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COMPANIES (AMENDMENT) ACT, 2020

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No. 34 of 2020

COMPANIES (AMENDMENT) ACT, 2020

AN ACT TO AMEND THE COMPANIES ACT

[Date of Assent - 11th December, 2020]

Enacted by the Parliament of The Bahamas

1. Short title and commencement.

- (1) This Act, which amends the Companies Act (*Ch. 308*), may be cited as the Companies (Amendment) Act, 2020.
- (2) This Act shall come into into operation on such date as the Minister may appoint by notice, published in the Gazette.

2. Repeal and replacement of section 25 of the principal Act.

Section 25 of the principal Act is repealed and replaced as follows —

“25. Contracts generally.

- (1) A company may enter into a contract in the same manner as an individual may enter into a contract, such that —
 - (a) where a contract entered into by an individual would be required by law to be in writing and signed, that contract may be entered into by or on behalf of a company in writing and signed by a person acting under the express or implied authority of the company, and may be varied or discharged in the same manner; and
 - (b) where a contract entered into by an individual would be valid although entered into orally and not reduced to writing, that contract may be entered into orally by or on behalf of a company by a person acting under the express or implied authority of the company and not reduced to writing, and may be varied or discharged in the same manner.

- (2) A contract is valid and binding on a company, its successors and all other parties to the contract where —
 - (a) it is entered into by the company in accordance with subsection (1); and
 - (b) it is executed by the company in a manner contemplated by the parties in accordance with section 25C.”.

3. Insertion of new sections 25A - 25C into the principal Act.

The principal Act is amended by the insertion immediately after section 25 of the following new sections —

“25A. Deeds generally.

- (1) A document is validly executed by a company as a deed where it is executed in accordance with the provisions of this section and is delivered as a deed.
- (2) A document executed by a company as a deed shall be expressed to be or to be executed as, or otherwise shall make clear on its face that it is intended to be, a deed and —
 - (a) shall be signed by a director of the company or by a person acting with the express or implied authority of the company in the presence of a witness who attests to the signature; or
 - (b) shall be sealed with the seal of the company and witnessed and attested by a director or such other person authorised by the company’s memorandum and articles to witness and attest the application of the company’s seal in the presence of a witness who attests to the signature.
- (3) For the purposes of subsection (2), the mere execution by a company of a document under seal shall not be taken to make clear on its face or otherwise be an expression that it is or is intended to be a deed.
- (4) A document executed as a deed in accordance with this section is presumed to be delivered when executed, unless a contrary intention is proved.
- (5) Any signature affixed by or at the direction of an individual in the name or on behalf of a company in execution of a deed under this section shall comply with section 3 of the Property (Execution of Deeds and Documents) Act, 2020.”.

25B. Deeds executed by foreign companies.

- (1) A deed intended to be governed by the laws of The Bahamas and executed by a foreign company or other foreign entity is validly executed where —
 - (a) the deed is executed in a manner permitted by the laws of the territory in which the foreign company or other foreign entity is incorporated, registered or organised; and
 - (b) the intention to be governed by the laws of The Bahamas is stated in or otherwise made apparent on the face of the deed.
- (2) A deed executed by a foreign company or other foreign entity in accordance with subsection (1) is valid and binding under the laws of The Bahamas and shall be treated as a deed executed in compliance with section 25A.”.

25C. Manner of execution of instruments.

- (1) A contract, deed or other instrument may be executed by a company in any manner contemplated by the parties.
- (2) Without prejudice to the generality of subsection (1), execution by a company includes without limitation —
 - (a) execution of the complete instrument by the party or parties thereto; or
 - (b) execution of signature pages to the instrument, whether or not the instrument is at the time in final form, which are physically or electronically attached or added to, or compiled with, the remainder of the instrument by or on behalf of the executing party or otherwise with the executing party’s express or implied authority.
- (3) This section applies to a deed or instrument under seal whether made before, on or after the date this section comes into operation but no deed or instrument under seal made before such date shall be invalid by reason only of a provision of this section.”.

4. Repeal and replacement of section 26 of the principal Act.

Section 26 of the principal Act is repealed and replaced as follows —

“26. Company seal.

- (1) A company may elect to have a common seal.
- (2) A company which elects to have a common seal —
 - (a) shall have its name engraved in legible characters on the seal;

- (b) may keep the seal at such place as it may from time to time determine and, in default of such determination, at its registered office; and
 - (c) where authorised by its articles, may maintain a duplicate seal or seals, each of which shall be a facsimile of the common seal, at such place or places throughout the world as it may authorise and a duplicate seal may bear on its face the name of any country, territory, district or place where it is to be used.
- (3) An instrument to which a duplicate seal of a company is affixed shall bind the company as if it had been sealed with the common seal of the company.
 - (4) A company having a duplicate seal may authorise any person appointed for the purpose to affix the duplicate seal to an instrument to which the company is a party.
 - (5) A director or officer of a company, or a person acting on behalf of a company, shall not use or authorise the use of a seal purporting to be a seal of the company on which the name of the company is not engraved in accordance with subsection (2)(a).”.

5. Repeal and replacement of section 28 of the principal Act.

Section 28 of the principal Act is repealed and replaced as follows —

“28. Power of attorney.

- (1) Where the memorandum and articles of a company permit it to appoint a person to act on its behalf as its attorney, the company may appoint such attorney by instrument in writing, generally or in relation to a specific matter.
- (2) An attorney appointed in accordance with subsection (1) binds the company where the act of the attorney is in accordance with the instrument under which the attorney was appointed.
- (3) An instrument appointing an attorney under this section may be executed as a deed or signed by a person acting with the express or implied authority of the company in the presence of a witness who attests to the signature.”.

6. Insertion of new section 28A into the principal Act.

The principal Act is amended by the insertion immediately after section 28 of the following new section —

“28A. Compliance with sections 25, 25A, 25B, 25C, 26 and 28.

It shall not be necessary for a company to amend its Memorandum and Articles of Association in order to satisfy the requirements of sections 25, 25A, 25B, 25C, 26 and 28.”.

7. Amendment of section 65 of the principal Act.

Section 65 of the principal Act is amended by the deletion of subsections (6) and (7) and the substitution of the following —

- “(6) Upon receiving notice of a meeting of members, and not less than seven days before the scheduled date of such meeting, a member or members owning five per cent or more of the voting shares of a company may require the directors to include specified items on the agenda.
- (7) For the purposes of subsection (6), the directors of a company shall —
 - (a) include the relevant specified items on the agenda of a meeting except where the items —
 - (i) if passed, would be ineffective, whether by reason of inconsistency with any law or the company’s memorandum or articles of association;
 - (ii) are materially and commercially sensitive;
 - (iii) are subject to legal professional privilege;
 - (iv) are a breach of employee privacy or defamatory of any person; or
 - (v) are otherwise frivolous or vexatious in nature; and
 - (b) no less than forty eight hours before the relevant meeting, issue notice of the inclusion of the relevant specified items on the agenda of the meeting.”.

8. Amendment of section 107 of the principal Act.

Section 107 of the principal Act is amended by the insertion immediately after subsection (7) of the following —

- “(8) For the purposes of this section, a “material contract” shall have the meaning ascribed by the Securities Industry Act.”.

9. Repeal and replacement of section 109 of the principal Act.

Section 109 of the principal Act is repealed and replaced as follows —

“109. Setting aside a contract.

- (1) When a director or officer of a company fails to disclose, in accordance with section 107, his interest in a material contract made by the company, the court may, upon the

application of the company or member of the company

- - (a) set aside the contract on such terms as the court thinks fit; and
 - (b) find the interested director or officer, who failed to make the required disclosure, liable for any damage caused to the company if the interested director acted negligently, fraudulently, or in bad faith.
- (2) Notwithstanding subsection (1), or the fact that a director or officer disclosed a conflict of interest concerning a material contract with the company, a member of the company shall be entitled to apply to the court for the contract to be set aside where the member considers that that transaction was unfairly prejudicial to the member's interest.
- (3) Notwithstanding the power of the court to set aside a contract, the court may also make an order —
- (a) requiring the company or any other person to acquire the shareholder's shares;
 - (b) requiring the company or any other person to pay compensation to the shareholder;
 - (c) regulating the future conduct of the company's affairs;
 - (d) altering or adding to the company's memorandum or articles of association;
 - (e) appointing a receiver of the company;
 - (f) directing the rectification of the records of the company; or
 - (g) putting the company into liquidation.”.

10. Amendment of section 118A of the principal Act.

Section 118A of the principal Act is amended —

- (a) by the deletion of subsections (4) and (5) and the substitution of the following —
 - “(4) Within ten working days of receiving a request under subsection (1), the company shall by written notice —
 - (a) set a date and a time for the member to attend the company to inspect the requested documents and information, which date shall not exceed fourteen days from the date of the notice; and
 - (b) stipulate whether any costs are attached to the preparation of any copies of the requested documents or information; or

- (c) refuse the member's request setting out the reasons for such refusal.
- (5) For the purpose of subsection (4)(c), a company may refuse to provide the requested documents or information if —
 - (a) the disclosure of the documents or information would be likely to prejudice the commercial position of the company;
 - (b) the disclosure of the information would or would be likely to prejudice the commercial position of any other person, whether or not that person supplied the information to the company; or
 - (c) the request for the information is frivolous or vexatious.”; and
- (b) by the insertion immediately after subsection (5), of the following new subsections (6), (7), (8) and (9) —
 - “(6) Where a company has attached costs to the preparation of any copies of the requested documents or information, the member shall be deemed to have withdrawn the request to inspect if the cost remains unpaid ten working days after the member received the company's notice, or if within ten working days of receiving the company's notice, the member lodges written objection asserting that the costs are unreasonable.
 - (7) A member whose request to inspect is —
 - (a) refused by the company; or
 - (b) deemed withdrawn due to the member lodging a written objection that the costs are unreasonable,shall have ninety days from the date of such refusal or the lodging of the written objection to apply to a court for relief, and the court may make an order requiring the company —
 - (i) to provide copies of the requested documents and information at no or a reduced cost; or
 - (ii) to allow inspection of the documents or information where satisfied that the company's reason for refusal is unreasonable or insufficient; or
 - (iii) to allow inspection of the documents or information where the company has sufficient reason to refuse but that reason is outweighed by other reasons.

- (8) Where a court makes an order under subsection (7), it may specify the period for compliance by the company.
- (9) On an application for an order under this section, no costs shall be awarded.”.

11. Amendment of section 123 of the principal Act.

Section 123 of the principal Act is amended by the deletion of subsection (1) and the substitution of the following —

- “(1) A public company shall file with the Registrar a copy of its annual financial statements or consolidated financial statements within two days of its annual general meeting.”.

12. Insertion of new section 296A into the principal Act.

The principal Act is amended by the insertion immediately after section 296 of the following new section —

“296A. Offences in relation to misuse of company seal.

- (1) Where a company contravenes or fails to comply with section 26(2)(a), the company and every director and officer of the company who is in default commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding two years.
- (2) A director or officer of a company or a person acting on behalf of a company who, in contravention of section 26(5) uses or authorises the use of a seal purporting to be a seal of the company on which the name of the company is not engraved commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding two years.”.