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# COMPANIES (AMENDMENT) ACT, 2019

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No. 6 of 2019

## COMPANIES (AMENDMENT) ACT, 2019

### AN ACT TO AMEND THE COMPANIES ACT TO PROVIDE FOR ENHANCED PROTECTION OF MINORITY INVESTORS, SHAREHOLDER GOVERNANCE AND FOR MATTERS CONNECTED THERE TO

[Date of Assent - 30<sup>th</sup> April, 2018]

**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, 2019.
- (2) This Act shall come into force on such date as the Minister may appoint by notice published in the *Gazette*.

#### **2. Amendment of section 2 of the principal Act.**

Section 2 of the principal Act is amended by the insertion, in the appropriate alphabetical order, of the following new definitions—

“**key employee**” means any employee who by reason of their position and in particular their seniority, expertise or knowledge of confidential information is likely to cause damage to a company if they were to leave and become employed with a competitor of the company;

“**related party**” means —

- (a) an officer, director, or employee of a company;
- (b) a founder or shareholder of a company;
- (c) an individual who has made a substantial monetary contribution to a company;
- (d) a relative being any direct relative (spouse or spousal equivalent, parent, sibling or dependant), of an officer,

director, employee, founder, shareholder of a company or substantial monetary contributor to a company;

- (e) a partnership or other non-corporate investment arrangement where an officer, director or employee, or a relative thereof, directly or indirectly, has an ownership interest or controls in excess of five per cent of a company;
- (f) a corporate entity where an officer, director or employee, or a relative thereof, directly or indirectly, owns more than a twenty percent or greater, ownership or beneficial interest or exerts significant influence or control over the entity; or
- (g) a corporate entity where an officer, director or key employee, or a relative thereof, serves as an officer, director, trustee, key employee or partner, or the equivalent thereof;

**“substantial monetary contributions”** means loans or other financing provided to a company in excess of ten per cent of its non-equity financing;

**“substantial monetary contributor”** means an entity that provides a loan or other financing to a company in excess of ten per cent of its non-equity financing.”.

### **3. Insertion of new section 9A into the principal Act.**

The principal Act is amended by the insertion immediately after section 9, of the following new section —

#### **“9A. Nominee notification.**

- (1) Notwithstanding section 58, where a subscriber or shareholder holds his shares for another as nominee it shall be so specified in the memorandum and on the register.
- (2) The nominee must complete a declaration of trust, naming the beneficiaries for whom he holds the shares and a record of such declaration must be maintained at the company's registered office.
- (3) For the purposes of this section a “beneficiary” shall be a natural person who ultimately directly or indirectly owns or controls a company.”.

### **4. Repeal and replacement of section 38 of the principal Act.**

Section 38 of the principal Act is repealed and replaced as follows —

#### **“38. Share issue.**

- (1) The directors of a company may, if so authorised by a resolution of the company or its articles, exercise the power of the company to —

- (a) allot shares in the company;
  - (b) grant rights to subscribe for shares in the company; or
  - (c) issue an instrument that allows for the conversion of any of the value of the instrument into shares in the company.
- (2) The directors of a company may, where authorised, exercise the power of the company under subsection (1) for a particular exercise of the power or for its exercise generally, and such power may be unconditional or subject to conditions.
- (3) An authorisation to exercise the power of a company under subsection (1) must —
- (a) state the maximum amount of shares that may be allotted under that power; and
  - (b) specify the date on which the power will expire.”.

**5. Insertion of new section 44A into the principal Act.**

The principal Act is amended by the insertion immediately after section 44, of the following new section —

**“44A. Subsidiary company may not hold shares in parent company.**

- (1) For the purposes of this section "shares" includes shares with voting rights attached thereto.
- (2) A subsidiary of a company shall be prohibited from holding shares in its parent company except where the subsidiary held those shares before the coming into force of this section.
- (3) With effect from the coming into force of this section, any —
  - (a) issue of shares by; or
  - (b) transfer of shares from,a parent company to its subsidiary, shall be void and of no effect.
- (4) Notwithstanding subsection (2), where a company that holds shares in another company becomes a subsidiary of the other company, the company may continue to hold those shares, however the voting rights attached to those shares shall be void and of no effect.
- (5) Nothing in this section prevents a subsidiary company from holding shares in its parent company in the capacity as a personal representative or a trustee unless the parent company or another subsidiary has a beneficial interest under the trust, other than an interest that arises by way of security

for the purposes of a transaction made in the ordinary course of the business of lending money.

- (6) This section applies to a nominee for a subsidiary company in the same way as it applies to a subsidiary company.”.

#### **6. Amendment of section 60 of the principal Act.**

Section 60 of the principal Act is amended by the insertion immediately after subsection (3), of the following new subsection —

“(4) Where any company has declared a dividend, a copy of the resolution declaring the dividend —

- (a) must be sent to all shareholders of the company entitled to such dividend; and
- (b) must, if the company is a public company, be published in a local newspaper within twenty-one days of the passing of the resolution,

and such dividend shall be paid to the members of the company within one hundred and twenty calendar days of the passing of such declaration, except in the case of a prohibited dividend under section 61.”.

#### **7. Amendment of section 65 of the principal Act.**

Section 65 of the principal Act is amended by the insertion immediately after subsection (3), of the following new subsection —

“(4) The directors of a company —

- (a) must provide written notice to the members of the company of the time and place of a meeting; and
- (b) must, in not less than twenty-one days before the scheduled date of the meeting, send to every member and every director of the company, a written notice referred to in paragraph (a), and where existing companies' Memorandum, Articles or unanimous shareholder agreements stipulate a notice period of less than twenty-one days notice, the notice period is deemed to be changed to twenty-one days.

(5) Notwithstanding subsection (4)(b), members of a company may waive the requirement to give notice of a meeting where —

- (a) the total number of the shares of the members entitled to vote on all the matters to be considered at the meeting; or
- (b) the votes of each class or series of shares where members are entitled to vote thereon as a class or series together with an absolute majority of the remaining votes,

constitutes a ninety per cent majority, or such other lesser majority as may be specified in the Memorandum, Articles or a unanimous shareholder agreement and for this purpose the presence of a member at the meeting shall be deemed to constitute waiver on his part.

- (6) Upon receiving notice of a meeting of members, and not less than seven days before the scheduled date of such meeting, a member 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) The directors of a company shall not refuse to include specified items on the agenda of a meeting unless the item is considered to be —
  - (a) materially and commercially sensitive;
  - (b) subject to legal professional privilege;
  - (c) a breach of employee privacy; or
  - (d) otherwise unreasonably frivolous in nature.”.

**8. Amendment of section 107 of the principal Act.**

Section 107 of the principal Act is amended —

- (a) by the deletion of subsection (1) and the substitution of the following —

“(1) A director or officer of a company, including the chief executive officer and other executive officers or equivalent, of the company, who —

  - (a) is a party to a material contract or proposed contract with the company; or
  - (b) is a director or an officer of any entity, or has an interest in any entity that is a party to a material contract or proposed contract with the company,

shall disclose in writing to the company’s board of directors the nature and extent of his interest, all material facts relating to his interest, and include the monetary value of his interest if such interest is able to be quantified, and the directors shall cause the disclosure to be entered into the minutes of meetings of the directors.”;
- (b) by the deletion of subsection (4) and the substitution of the following —

“(4) Where a contract or proposed contract is one that, in the ordinary course of a company's business, does not require the approval of the directors or members of the company, a director or member with an interest therein shall,

immediately upon becoming aware of the contract or proposed contract, make written disclosure to the board of —

- (a) the nature and extent of his interest;
- (b) all material facts relating to his interest; and
- (c) the monetary value of his interest if such interest is able to be quantified.”;

(c) by the deletion of subsection (5) and the substitution of the following —

“(5) A director or officer of a company shall not vote —

- (a) on any directors’ or shareholders’ resolution to approve a material contract if the director or officer has an interest in that contract;
- (b) to approve any contract, material or not material, if the contract relates in any way to —
  - (i) any personal loans or advances to him by the company;
  - (ii) the director's or officer's personal remuneration or benefits.”;

(d) by the deletion of subsection (6), and the substitution of the following —

“(6) If a director has an interest in a material contract he shall provide to the company an annual certification of that interest which, in the case of a public company, shall be recorded in the company's annual report.

(7) The report of all of a director's interests shall be made available for inspection by any shareholder.”.

## **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 contract.**

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, in bad faith or in a manner that was unfair and prejudicial to the shareholders.”.

#### **10. Insertion of new section 118A into the principal Act.**

The principal Act is amended by the insertion immediately after section 118, of the following new section 118A —

##### **“118A. Inspection of records by members.**

- (1) Any member of a company may, in person or by his attorney and in furtherance of a proper purpose, request in writing specifying the purposes, to inspect during normal business hours the Share Register of the company and the books, records, details of transactions with a related party, directors’ disclosures of material interests, minutes and consents kept by the company and to make copies of extracts therefrom.
- (2) For the purposes of subsection (1), a proper purpose is a purpose reasonably related to the member’s interest as a member.
- (3) If a request under subsection (1) is submitted by an attorney for a member, the request shall be accompanied by a power of attorney authorising the attorney to act for the member.
- (4) If the company, by a resolution of directors, determines that it is not reasonably in the best interest of the company or of any other member of the company to comply with a request under subsection (1), the company may refuse the request.
- (5) If a company refuses a request under subsection (1), the member may before the expiration of a period of ninety days of his receiving notice of the refusal, apply to the court for an order to allow inspection of the documents listed under that subsection.”.

#### **11. Amendment of section 271 of the principal Act.**

Section 271 of the principal Act is amended —

- (a) in subsection (1)(a) by the insertion immediately after the words “this Act”, the words “or any other Act.”;
- (b) by the deletion of subsection (1A) and (1B);
- (c) by the deletion of subsections (2) through (4) and the substitution of the following —
  - “(2) Subject to subsection (4), where —
    - (a) the Registrar is of the opinion that a company in default in relation to any requirement as to a return, notice, document or prescribed fee;

- (b) a company refuses to comply with a request or direction given by the Registrar;
- (c) a company's registration is revoked or cancelled; or
- (d) the Registrar has reasonable cause to believe that a company has ceased to carry on business,

the Registrar shall send a notice, in accordance with subsection (4), to that company advising it as to the Registrar's findings or actions in relation to paragraphs (a) through (d) and that if the default is not remedied within twenty-one days after the receipt of the notice, the company shall be removed from the register.

- (3) After the expiration of the time specified in the notice, unless the company shows cause why it should not be removed from the register, the Registrar may remove it from the register and shall publish a notice to that effect in the *Gazette*.
- (4) A notice under this section shall be delivered to the company's registered office, its physical premises or in default of such delivery, the notice shall be published in the *Gazette* and in a daily newspaper in circulation in The Bahamas.
- (5) After the expiration of ninety days from the coming into force of this section, the Registrar shall, without serving any prior notice, remove a company from the register which is for more than twenty years in default under subsection (2) and shall publish a notice of such removal in the *Gazette*.”.

## **12. Insertion of new section 271A into the principal Act.**

The principal Act is amended by the insertion immediately after section 271 of the following new section —

### **“271A. Removal of companies non-compliant under other law.**

- (1) The Registrar shall remove a company from the register of companies —
  - (a) after being duly notified by the Authority established under section 2 of the Commercial Entities (Substance Requirements) Act, 2018 (*No. 32 of 2018*) the company is not compliant with that Act; or
  - (b) where its registered office fails to meet its obligation, under section 8 of the Register of Beneficial Ownership Act, 2018 (*No. 38 of 2018*), to identify and verify the beneficial owners of the company.

- (2) The Registrar, before removing a company from the register, shall send a notice to the company —
  - (a) advising it as to his findings in relation the company's non-compliance; and
  - (b) stating that unless the default is remedied within twenty-one days after receipt of the notice; or
  - (c) stating that unless the beneficial owners of the company are identified and verified within twenty-one days after receipt of the notice, the company shall be removed from the register,
 the company shall be removed from the register.
- (3) The provision of sections 273B(1) and 273C(1) relating to the time permitted for a company to apply for restoration to the register shall apply *mutatis mutandis* to this section.
- (4) Where a registered office certifies to the Registrar that it is unable to identify or verify the beneficial owners of a company in accordance with section 8 of the Register of Beneficial Ownership Act, 2018 (*No. 38 of 2018*), the office may resign as the registered office of the company and thereupon the Registrar shall remove the company from the register.”.

### 13. Repeal and replacement of section 273 of the principal Act.

The principal Act is amended by the repeal and replacement of section 273 as follows —

**“273. Property of company removed from register to be bona vacantia.**

- (1) For the purposes of this section and section 273A, “property” includes all monies and other negotiable instruments, chattel and real property held by a company including leasehold property, but not including property held by a company on trust for any other person.
- (2) Where a company is removed from the register of companies, all property and rights whatsoever vested in or held on trust for the company, immediately before its removal from the register, subject to and without prejudice to any order by the Registrar under section 273B(2), shall —
  - (a) prior to the expiration of the period of twenty years, referred to in section 273B(1), be held on trust by the Treasurer for members of the company for the duration of the twenty years; and

- (b) after the expiration of the twenty year period, be deemed to be *bona vacantia* and shall belong to the Treasurer for the benefit of The Bahamas.
- (3) Subject to section 274, any property vested in the Treasurer shall not be disposed of without the the prior approval of both Houses of Parliament signified by resolution thereof.”.

**14. Insertion of new sections 273A to 273D into the principal Act.**

The principal Act is amended by the insertion immediately after section 273 of the following new sections —

**“273A. Treasurer exempt from liability.**

Where the Treasurer holds property for a company that has been removed from the register, the Treasurer shall not be liable —

- (a) to manage the property;
- (b) for any loss or damage to the property;
- (c) for waste; or
- (d) in respect of any claim by a third party.

**273B. Application to Registrar for restoration to register.**

- (1) If the name of a company has been removed from the register under section 271, the company or a creditor, member or liquidator thereof, may within twenty years immediately following the date of the removal, apply to the Registrar to have the name of the company restored to the register.
- (2) The Registrar shall cause the name of the company to be restored to the register if satisfied that the company at the time of removal from the register —
  - (a) was not in default or carrying on business; and
  - (b) has paid the prescribed fee and filed the requisite documents,and shall issue a certificate of restoration in the approved form.

**273C. Application to court for restoration to register.**

- (1) After the expiration of the twenty year period referred to in section 273(1), a company, a creditor, member or liquidator thereof may apply to the court to have the name of the company restored to the register.

- (2) Where application is made under subsection (1), the court shall order the name of the company to be restored to the register if —
  - (a) the court is satisfied that it would be fair and reasonable to do so; and
  - (b) the company pays all outstanding fees.

**271D. Effect of restoration to the register.**

- (1) Where a company is restored to the register, the company shall be deemed to have continued in existence as if its name had not been removed from the register.
- (2) Where a company is restored to the register, the trust referred to in section 273(2) shall be extinguished and the property vested in the Treasurer shall revert to the company.
- (3) Subsection (2) shall apply to property which had vested in the Treasurer at the time of the coming into force of this section as well as to property vesting in the Treasurer after the coming into force of subsection (2).”.

**15. Amendment of section 286 of the principal Act.**

Section 286 of the principal Act is amended by the insertion immediately after subsection (1), the following new subsection (1A) —

“(1A) A nominee who fails to comply with section 9A shall be liable to a civil penalty of twenty dollars for each day or part thereof during which the contravention, refusal or neglect continues.”.

**16. Insertion of new section 300A into the principal Act.**

The principal Act is amended by the insertion immediately after section 300 of the following new section —

**“300A. Payment of outstanding fees.**

- (1) Notwithstanding section 300(5), where a company has fees that are in arrears, the company may elect to enter into an agreement with the Registrar to pay all outstanding fees in instalments.
- (2) The Registrar may, by notice in writing, postpone the date on or before which any fee shall be payable if he has reasons, which appear to him sufficient, to do so in any particular case.

- (3) The failure of the company to adhere to an agreement referred to in subsection (1) may render it liable to be removed from the register.”.

**17. Amendment of First Schedule to the principal Act.**

Paragraph 48 of the First Schedule to the principal Act is amended by the deletion of the word “Seven” and the substitution of the words “Twenty-one”.

**18. Transitional.**

- (1) Where immediately before the commencement of this Act, a company has not paid its outstanding fees, the company must, within ninety days of the commencement of this Act —
  - (a) pay such fees; or
  - (b) enter into an agreement with the Registrar to pay all such fees in instalments.
- (2) The failure of the company to adhere to the agreement referred to under subsection (1) may render it liable to be removed from the register of companies.
- (3) A company in existence prior to the commencement of this Act shall comply with section 9A within six months from the date of commencement of this Act.