

# COMPANIES REGULATIONS 2018

*(Legal Notice 11 of 2018)*

## ARRANGEMENT OF REGULATIONS

### REGULATION

#### *Preliminary*

1. Citation and Commencement
2. Protected cell companies
3. Terms defined or specified for purposes of Ordinance

#### *Company names*

4. Permitted characters
5. Requirements for a company name
6. Company name in a foreign language or containing words in a foreign language
7. Additional company endings

#### *Re-use of company names*

8. Interpretation for regulations 9 to 12
9. Re-use of name changed under Ordinance or former Ordinance
10. Re-use of name of a struck-off or dissolved company
11. Re-use of name of discontinued company
12. Restrictions

#### *Registers and records*

13. Register of members
14. Register of directors
- 14A. Nominee directors
- 14B. Power to enforce
15. Period for which documents shall be kept
16. Approval of

*Voluntary liquidation*

17. Individuals eligible to be appointed as or to act as voluntary liquidator
18. Circumstances in which voluntary liquidator shall be licensed insolvency practitioners
19. Advertisement of voluntary liquidator's appointment

*Miscellaneous*

20. Additional matters to be included in articles of incorporation
21. Service of documents on company
22. Reduction of cell share capital with approval of CourtCertificates of translation
23. Information to be contained in Register of Registered Charges
24. Certificate of good standing
25. Notices, returns and documents to be filed by companies and foreign companies
26. Documents and particulars prescribed for the purposes of sections 268 and 270 of the Ordinance
27. Documents excluded from section 293 of the Ordinance
28. Publication of approved forms
29. Registrar not responsible for verifying documents filed

*Fees and penalties*

30. Fees and late payment penaltiesCell transfer orders
31. Financial penalties

SCHEDULE 1  
SCHEDULE 2  
SCHEDULE 3  
SCHEDULE 4  
SCHEDULE 5

## TURKS AND CAICOS ISLANDS

### COMPANIES REGULATIONS 2018

*(Legal Notices 11 of 2018 36 of 2018)*

**MADE** by the Governor under section 300 of the Companies Ordinance 2017.

#### *Preliminary*

#### **Citation and commencement**

1. These Regulations may be cited as the Companies Regulations 2018 and come into force on 7<sup>th</sup> February 2018.

#### **Interpretation**

2. (1) In these Regulations—

“close family member”, in relation to an individual, means the individual’s—

- (a) spouse;
- (b) child, including a step child and an adopted child;
- (c) parent, including a step parent and an adoptive parent;
- (d) brother or sister, including a step brother or sister and an adoptive brother or sister; or
- (e) grandchild;

“disqualified person” has the meaning specified in section 280(4) of the Insolvency Ordinance, 2017;

“Ordinance” means the Companies Ordinance 2017; and

“restricted person” has the same meaning as in the Insolvency Ordinance, 2017.

(2) Any word or phrase defined in the Ordinance has, unless the context otherwise requires, the same meaning in these Regulations.

#### **Terms defined or specified for purposes of Ordinance**

3. (1) For the purposes of section 282(4) of the Ordinance—

(a) a company is affiliated with another company if it is in the same group as the other company; and

(b) a company that is affiliated with another company is an “affiliated company” of that other company.

(2) The exchanges listed in Schedule 1 are recognised exchanges for the purposes of the Ordinance.

### *Company names*

#### **Permitted characters**

4. A company name may contain any character specified in Schedule 2.

#### **Requirements for a company name**

5. (1) The name of a company shall be—

(a) its company number name, within the meaning of section 33 of the Ordinance; or

(b) a name that comprises no more than one hundred permitted characters.

(2) A company name, other than a company number name, may only contain one or more numerals if the Registrar is satisfied that it is clear from the context that the name is not a company number name.

#### **Company name in a foreign language or containing words in a foreign language**

6. Where the proposed name for a company or the name or alternate name of a foreign company applying to be registered under Part XVI of the Ordinance, or filing notice of a change in its corporate name under section 270(1)(a) of the Ordinance, has a meaning in a language other than English, the application to register the company under that name, whether on incorporation, continuation or a change of name, or to register the foreign company under that name, shall be accompanied by a translation of the name or proposed name that has been certified, in accordance with regulation 22, by the person who translated the name.

#### **Additional company endings**

7. The name of an international company may, in place of the word “Limited” or the abbreviation “Ltd” end with—

(a) the word “Corporation” or “Incorporated”;

- (b) the words “Societe Anonyme” or “Sociedad Anonima”; or
- (c) the abbreviation “Corp”, “Inc” or “S.A.”.

*Re-use of company names*

**Interpretation for regulations 9 to 12**

**8.** (1) For the purposes of regulations 9 to 12—

“discontinued company” means a company in respect of which the Registrar has issued a certificate of discontinuance under section 223(7) of the Ordinance;

“dissolved company” means a company that has been dissolved under the Ordinance or the former Ordinance;

“former name” means the name used by a company or a former Ordinance company immediately prior to the date that its name was changed under the Ordinance or the former Ordinance;

“former Ordinance” means the Companies Ordinance [Cap. 16.08];

“former Ordinance company” means a company incorporated, formed, continued or registered under the former Ordinance, but excludes a foreign company incorporated outside the Islands registered under Part XII of the former Ordinance;

“insolvent company” means, subject to subsection (2), a company that is—

- (a) in liquidation under the Insolvency Ordinance or has been dissolved following the termination of its liquidation under that Ordinance; or
- (b) in administrative receivership, within the meaning of the Insolvency Ordinance, or has been dissolved within two years after the termination of its administrative receivership, without entering into liquidation; and

“struck-off company” means a company that has been struck off the Register of Companies or the Register of Companies maintained under the former Ordinance;

(2) A company that has been dissolved for seven years or more ceases to be an “insolvent company” for the purposes of regulations 9 to 12.

### **Re-use of name changed under Ordinance or former Ordinance**

**9.** (1) The Registrar may incorporate or continue a company under, or register a change of name of a company to, a name that is identical or similar to the former name of another company or a former Ordinance company—

- (a) at any time after the expiry of a period of five years from the date that the company or former Ordinance company changed its name; or
- (b) if the company that has changed its name provides its written consent—
  - (i) where the Registrar is satisfied that the change of name is part of a genuine sale of the business or undertaking, or a substantial part of the business or undertaking, of the consenting company to the company seeking to re-use the name, at any time after the consenting company has changed its name;
  - (ii) where the Registrar is satisfied that both companies are affiliates, at any time after the consenting company changed its name; or
  - (iii) in any other case, after the expiry of a period of three years from the date that the consenting company changed its name.

(2) Where a company has changed its name, and the name, or a similar name, has not been registered to another company, the Registrar may permit the company to change its name to its previous name, or a similar name.

### **Re-use of name of a struck-off or dissolved company**

**10.** (1) The Registrar may permit the name of a struck-off company, or a name similar to the name of a struck-off company, to be registered to another company at any time after the expiry of a period of five years from the date that the struck-off company was struck off the Register of Companies or the Register of Companies maintained under the former Ordinance.

(2) The Registrar may permit the name of a dissolved company, or a name similar to the name of a dissolved company, to be registered to another company at any time after the date that the dissolved company was dissolved.

### **Re-use of name of discontinued company**

**11.** (1) The Registrar may permit the name of a discontinued company, or a name similar to the name of a discontinued company, to be registered to another company at any time after the expiry of a period of five years from the date of the certificate of discontinuance issued in respect of the discontinued company.

(2) If a discontinued company is subsequently continued under the Ordinance, the Registrar may permit the company to be continued under its previous name, as stated in the certificate of discontinuance, unless the name has been re-used in accordance with these Regulations.

### **Restrictions**

**12.** (1) Notwithstanding regulations 9 to 11, the Registrar shall not permit a name to be registered to—

- (a) more than two different companies; or
- (b) more than twice to the same company, in any period of seven years.

(2) If the other company is an insolvent company, the name of the insolvent company, or a name similar to the name of the insolvent company, may only be registered to another company—

- (a) if the liquidator or administrative receiver has sold the business or undertaking, or a substantial part of the business or undertaking, of the insolvent company to the second company; or
- (b) with the leave of the Court.

### *Registers and records*

### **Register of members**

**13.** (1) The register of members of a company shall, in addition to the information specified in section 85(1)(a) to (g) of the Ordinance, state—

- (a) in the case of a person who holds shares in a company, whether there are any restrictions on the transfer of those shares; or
- (b) in the case of a guarantee member, the amount which the member is liable to contribute to the company's property in the event that a voluntary

liquidator or an Insolvency Ordinance liquidator is appointed whilst the person is a member.

(2) Information relating to a former member of a company may be deleted from the register of members twenty years following the date that the person ceased to be a member.

### **Register of directors**

**14.** (1) The register of directors shall state—

(a) in the case of a director who is an individual, the director's—

- (i) full legal name and any former names;
- (ii) date of birth;
- (iii) nationality; and
- (iv) usual residential address and, if different, an address for service;

(b) in the case of a director that is a body corporate, the director's—

- (i) full corporate name;
- (ii) registered office or, if it does not have a registered office, its principal place of business; and
- (iii) legal form and the jurisdiction by which it is governed;

(c) in the case of every director—

- (i) the date on which the person was appointed as a director of the company; and
- (ii) the date on which the person ceased to be a director of the company.

(2) For the purposes of this section, “director” includes an alternate director.

### **Nominee directors**

**14A.** (1) A director of a company incorporated on or after the commencement of these Regulations who becomes a nominee shall inform the company of that fact and provide such prescribed particulars of the person for whom the director is a nominee within thirty days after the director becomes a nominee.

(2) A director of a company incorporated before the commencement of the commencement of these Regulations—



(a) who is a nominee shall inform the company of that fact and provide such prescribed particulars of the person for whom the director is a nominee within ninety days after the commencement of these Regulations; or

(b) who becomes a nominee shall inform the company of that fact and provide such prescribed particulars of the person for whom the director is a nominee within thirty days after the director becomes a nominee.

(3) A director of a company mentioned in subsection (1) or (2) shall inform the company—

(a) that he ceases to be a nominee within thirty days after the cessation; and

(b) of any change to the particulars provided to the company under that subsection within thirty days after the change.

(4) A company shall keep a register of its directors who are nominees (called in this regulation the register of nominee directors) at the office of its registered agent in a form approved by the Registrar.

(5) Subject to regulation 14B, a company shall not disclose, or make available for inspection, the register of nominee directors or any particulars contained in the register of nominee directors to any member of the public.

(6) A director who fails to comply with subsection (1), (2) or (3), commits an offence and is liable on summary conviction to a fine of \$5,000.

(7) A company that fails to comply with subsection (4) or (5), the company, and every officer of the company who is in default, each commits an offence and shall be liable on summary conviction to a fine of \$5,000.

(8) In this section, a director is a nominee if the director is accustomed or under an obligation whether formal or informal to act in accordance with the directions, instructions or wishes of any other person.

(9) For the purposes of—

(i) subsections (1)(a) and (b) and (2)(a) and (b), the prescribed particulars of an individual for whom the director is a nominee are—

(ii) full name;

(iii) aliases, if any;

- (iv) residential address;
  - (v) nationality;
  - (vi) identity card number or passport number;
  - (vii) date of birth; and
  - (viii) date on which the director became the individual's nominee; and
- (b) subsection (1)(a) and (b) and (2)(a) and (b), the prescribed particulars of a legal entity for whom the director is a nominee are—
- (i) name;
  - (ii) unique entity number issued by the Registrar, if any;
  - (iii) address of registered office;
  - (iv) legal form of the legal entity;
  - (v) jurisdiction where, and statute under which, the legal entity is formed or incorporated;
  - (vi) the name of the corporate entity register of the jurisdiction in which the legal entity is formed or incorporated, if applicable;
  - (vii) identification number or registration number of the legal entity on the corporate entity register of the jurisdiction where the legal entity is formed or incorporated, if applicable; and
  - (viii) date on which the director became the legal entity's nominee.

*(Inserted by L. N. 36/2018)*

### **Power to enforce**

- 14B.** (1) The Registrar may—
- (a) require a company to which regulation 14A applies to produce its register, its register of nominee directors and any other document relating to those registers or the keeping of those registers, within five days of the request;
  - (b) inspect, examine and make copies of the registers and any document so produced; and

- (c) make such inquiry as may be necessary to ascertain whether the provisions regulation 14A are complied with.
- (2) Where any register or documents as are mentioned in subsection (1) are kept in electronic form—
- (a) the power of the Registrar in subregulation (1)(a) to require the register or any documents to be produced includes the power to require a copy of the register or documents to be made available in legible form and subregulation (1)(b) is to accordingly apply in relation to any copy so made available; and
  - (b) the power of the Registrar under subregulation (1)(b) to inspect the register or any documents includes the power to require any person on the premises in question to give the Registrar such assistance as the Registrar may require to enable the Registrar to inspect and make copies of the register or documents in legible form, and to make records of the information contained in them.
- (3) Any person who fails to comply with any requirement imposed under subregulation (1) or (2) commits an offence and is liable on summary conviction to a fine of \$5,000. (*Inserted by L. N. 36/2018*)

**Period for which documents shall be kept**

15. (1) A company shall keep—
- (a) its articles, register of members, register of directors, beneficial ownership register and register of charges until it is dissolved;
  - (b) minutes of meetings and resolutions required to be kept under section 133 of the Ordinance, for a period of seven years after the date of the resolution or meeting; and
  - (c) financial records required to be kept under section 134 of the Ordinance, for a period of seven years following the end of—
    - (i) the financial year to which the records relate; or
    - (ii) if the company does not have a financial year, the calendar year to which the records relate.
- (2) This regulation applies to records kept in hard copy and to records kept in electronic form.

### **Circumstances in which director interested in a transaction**

**16.** (1) A director of a company is considered to be interested in a transaction with the company if the director—

- (a) is a party to the transaction;
- (b) will or may derive a material financial or other benefit from the transaction;
- (c) has a material interest in another party to the transaction;
- (d) subject to subregulation (2), is a director, officer, or trustee of another party to, or person who will or may derive a material financial or other benefit from, the transaction;
- (e) is a close family member of another party to the transaction or of a person who will or may derive a material financial or other benefit from the transaction; or
- (f) is otherwise directly or indirectly materially interested in the transaction.

(2) Subregulation (1)(d) does not apply if the other person who is a party to, or will or may derive a material financial or other benefit from the transaction, is—

- (a) the company's parent, of which the company is a wholly owned subsidiary;
- (b) a wholly owned subsidiary of the company; or
- (c) a wholly owned subsidiary of a parent of which the company is also a wholly owned subsidiary.

#### *Voluntary liquidation*

### **Individuals eligible to be appointed as or to act as voluntary liquidator**

**17.** (1) For the purposes of section 237(6) of the Ordinance, an individual is eligible to be appointed and to act as the voluntary liquidator of a company if the individual is not disqualified from acting as the voluntary liquidator of a company under sub-regulation (2).

(2) The following individuals are disqualified from being appointed, or acting, as the voluntary liquidator of a company—

- (a) a disqualified person or an individual subject to an equivalent disqualification under the laws of a country outside the Islands;

- (b) a restricted person or an individual subject to an equivalent restriction under the laws of a country outside the Islands;
- (c) an individual who is under eighteen years of age;
- (d) an undischarged bankrupt;
- (e) an individual who is, or at any time in the previous two years has been, a director of the company or an affiliated company;
- (f) an individual who acts, or at any time in the previous two years has acted, in a senior management position in relation to the company or an affiliated company and whose functions or responsibilities have included functions or responsibilities in relation to the financial management of the company or an affiliated company; or
- (g) an individual who is a close family member of an individual specified in paragraph (e) or (f).

**Circumstances in which voluntary liquidator shall be licensed insolvency practitioner**

**18.** (1) For the purposes of section 238(2) of the Ordinance, the voluntary liquidator, or where there are joint voluntary liquidators, at least one of the voluntary liquidators, of a company that is a regulated person shall be a licensed insolvency practitioner if the company holds, or has at any time held—

- (a) a licence issued under the Banking Ordinance;
- (b) a licence issued under the Insurance Ordinance, except a principal insurance representative's licence and an insurance sub-agent's licence;
- (c) an unrestricted trust company's licence issued under the Trust Companies (Licensing and Supervision) Ordinance 2016;
- (d) a licence issued under the Money Transmitters Ordinance;
- (e) a licence issued under the Company Management (Licensing) Ordinance;
- (f) a licence issued under the Investment Dealers (Licensing) Ordinance; or
- (g) a licence issued under the Mutual Funds Ordinance, but excluding a registered or recognised mutual fund.

(2) Subregulation (1)(b) does not apply if the holder of the licence is a producer owned reinsurance company within the meaning of section 9 of the Insurance Ordinance [Cap. 16.06].

### **Advertisement of voluntary liquidator's appointment**

**19.** For the purposes of section 242(1)(b) and section 247C(3)(b) of the Ordinance, the voluntary liquidator of a company shall advertise notice of his appointment—

- (a) in at least one issue of a newspaper published and circulating in the Islands; and
- (b) unless the company's principal place of business is in the Islands—
  - (i) in at least one issue of a newspaper circulating in the place outside the Islands in which its place of business, or if it has more than one, its principal place of business, is situated; or
  - (ii) if the company does not have a place of business, or the voluntary liquidator does not know where its place of business is situated, in such manner as the liquidator considers is most likely to come to the attention of any creditors of the company.

### *Miscellaneous*

### **Additional matters to be included in articles of incorporation**

**20.** The articles of a company limited by shares or authorised to issue shares shall specify the maximum number of shares that the company is authorised to issue or that the company is authorised to issue an unlimited number of shares.

### **Service of documents on company**

**21.** (1) For the purposes of section 138(1) of the Ordinance the following are the prescribed methods for sending a document to the registered office or registered agent of the company—

- (a) in the case of a document in legal proceedings—
  - (i) by serving it in accordance with the Rules of the Supreme Court; or
  - (ii) by sending it in accordance with any directions as to service given by the court having jurisdiction in the proceedings;
- (b) in the case of any other document—

- (i) by posting the document to a postal box which the registered agent is using at the time;
  - (ii) by sending it by facsimile transmission to a telephone number used by the registered agent for the transmission of documents by facsimile; or
  - (iii) by sending it by email to an email address used by the registered agent at the time.
- (2) For the purposes of section 138(2) of the Ordinance—
  - (a) if a document is served by leaving it at the company's registered office, service is considered to be effective if it is proved—
    - (i) that the document was handed to an individual who is a director, officer or employee of the company; or
    - (ii) if an individual referred to in subparagraph (i) refused to accept the document, that the document was brought to the attention of, and left in a place accessible to, the individual;
  - (b) if a document is served by leaving it at the office of the company's registered agent, service is considered to be effective if it is proved—
    - (i) that the document was handed to an individual who is a director, officer or employee of the registered agent; or
    - (ii) if an individual referred to in subparagraph (i) refused to accept the document, that the document was brought to the attention of, and left in a place accessible to, the individual;
  - (c) if a document is posted to a postal box, the document is deemed to be received ten working days after it is posted, or such shorter period as a court having jurisdiction in proceedings any matter may determine;
  - (d) if a document is sent by facsimile transmission, the document is deemed to have been received on the working day following the day on which it was sent; and
  - (e) if a document is sent by email, the document is deemed to have been received on the working day following the day on which it was sent.
- (3) In proving service of a document by—

- (a) post, it is sufficient to prove that—
  - (i) the document was properly addressed;
  - (ii) all postal or delivery charges were paid; and
  - (iii) the document was posted to the post box concerned;
- (b) facsimile transmission, it is sufficient to prove that the document was properly transmitted by facsimile machine to the company; or
- (c) email, it is sufficient to prove that—
  - (i) the document was properly addressed; and
  - (ii) the document was properly sent to the email address.

(4) A document is not to be deemed to have been served on a person in accordance with subsection (2)(c), (d) or (e) if the person proves that, through no fault on the person's part, the document was not received within the time specified.

### **Certificates of translation**

**22.** (1) This regulation applies where a translation into the English language of a name of a company or foreign company or any document required to be filed, submitted or provided to the Registrar, is required by the Ordinance or these Regulations to be certified as accurate.

(2) The person who made the translation shall certify, or verify, before a person authorised to act as a Notary Public or to administer oaths that—

- (a) the translation is an accurate translation of the document concerned; and
- (b) he has the necessary competence to translate the document into English.

(3) Where a translation is certified or verified in a country outside the Islands, the translation shall be certified or verified before a person authorised under the law of the country concerned—

- (a) to act as a Notary Public, or equivalent; or
- (b) administer oaths, or their equivalent.

(4) The requirements of sub-regulation (2) or (3) shall be treated as satisfied without the need for any certification or verification before a Notary Public (or its equivalent) or other person qualified to administer oaths if the translation of a



document is carried out by a person who is duly sworn and appointed to translate documents—

- (a) by a court in or outside the Islands; or
- (b) by the Government of the Islands or the government of a country or territory outside the Islands.

(5) A person who translates a document by virtue of subsection (4) shall indicate in writing the court or government by which the person is appointed.

### **Information to be contained in Register of Registered Charges**

**23.** The Register of Registered Charges maintained in respect of a company shall contain the following information in respect of each charge registered—

- (a) the registered name and company number of the company that has created the charge;
- (b) the date and time of registration of the charge;
- (c) if the charge is a charge created by the company, the date of its creation or, if the charge is a charge existing on property acquired by the company, the date on which the property was acquired;
- (d) a short description of the liability secured by the charge;
- (e) a short description of the property charged;
- (f) the name and address of the trustee for the security or, if there is no trustee, the name and address of the chargee;
- (g) details of any prohibition or restriction, if any, contained in the instrument creating the charge on the power of the company to create any future charge ranking in priority to or equally with the charge;
- (h) the name and address of the person who filed the charge for registration and the person's entitlement to file the charge;
- (i) details of any variation of the charge registered under section 165 of the Ordinance;
- (j) the date and time of registration of any variation of the charge registered under section 165 of the Ordinance;

- (k) the name and address of the person who filed the variation of the charge for registration and the person's entitlement to file the variation;
- (l) where a notice of satisfaction or release is registered under section 166 of the Ordinance, details of the satisfaction of any charge registered under section 164 of the Ordinance or, where a charge has ceased to affect the property, or any part of the property of the company, details of the property that has ceased to be affected by the charge, stating whether this is the whole or part of the company's property; and
- (m) the date and time of registration of the notice of satisfaction or release registered under section 166 of the Ordinance.

### **Certificate of good standing**

**24.** A certificate of good standing issued under section 294 of the Ordinance shall state—

- (a) that, at the date of the certificate, the company—
  - (i) is on the Register of Companies; and
  - (ii) has paid all fees and penalties due under the Ordinance; and
- (b) whether, at the date of the certificate—
  - (i) the company has filed articles of merger or consolidation that have not yet become effective;
  - (ii) the company has filed articles of arrangement that have not yet become effective;
  - (iii) the company is in voluntary liquidation;
  - (iv) the company is in liquidation or receivership under the Insolvency Ordinance 2017 and, where appropriate, stating that it is in administrative receivership; or
  - v) any proceedings to strike the name of the company off the Register of Companies have been instituted.

### **Notices, returns and documents to be filed by companies and foreign companies**

**25.** (1) The notices, returns and documents specified in column 1 of Schedule 5 must be filed by companies or foreign

companies on or before the due date, or within the period specified, in column 2 of Schedule 5.

(2) A notice, return or document specified in Schedule 5 shall be in, and contain the particulars specified in, the approved form.

(3) This regulation and Schedule 5 does not limit—

- (a) any requirement of the Ordinance to file a notice, document or return; or
- (b) the filing of any notice, document or return permitted to be filed by the Ordinance.

### **Documents and particulars prescribed for the purposes of sections 268 and 270 of the Ordinance**

**26.** (1) An application by a foreign company for registration under Part XVI of the Ordinance shall, in addition to the documents specified in section 268(3)(a) to (e) of the Ordinance, be accompanied by a document setting out the following particulars—

- (a) the foreign company's principal place of business in the Islands;
- (b) the nature of the business of the foreign company carried on in the Islands; and
- (c) the registered office or equivalent of the company outside the Islands.

(2) The particulars specified in subregulation (1)(a), (b) and (c) are prescribed for the purposes of section 270(1)(f) of the Ordinance.

### **Documents excluded from section 293 of the Ordinance**

**27.** (1) The following are the “membership documents” of a company for the purposes of this regulation—

- (a) a notice of the first members of a company;
- (b) a notice of members filed under paragraph 3(2)(b)(iv) of Schedule 1 of the Ordinance;
- (c) a notice of members filed under paragraph 9A(1)(a)(ii) of Schedule 1 of the Ordinance; or
- (d) a notice of a change in the members of a company.

(2) Subject to subregulations (3), (4) and (5), a person may not inspect or require a certified or uncertified extract of any of a company's membership documents.

(3) A person may inspect and require a certified or uncertified extract of a company's filed membership document if the company has provided to the Registrar a written notice consenting to that person inspecting and being provided with extracts of its membership documents.

(4) A written notice of consent given under subregulation (2) shall state either that—

- (a) the consent applies to all membership documents filed by the company; or
- (b) the consent applies to all membership documents filed by the company after a date specified in the notice.

(5) Notwithstanding section 293 of the Ordinance, subregulation (2) does not limit the operation of section 51 of the Financial Services Commission Ordinance [Cap. 16.01] with respect to—

- (a) a membership document; or
- (b) any information contained in a membership document.

### **Publication of approved forms**

**28.** (1) For the purposes of section 301(1) of the Ordinance, the Commission publishes an approved form in the prescribed manner by—

- (a) publishing the form on its website; and
- (b) providing notice of the publication of the form to persons that the Commission considers will be substantially affected.

(2) The Commission may comply with subregulation (1)(a) by providing notice in such manner as the Commission considers appropriate to any professional or trade associations of which persons who may be affected by the form are members.

### **Registrar not responsible for verifying documents filed**

**29.** The Registrar is not required to—

- (a) review or verify the accuracy of any document filed; or
- (b) verify that any document filed comply with the Ordinance or these Regulations,

unless he is required to do so by the Ordinance or these Regulations.

*Fees and penalties*

**Fees and late payment penalties**

**30.** (1) The fees and late payment penalties specified in Schedule 3 and Schedule 4 shall be payable to the Registrar in respect of the matters to which they relate.

(2) A former Ordinance company that is automatically registered under paragraph 5 of Schedule 1 of the Ordinance and a foreign company that is deemed registered under paragraph 20A of Schedule 1 of the Ordinance remains liable for all fees and penalties outstanding under the former Ordinance at the date of its automatic registration or deemed registration.

**Financial penalties**

**31.** (1) This regulation applies with respect to financial penalties that may be imposed under section 297 of the Ordinance.

(2) For the purposes of section 297(1), the Commission may, in addition to imposing a penalty for a breach or failure to comply, specified in Schedule 2 of the Ordinance, impose a financial penalty for the failure of a company or foreign company to file a document specified in Schedule 5 of these Regulations on or before the due date specified in the Schedule.

(3) Subject to subregulations (4) and (5), in determining the financial penalty to be imposed on a company or a foreign company, the Commission—

(a) shall take into account the following matters—

- (i) the nature and seriousness of the contravention;
- (ii) in respect of the failure of a company or foreign company to file a document specified in Schedule 5 on or before the due date, the length of the period by which the document is overdue or was filed late;
- (iii) whether the company or foreign company has previously contravened the Ordinance;
- (iv) whether the contravention was deliberate or reckless or caused by the negligence of the company or foreign company; and

(b) may take into account such other matters as it considers appropriate.

(4) The penalty for a failure to file a document referred to in Schedule 5 shall not exceed \$25 for each day that the document is overdue.

(5) The maximum penalty that the Commission may impose for a breach or failure to comply specified in Schedule 2 of the Ordinance, is \$25,000.

## **SCHEDULE 1**

### **RECOGNISED EXCHANGES**

The following exchanges are recognised exchanges for the purposes of the Ordinance—

1. Australian Securities Exchange
2. Bahamas International Securities Exchange
3. Barbados Stock Exchange
4. Bermuda Stock Exchange
5. Berne eXchange
6. B3
7. Bolsa de Madrid
8. Bombay Stock Exchange
9. Borsa Italiana
10. Buenos Aires Stock Exchange
11. Canadian Securities Exchange
12. Cayman Islands Stock Exchange
13. Nasdaq Copenhagen
14. Deutsche Börse Group, also called Deutsche Börse AG
15. Eastern Caribbean Securities Exchange
16. Eurex Exchange
17. Euronext
18. Guyana Stock Exchange
19. Stock Exchange Hong Kong
20. Irish Stock Exchange
21. Jamaica Stock Exchange
22. Japan Exchange Group
23. Johannesburg Stock Exchange
24. Korea Exchange
25. London Stock Exchange
26. Luxembourg Stock Exchange
27. Malta Stock Exchange
28. NASDAQ
29. Nasdaq Nordic
30. National Stock Exchange of India
31. New York Stock Exchange
32. New Zealand Exchange
33. Nordic Growth Market
34. Oslo Stock Exchange

35. Shanghai Stock Exchange
36. Singapore Exchange
37. SIX Swiss Exchange
38. Stock Exchange of Singapore
39. NASDAQ Stockholm
40. Shenzhen Stock Exchange
41. Taiwan Stock Exchange
42. The International Stock Exchange
43. Toronto Stock Exchange
44. Trinidad and Tobago Stock Exchange
45. Wiener Börse



## SCHEDULE 2

### PERMITTED CHARACTERS FOR COMPANY NAMES

The following characters are permitted in a company name:

1. The letters A to Z, in lower and upper case.
2. Subject to regulation 5(2), the numerals 0 to 9.
3. Any roman numerals.
4. The following punctuation marks:
  - Full stop .
  - Comma ,
  - Dash -
  - Underscore \_
  - Apostrophe ‘ ’
  - Brackets [ ], ( ) or { }
  - Exclamation mark !
  - Question mark ?
  - Inverted commas “ ”
5. The following symbols:
  - @ & \* / \ < > + = # %
6. The Registrar may, generally or on a case-by-case basis, permit the use of—
  - (a) accents with one or more letters; and
  - (b) symbols that indicate a particular currency.

### SCHEDULE 3

#### FEES AND LATE PAYMENT PENALTIES

1.	For an application to incorporate a company, other than a non-profit company—	
	(a) in the case of a domestic company limited by shares or authorised to issue shares—	
	(i) if the company is authorised to issue no more than 50,000 shares	\$300
	(ii) if the company is authorised to issue more than 50,000 shares but no more than 100,000 shares	\$450
	(iii) if the company is authorised to issue more than 100,000 shares but no more than 750,000 shares	\$550
	(iv) if the company is authorised to issue more than 750,000 shares but no more than 2,000,000 shares	\$1,050
	(v) if the company is authorised to issue more than 2,000,000 shares or an unlimited number of shares	\$2,050
	(b) in the case of an international company limited by shares or authorised to issue shares—	
	(i) if the company is authorised to issue no more than 5,000 shares	\$150
	(ii) if the company is authorised to issue more than 5,000 shares but no more than 50,000 shares	\$150 plus one percent of the number of shares the company is authorised to issue above

		5,000 shares
	(iii) if the company is authorised to issue more than 50,000 shares but no more than 100,000 shares	\$600 plus one half of one percent of the number of shares the company is authorised to issue above 50,000 shares
	(iv) if the company is authorised to issue more than 100,000 shares but no more than 1,000,000 shares	\$850 plus one-tenth of one percent of the number of shares the company is authorised to issue above 100,000 shares
	(v) if the company is authorised to issue more than 1,000,000 shares or an unlimited number of shares	\$2,000
	(b) in the case of a company limited by guarantee or an unlimited company that, in each case, is not authorised to issue shares	\$300
2.	For an application to incorporate a non-profit company	\$300
3.	For an application to register a foreign company under Part XVI of the Ordinance	\$300
4.	On an application to continue a foreign company, whether as a domestic company or an international company	\$300
5.	Application to register the conversion of a company as a protected cell company	\$300
6.	The annual fee specified—	
	(a) in the case of a domestic company, in paragraph 45 of this Schedule	
	(b) in the case of an international	

	company, in paragraph 46 of this Schedule	
	(c) in the case of a non-profit company, in paragraph 47 of this Schedule	
	(d) in the case of a foreign company registered under Part XVI of the Ordinance, in paragraph 48 of this Schedule	
7.	For the issue of a certificate of discontinuance of a company under section 223(7) of the Ordinance	\$1,000
8.	<p>For filing a notice of an increase in the number of shares that a company is authorised to issue, a fee calculated as follows:  Fee payable = (A – B – C) + D  Where:  A represents the fee that would be payable, at the date of filing of the notice of increase, for the incorporation of a company authorised to issue the total number of shares that the company is authorised following the increase  B represents the fee paid for the incorporation of the company, whether under this Ordinance or the former Ordinance  C represents the total sum paid for the previous filing of any notices under this paragraph, excluding in respect of each filing, the sum represented by the letter “D”  D represents the sum of \$50</p>	Calculated in accordance with the formula specified in column 2
9.	For the filing of an amendment to the articles of a company For the filing of an amendment to the articles of a company	\$100
10.	For filing restated articles	\$25
11.	For an application to change the registered name of a company	\$100
12.	On an issuance of a certificate of change of name under section 36(3) of	\$250

	the Ordinance (Registrar directing change of name) (includes a Gazetting fee)	
13.	For an application to reserve a name	\$10
14.	For the Registrar's consent to use a restricted word, phrase or abbreviation	\$50
15.	For filing a notice of appointment of a registered agent (company and foreign company)	\$25
16.	For filing a notice of a change in registered office	\$50
17.	For filing notice of a change of registered agent (company and foreign company)	\$25
18.	For filing a notice of resignation of a registered agent (company and foreign company)	\$25
19.	For filing a notice of appointment of the first directors of a company under section 112(1)(b) of the Ordinance	\$25
20.	For filing a notice of the first members of a company	\$25
21.	For filing a notice of a change in directors under section 119 of the Ordinance	\$50
22.	For filing a notice of a change in the members of a company	\$50
23.	For the registration of a charge under section 164 of the Ordinance	\$100
24.	For the registration of a variation of a registered charge	\$50
25.	For the registration of a notice of satisfaction or release of a registered charge	\$50
26.	For the registration of articles of merger or consolidation	\$500
27.	For filing documents under section 212(2)(b) of the Ordinance (surviving or consolidated company to be incorporated under the laws of a jurisdiction outside the Islands)	\$500
28.	For the registration of articles of	\$500

	arrangement	
29.	For filing an order of the Court sanctioning a scheme of arrangement	\$500
30.	For the registration of a change of particulars of a foreign company	\$50
31.	For filing a notice of appointment of a voluntary liquidator	\$250
32.	For filing a notice of resignation of a voluntary liquidator	\$50
33.	For filing a copy of an order removing a voluntary liquidator under section 246(7) of the Ordinance	\$50
34.	For filing a sealed copy of an order terminating a voluntary liquidation	\$100
35.	For filing a statement that a voluntary liquidation has been completed under section 251(1) of the Ordinance	\$25
36.	For an application to strike from the Register on an expedited basis, a company that has ceased to carry on business and has no assets or liabilities	\$50 plus the fee payable for the publication of the notice of strike off of the company in the <i>Gazette</i>
37.	For the restoration of a company to the Register under section 260(1) of the Ordinance	\$250 plus the fee payable for the publication of the notice of restoration of the company in the <i>Gazette</i>
38.	For filing sealed copy of order of the Court restoring a dissolved company to the Register under section 263(1) (plus a Gazetting fee)	\$500
39.	For the issuance of a certificate of good standing	\$50
40.	For a search (government, government agencies and statutory bodies are exempt for the payment of the fee) <i>(Amended by L. N. 36/2018)</i>	\$50
41.	For issuance of a certificate under section 295	\$25

42.	For the issuance of a duplicate certificate	\$10
43.	For an uncertified copy or extract of any document (per page)	\$1
44.	For a certified copy or extract of any document, whether under hand or under seal—	
	(a) if the total number of pages to be certified does not exceed 20 pages	\$50
	(b) if the total number of pages to be certified exceeds 20 pages	\$100
45.	The annual fee payable by a domestic company is as follows:	
	(a) on 30 <sup>th</sup> June in the year immediately following the year of its incorporation, continuation or registration as a consolidated company	\$25 for each full month that it has been on the Register of Companies in the year of its incorporation, continuation or registration as a consolidated company
	(b) on 30 <sup>th</sup> June in each subsequent year	\$300
46.	The annual fee payable by an international company is as follows:	
	(a) on 31 <sup>st</sup> January in the year immediately following the year of its incorporation, continuation or registration as a consolidated company	
	(i) if the company was incorporated, continued or registered as a consolidated company between 1 <sup>st</sup> January and 31 <sup>st</sup> March	\$350
	(ii) if the company was incorporated, continued or registered as a consolidated company between 1 <sup>st</sup> April and 30 <sup>th</sup> June	\$265
	(iii) if the company was incorporated, continued or registered as a consolidated company between 1 <sup>st</sup>	\$175

	July and 30 <sup>th</sup> September	
	(iv) if the company was incorporated, continued or registered as a consolidated company between 1 <sup>st</sup> October and 31 <sup>st</sup> December	\$90
	(b) on 31 <sup>st</sup> January in each subsequent year	\$350
47.	The annual fee payable by a non-profit company is as follows:	
	(a) on 31 <sup>st</sup> January in the year immediately following the year of its incorporation	
	(i) if the company was incorporated between 1 <sup>st</sup> January and 31 <sup>st</sup> March	\$150
	(ii) if the company was incorporated between 1 <sup>st</sup> April and 30 <sup>th</sup> June	\$110
	(iii) if the company was incorporated between 1 <sup>st</sup> July and 30 <sup>th</sup> September	\$75
	(iv) if the company was incorporated, continued or registered as a consolidated company between 1 <sup>st</sup> October and 31 <sup>st</sup> December	\$40
	(b) on 31 <sup>st</sup> January in each subsequent year	\$150
48.	The annual fee payable by a foreign company is as follows:	
	(a) on 31 <sup>st</sup> January in the year immediately following the year of its registration	
	(i) if the company was registered between 1 <sup>st</sup> January and 31 <sup>st</sup> March	\$300
	(ii) if the company was registered between 1 <sup>st</sup> April and 30 <sup>th</sup> June	\$225
	(iii) if the company was registered between 1 <sup>st</sup> July and 30 <sup>th</sup> September	\$150
	(iv) if the company was registered between 1 <sup>st</sup> October and 31 <sup>st</sup>	\$75



	December	
	(b) on 31 <sup>st</sup> January in each subsequent year	\$300
49.	The late payment penalty payable by a domestic company that fails to pay the annual fee payable under paragraph 45 in full on or before the date on which it is due is calculated as follows—	
	(a) if the annual fee is paid in full on or before 31 <sup>st</sup> July of the year in which it is due	Nil
	(b) if the annual fee is not paid in accordance with paragraph (a), but is paid in full on or before 30 <sup>th</sup> September of the year in which it is due	50% of the annual fee payable
	(c) if the annual fee is not paid in full on or before 30 <sup>th</sup> September of the year in which it is due	100% of the annual fee payable
50.	The late payment penalty payable by an international company that fails to pay the annual fee payable under paragraph 46 in full on or before the date on which it is due is calculated as follows—	
	(a) if the annual fee is paid in full on or before 28 <sup>th</sup> February of the year in which it is due	Nil
	(b) if the annual fee is not paid in accordance with paragraph (a), but is paid in full on or before 30 <sup>th</sup> April of the year in which it is due	50% of the annual fee payable
	(c) if the annual fee is not paid in full on or before 30 <sup>th</sup> April of the year in which it is due	100% of the annual fee payable
51.	The late payment penalty payable by a non-profit company that fails to pay the annual fee payable under paragraph 47 in full on or before the date on which it is due is calculated as follows—	
	(a) if the annual fee is paid in full on or before 28 <sup>th</sup> February of the year	Nil

	in which it is due	
	(b) if the annual fee is not paid in accordance with paragraph (a), but is paid in full on or before 30 <sup>th</sup> April of the year in which it is due	50% of the annual fee payable
	(c) if the annual fee is not paid in full on or before 30 <sup>th</sup> April of the year in which it is due	100% of the annual fee payable
52.	The late payment penalty payable by a foreign company that fails to pay the annual fee payable under paragraph 48 in full on or before the date on which it is due is calculated as follows—	
	(a) if the annual fee is paid in full on or before 28 <sup>th</sup> February of the year in which it is due	Nil
	(b) if the annual fee is not paid in accordance with paragraph (a), but is paid in full on or before 30 <sup>th</sup> April of the year in which it is due	50% of the annual fee payable
	(c) if the annual fee is not paid in full on or before 30 <sup>th</sup> April of the year in which it is due	100% of the annual fee payable

#### SCHEDULE 4

##### FEES AND LATE PAYMENT PENALTIES (TRANSITIONAL PROVISIONS)

1.	No fee is payable in respect of an application by an existing company under paragraph 3 of Schedule 1 of the Ordinance, to register under the Ordinance, provided that the company applies to register under the Ordinance on or before 31 <sup>st</sup> October 2018—	
	(a) as an equivalent type of company; and	
	(b) with the same number and value of authorised shares with which, on the date of the application, it is authorised to issue under the former Ordinance.	
2.	For the purposes of paragraph 1, an existing company applies to register under the Ordinance as an equivalent type of company if—	
	(a) in the case of a company registered under the former Ordinance as a company limited by shares, it applies to register under the Ordinance as a company limited by shares;	
	(b) in the case of a company registered under the former Ordinance as a company limited by guarantee not authorised to have a share capital, it applies to register under the Ordinance as a company limited by guarantee that is not authorised to issue shares;	
	(c) in the case of a company registered under the former Ordinance as a company limited by guarantee authorised to have a share capital, it applies to register under the Ordinance as a company limited by guarantee that is authorised to issue shares;	
	(d) in the case of a company registered under the former Ordinance as an exempted	

	company limited by guarantee, it applies to register under the Ordinance as an international company;	
	(e) in the case of a company registered under the former Ordinance as an unlimited company authorised to have a share capital, it applies to register under the Ordinance as an unlimited company that is authorised to issue shares;	
	(f) in the case of a company registered under the former Ordinance as an unlimited company that is not authorised to have a share capital, it applies to register under the Ordinance as an unlimited company that is not authorised to issue shares;	
	(g) in the case of a company registered under the former Ordinance as an exempted company or a limited life company, it applies to register under the Ordinance as an international company;	
	(h) in the case of a company registered under the former Ordinance as a non-profit company, it applies to register under the Ordinance as a non-profit company;	
	(i) in the case of a company registered as a protected cell company, it applies to register under the Ordinance as a protected cell company; or	
	(j) in the case of a company that is registered under the former Ordinance, but is not registered as an exempted company or a limited life company or a protected cell company, it applies to register under the Ordinance as a domestic company.	
3.	For an application to register under the Ordinance made by an existing company that falls within subparagraphs (a) and (b) of paragraph 1 of this Schedule, which is filed between 1 <sup>st</sup> November and 31 <sup>st</sup> December 2018 ( <i>Amended by L. N. 36/2018</i> )	\$50
4.	For an application to register under the Ordinance made by an existing company that does not fall within paragraph 1 of this Schedule	\$350

5.	For an application by a registered not for profit association to register as a non-profit company under paragraph 19 of Schedule 1 of the Ordinance	\$200
6.	For filing a notice of registered agent under paragraph 9(3) of Schedule 1 of the Ordinance	\$25
7.	For filing a notice of appointment of registered agent under paragraph 9(4)(b) of Schedule 1 of the Ordinance	\$25
8.	For filing a notice of directors under paragraph 9A(1)(a)(i) of Schedule 1 of the Ordinance	\$75
9.	For filing a notice of members under paragraph 9A(1)(a)(ii) of Schedule 1 of the Ordinance	\$75
10.	The following apply in relation to the annual fee payable under paragraphs 45, 46 and 47 of Schedule 3 of these Regulations by a former Ordinance company registered as a company under Schedule 1 of the Ordinance:	
	<p>(a) in the case of a company registered under Schedule 1 of the Ordinance as a domestic company—</p> <p>(i) if the company was incorporated on or before 30 June 2017 and is registered under paragraph 4 of Schedule 1 of the Ordinance between 1 February and 30 June 2018, the fee specified in paragraph 45(b) of Schedule 3 of these Regulations is payable on 30 June 2018; and</p> <p>(ii) if the company, regardless of its date of incorporation, is registered under paragraph 4 of Schedule 1 of the Ordinance on or after 1<sup>st</sup> July 2018 or is automatically registered under paragraph 5 of the Ordinance, the company's liability for the fee specified in paragraph 45(b) of Schedule 3 of these Regulations commences on 30 June 2019;</p>	
	(b) in the case of a company registered	

	under Schedule 1 of the Ordinance as an international company, the company's liability for the fee specified in paragraph 46(b) of Schedule 3 of these Regulations commences on 31 January 2019;	
	(c) in the case of a company registered under Schedule 1 of the Ordinance as a non-profit company, the company's liability for the fee specified in paragraph 47(b) of Schedule 3 of these Regulations commences on 31 January 2019.	
11.	The liability for the fee specified in paragraph 48(b) of Schedule 3 of these Regulations of a foreign company deemed registered under paragraph 20A of Schedule 1 of the Ordinance commences on 31 January 2019.	

## SCHEDULE 5

### NOTICES, DOCUMENTS AND RETURNS REQUIRED TO BE FILED

A company or foreign company is required to file the notices, returns and documents specified in the first column on or before the due date, or within the period specified, in the second column.

	<b>Document</b>	<b>Date Due or Period within which Document to be Filed</b>
1.	Notice of first members of a company	Within fourteen days of members being entered on the register of members
2.	Notice of change in members of a company	Within fourteen days of change in members

*(Amended by L. N. 36/2018)*

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