

COMPANIES ACT 1974

(Chapter 30)

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GENERAL NOTE: The maximum fines in this Act are as increased by the Fines Act 1986 and by the Criminal Justice (Penalties, Etc.) Act 1993 s 1.

AN ACT

to amend the Companies Acts 1931 to 1968; to provide that a subsidiary company shall not own shares in its holding company; for the conduct of business by insurance companies; for the registration by a company of substantial interests in its own shares; for the investigation of a company's affairs; prohibiting a company acting as a director; and for various matters relating to the administration of companies.

1 Holding and subsidiary companies

(1) For the purposes of this Act, a company shall, subject to the provisions of subsection (3) below, be deemed to be a subsidiary of another if, but only if-

(a) that other either-

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

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

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

(2) For the purposes of subsection (1) above, the composition of a company's board of directors shall be deemed to be controlled by another company if, but only 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; but for the purposes of this provision that other company shall be 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 thereto without the exercise in his favour by that other company of such a power as aforesaid; or
- (b) that a person's appointment thereto follows necessarily from his appointment as director of that other company; or
- (c) that the directorship is held by that other company itself or by a subsidiary of it.

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

- (a) any shares held or power exercisable by that other in a fiduciary capacity shall be treated as not held or exercisable by it;
- (b) subject to the two following paragraphs, any shares held or power exercisable-
 - (i) by any person as a nominee for that other (except where that other is concerned only in a fiduciary capacity); or
 - (ii) by, or by a nominee for, a subsidiary of that other, not being a subsidiary which is concerned only in a fiduciary capacity,

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

(4) For the purposes of this Act, a company, shall be deemed to be another's holding company if, but only if, that other is its subsidiary.

(5) In this section 'company' includes any body corporate and 'equity share capital' means, in relation to a company, its issued share capital excluding any part thereof which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution.

(6)

[Subs (6) repealed by Companies Act 1982 Sch 3.]

2 Membership of holding company

(1) Except as provided in this section, a body corporate shall be incapable of being a member of a company which is its holding company, and any purported allotment or transfer of shares in a company to its subsidiary shall be void.

(2) Nothing in this section shall apply where the subsidiary is concerned as personal representative, or where it is concerned as trustee, unless the holding company or a subsidiary thereof is beneficially interested under the trust and is not so interested only by way of security for the purposes of a transaction entered into by it in the ordinary course of a business which includes the lending of money.

(3) This section shall not prevent a subsidiary which-

- (a) is, on the date this section takes effect, a member of its holding company; or
- (b) after the date on which this section takes effect but immediately before it becomes a subsidiary, is a member of the company which becomes its holding company,

from continuing to be a member but, subject to subsection (2) above, the subsidiary shall have no right to vote at meetings of the holding company or any class of members thereof.

(4) Subject to subsection (2) above, subsections (1) and (3) above shall apply in relation to a nominee for a body corporate which is a subsidiary, as if references in subsections (1) and (3) to such a body corporate included references to a nominee for it.

(5) In relation to a company limited by guarantee or unlimited which is a holding company, the reference in this section to shares, whether or not it has a share capital, shall be construed as including a reference to the interest of its members as such, whatever the form of that interest.

3

[S 3 repealed by Insurance Act 1986 Sch 6.]

4 Register of substantial interests

(1) If and for so long as may be directed by the Treasury, a company to which this section applies shall keep in accordance with this section a register of substantial interests in its voting shares.

[Subs (1) amended by Treasury Act 1985 Sch 2.]

(2) Every person having such an interest as is referred to in subsection (1) above shall make such notification to the company within the time limited by rules made under subsection (5) of this section as are provided for in subsection (3) below.

(3) A person referred to in subsection (2) above shall, in relation to the nominal value of the company's share capital carrying unrestricted voting rights, notify the company where he-

- (a) acquires an interest or a further interest equal to 3 per cent or more of that capital;

[Para (a) amended by Companies, etc. (Amendment) Act Sch 1.]

- (b) already has an interest in 3 per cent or more of that capital and either increases or diminishes that interest without reducing it below 3 per cent;

[Para (b) amended by Companies, etc. (Amendment) Act Sch 1.]

- (c) already has an interest in 3 per cent or more of that capital and reduces that interest below 3 per cent.

[Para (c) amended by Companies, etc. (Amendment) Act Sch 1.]

(4) A company shall not by virtue of anything done for the purposes of this section be affected with notice of, or put upon inquiry as to, the rights of any person in relation to any shares.

(5) Rules may be prescribed by the Treasury for the interpretation and otherwise in relation to the provisions of this section and such rules shall have effect as if they were enacted by this Act.

[Subs (5) amended by Treasury Act 1985 Sch 2.]

(6) A company to which this section applies is a company which is not a private company.

5 Financial Supervision Commission's power to apply for investigation

(1) The court may on the application of the Financial Supervision Commission appoint one or more competent inspectors to investigate the affairs of a company and to report thereon in such manner as the court shall direct.

[Subs (1) amended by Companies (Transfer of Functions) Act 2000 Sch 2.]

(2) Evidence to the court's satisfaction that it is in the public interest that there should be an investigation shall be sufficient to support an application under subsection (1) above, and without prejudice to the generality of the expression 'public interest' that expression shall for the purposes of this section include any circumstances suggesting-

- (a) that a company's business is being or has been conducted with intent to defraud its creditors or the creditors of any other person or otherwise for a fraudulent or unlawful purpose or that the company was formed for any fraudulent or unlawful purpose;

(b) that persons concerned with a company's formation or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct.

(3) Nothing in this section shall derogate from the rights of a member of a company under section 7 of the Companies Act 1968.

(4) Subject to the provisions of this Act, the provisions of section 134 of the principal Act shall apply in relation to an application under subsection (1) above.

(5) The court's power under section 134 of the principal Act shall be exercisable with respect to-

- (a) a company notwithstanding that it is in the course of being voluntarily wound up;
- (b) all bodies corporate incorporated outside the Island which are carrying on or have carried on business in the Island.

6 Investigation into related companies

(1) If an inspector appointed under sections 134 or 136 of the principal Act to investigate the affairs of a company thinks it necessary for the purposes of his investigation to investigate also the affairs of any other body corporate which is or has at any relevant time been the company's subsidiary or holding company or a subsidiary of its holding company or a holding company of its subsidiary, he shall have power so to do, and shall report on the affairs of the other body corporate so far as he thinks the results of his investigation thereof are relevant to the investigation of the affairs of the first-mentioned company.

(2) Subsection (1) above shall, where an inspector is appointed under section 5 of this Act, apply as if-

- (a) references therein to a subsidiary company included references to any other company which has the same directors as the company in respect of which the inspector is appointed; and
- (b) references to fifty per cent. in section 126(l)(a) of the principal Act (meaning of subsidiary company) were references to forty per cent.

7 Officers and agents

(1) For the purpose of sections 134, 135 and 136 of the principal Act, any reference to officers or to agents shall include past, as well as present, officers or agents, as the case may be, and for the purposes of those sections the expression 'agents', in relation to a company or other body corporate shall include the advocates and bankers of the company or other body corporate and any persons employed by the company or other body corporate as auditors, whether those persons are or are not officers of the company or other body corporate.

(2) Nothing in this Act shall require disclosure-

- (a) by an advocate of any privileged communication made to him in that capacity, except as respects the name and address of his client: or
- (b) by a company's bankers as such of any information as to the affairs of any of their customers other than the company.

8

[S 8 repealed by Companies, etc. (Amendment) Act 2003 Sch 2.]

9 Bodies corporate excluded from directorships

No body corporate (whether incorporated in the Island or elsewhere) shall be a director of a company, and section 143 of the principal Act (which makes certain provisions where a corporation is a director of a company) shall be construed accordingly.

[S 9 substituted by Statute Law Revision Act 1986 Sch 1 and amended by Companies, etc. (Amendment) Act 2003 Sch 1.]

10 Form of registers, etc

(1) Any register, index, minute book or book of account required under the principal Act to be kept by a company may be kept either by making entries in bound books or by recording the matters in question in any other manner.

(2) Where any such register, index, minute book or book of account is not kept by making entries in a bound book, but by some other means, adequate precautions shall be taken for guarding against falsification and facilitating its discovery, and where default is made in complying with this subsection, the company and every officer of the company who is in default shall be liable to a fine not exceeding £200 and further shall be liable to a default fine.

10A Use of computers for company records

(1) The power conferred on a company by section 10(l) of this Act to keep a register or other record by recording the matters in question otherwise than by making entries in bound books includes power to keep the register or other record by recording those matters otherwise than in a legible form, so long as the recording is capable of being reproduced in a legible form.

(2) Any provision of an instrument made by a company before the commencement of this section which requires a register of the holders of the company's debentures to be kept in a legible form is to be read as requiring the register to be kept in a legible or non-legible form.

(3) If any such register or other record of a company as is mentioned in section 10(l) of this Act, or a register of holders of a company's debentures, is kept by the company by recording the matters in question otherwise than in a legible form, any duty imposed on the company by the Companies Acts 1931 to 1992 to allow inspection of, or to furnish a copy of, the register or other record or any part of it is to be treated as a duty to allow inspection of, or to furnish a reproduction of the recording or of the relevant part of it in a legible form.

(4) The Treasury may by regulations make such provision in addition to subsection (3) above as it considers appropriate in connection with such registers or other records as are mentioned in that subsection, and are kept as so mentioned; and the regulations may make modifications of provisions of the Companies Acts 1931 to 1992 relating to such registers or other records.

[S 10A inserted by Companies Act 1992 Sch 2.]

11 [Amends section 2 of the Companies Act 1931.]

12 Printing of articles

The meaning assigned to 'printing' by section 2 of the Interpretation Act 1970 shall apply for the purposes of sections 5(6), 9(l) and 117(l) and (3) of the principal Act.

13 [Amends section 79 of the Companies Act 1931.]

14

[S 14 repealed by Companies Act 1986 s 18.]

15 [Amends section 111 of the Companies Act 1931.]

16

[S 16 repealed by Companies Act 1992 s 31.]

17

[S 17 repealed by Companies Act 1982 Sch 3.]

18 (a) [Amends section 143 of the Companies Act 1931.]

(b)

[Para (b) repealed by Companies Act 1982 Sch 3.]

(c) [Amends section 143 of the Companies Act 1931.]

19 (1) [Renumbers section 284(1) of the Companies Act 1931 to read 283A.]

(2) and (3)

[Subss (2) and (3) repealed by Fees and Duties Act 1989 Sch 3.]

20 [Amends section 341 of the Companies Act 1931.]

21

[S 21 repealed by Companies Act 1986 s 18.]

22 Regulations and other public documents

(1) The Treasury or the Financial Supervision Commission, with the concurrence of the Treasury, may by regulations provide for all matters necessary to carry the purposes of the Companies Acts 1931 to 1993 into effect, and without prejudice to the generality of the foregoing may prescribe-

(a)

[Para (a) repealed by Fees and Duties Act 1989 Sch 3.]

(b) maximum penalties not exceeding-

(i) on conviction on information, a fine;

(ii) on summary conviction £5,000,

for the contravention or failure to comply with the regulations or the terms and conditions of any licence granted under the regulations.

[Subs (1) amended by Treasury Act 1985 Sch 2, by Companies (Transfer of Functions) Act 2000 Sch 2 and by Companies, etc. (Amendment) Act 2003 Sch 1.]

(2) Where an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in such a capacity, he, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.

[Subs (2) substituted by Companies, etc. (Amendment) Act 2003 Sch 1.]

(3) Except where otherwise expressly provided every power to make a public document under the Companies Acts 1931 to 1993 shall be exercisable and exercised only by the Treasury, and every power under such a public document shall be exercisable and exercised only by the Treasury or according to the direction of the Treasury.

[Subs (3) amended by Treasury Act 1985 Sch 2 and by Companies (Transfer of Functions) Act 2000 Sch 2.]

(4) Nothing in this section shall affect-

(a) any power to make rules of court;

(b) the validity of any public document made under the Companies Acts 1931 to 1968 or any act or proceeding under such a document.

(5) Regulations and rules made under this Act shall be laid before Tynwald as soon as practicable after they are made, and if Tynwald at the sitting at which the regulations or rules are laid or at the next following sitting fails to approve them, the regulations or rules shall cease to have effect.

[Subs (5) substituted by Companies, etc. (Amendment) Act 2003 Sch 1.]

23 Interpretation

(1) In this Act '**principal Act**' means the Companies Act 1931.

(2) References in this Act to a body corporate include a body corporate incorporated outside the Island.

(3) The meaning assigned to 'public document' by section 2 of the Interpretation Act 1970 shall apply for the purposes of this Act to the principal Act.

(4)

[Subs (4) repealed by Companies, etc. (Amendment) Act 2003 Sch 2.]

24

[S 24 repealed by Statute Law Revision Act 1983 Sch. 2.]

25 Short title and commencement

(1) This Act may be cited as the Companies Act 1974 and shall be construed as one with the Companies Acts 1931 to 1968, and those Acts and this Act may be together cited as the Companies Acts 1931 to 1974.

(2) This Act shall come into operation when the Royal Assent thereto has been by the Governor announced to Tynwald and a certificate thereof has been signed by the Governor and the Speaker of the House of Keys but shall not take effect until such day as the Governor may by order appoint and different days may be appointed for different purposes.

[ADO (whole Act except ss 3 and 4) 1/1/1976 (GC142/75); (s 4) 1/3/1976 (GC15/76); (s 3) 31/8/1976 (GC106/76).]