2002)*

## PART V

### MISCELLANEOUS

#### **Insurance policy**

20. The Commission may by written notice require a licensee, who handles, directs or has oversight of, either directly or indirectly, any fund or property of a company in respect of which he is licensed, to effect a policy of insurance with an insurance company registered under the Insurance Act 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 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 to be fit and proper, having due regard to the nature and type of business carried on by the licensee; and, in the event that the insurance is withdrawn, cancelled or not renewed, the licensee shall immediately notify the Commission and shall cease to carry on its business until the insurance has been reinstated or replaced.

*(Amended by Acts 3 of 2002, 7 of 2002 and 8 of 2007)*

#### **Secrecy**

21. *Repealed by Act 7 of 2002.*

## Immunity

**22.** No liability attaches to the Commission or any person acting under the authority of the Commission for an act done in good faith in the discharge or purported discharge of his functions under this Act.

*(Amended by Act 7 of 2002)*

## Regulations

**23.** The Governor may make regulations generally for giving effect to the provisions of this Act and specifically—

- (a) prescribing the fees to be charged under this Act;
- (b) exempting any person or business, or class of person or business, from any provision of this Act;
- (c) prescribing any thing required to be prescribed by this Act.

## Code of Practice

**23A. (1)** The Commission may issue a Code of Practice with respect to the procedures to be followed by, and the conduct expected of, a licensee in the operation of his company management business.

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

**(3)** The Commission may amend, add to or replace the Code by notice published in the *Gazette*.

**(4)** Before publishing a notice under subsection (3) the Commission shall—

- (a) send a draft of the proposed amendment, addition to or replacement of the Code to every registered person affected by the notice specifying the period within which written representations are to be provided to the Commission; and
- (b) consider such written representations as it may receive.

*(Inserted by Act 7 of 2002)*

## Directions

**24.** Without limiting or affecting section 23, the Commission may, from time to time, issue by publication in the *Gazette*, directions in relation to such matters as it thinks fit and failure by any licensee to comply with the directions shall be taken into consideration when any action is proposed to be taken under section 8 or 9. *(Amended by Act 7 of 2002)*

## Offences

**25. (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 is guilty of an offence and liable on summary conviction to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding one year or both.

(2) Any person who—

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

is guilty of an offence and is liable on summary conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding one year or both.

(3) Where an offence is committed by a body corporate and a director or officer of that body corporate knowingly authorized, permitted, or acquiesced in the commission of the offence, the director or officer is also guilty of the offence and is liable on summary conviction to a fine of \$10,000 or to imprisonment for a term of one year or both.

*(Amended by Act 7 of 2002)*

### **Existing business**

**26.** A person who on the commencement of this Act is carrying on the business of company management shall within six months of that date, comply with the provisions of this Act.

### **Amendment of Schedule**

**27.** The Governor may amend the Schedule by order published in the *Gazette*.

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**SCHEDULE**

(Section 5)

**PARTICULARS TO BE SPECIFIED IN APPLICATIONS**

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

- (1) Name of applicant.
- (2) Address in Montserrat of the principal office of the applicant and, in the case of a company, its registered office.
- (3) In the case of a company, the names and addresses of all directors.
- (4) In the case of a company, the names and addresses of all shareholders.
- (5) In the case of a company, the names and addresses of all officers and managers, and of foreign agents of the company, and any contractual arrangements with such persons.
- (6) Names and addresses of attorneys, if any, of the applicant, together with a letter from the attorneys confirming that they act for the applicant.
- (7) Names and addresses of auditors of the applicant, together with a letter from the auditors confirming that they act for the applicant.
- (8) In the case of a company—
  - (a) the name and address of one of its officers who is the authorized agent in Montserrat to accept on behalf of the applicant service of process and any notices required to be served on it; and
  - (b) the name and address of another of its officers who in the absence or inability to act of the officer named in subparagraph (a) is the authorized agent in Montserrat of the applicant for the purposes of subparagraph (a).
- (9) In the case of a company, evidence of the proper incorporation of the company in Montserrat or in the country of incorporation, as the case may be.
- (10) Evidence in writing that the applicant himself or some person or company directly or indirectly connected with the applicant is possessed of solid and practical experience in company management.
- (11) The following—
  - (a) an undertaking in writing to provide and set apart a fully paid up capital before or at the time it commences business, such as the Commission may in its absolute discretion determine, or by a guarantee under seal of such sum given by a holding or parent or other company approved by the Commission; and
  - (b) the guarantee referred to in subparagraph (a) shall expressly provide that its formal validity, its essential validity, its interpretation and

effect and the rights and obligation of the parties to it are governed exclusively by the law of Montserrat and that the court of Montserrat only shall be the forum for these purposes.

(12) Character references in writing, together with such other evidence as the Commission may require, that neither the applicant nor, in the case of a company, any director or officer of the company has a criminal record either in Montserrat or elsewhere.

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

(14) Names of all subsidiary companies of the applicant with addresses of their registered offices.

(15) In the case of a company, a copy of the Act, charter, certificate of incorporation or memorandum and articles of association or partnership agreement of the applicant, as may be appropriate, verified by an affidavit sworn by a director, or partner and duly authenticated as follows—

- (a) in the case of a company incorporated in Montserrat, notarized; and
- (b) in the case of a foreign company, certified and authenticated under the public seal of the country, or place under the laws of which such company has been incorporated.

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

(17) Statement of assets and liabilities at the end of the month prior to the submission of the application certified by a director or senior officer.

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

*(Amended by Act 7 of 2002)*

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**COMPANY MANAGEMENT (FEES) REGULATIONS – SECTION 23**

*(S.R.O. 19/2000)*

**Commencement**

*[20 January 2000]*

**Short title**

1. These Regulations may be cited as the Company Management (Fees) Regulations.

**Fees**

2. The fees payable under Part II of the Act are prescribed in the Schedule hereto.

**Interpretation**

3. In these Regulations, “\$” means a dollar in the currency of the United States of America.

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**SCHEDULE**

*(Regulation 2)*

<i>Matters in respect of which a fee is payable</i>		<i>Amount of fee</i>
1.	In respect of an application under section 5	\$400 <sub>(non-refundable)</sub>
2.	In respect of the issue of a licence—	
	on or after July 1 in any year	\$500
	on or before June 30 in any year	\$1,000
3.	In respect of a renewal fee	\$1,000



