

CAYMAN ISLANDS



Supplement No. 6 published with Extraordinary
Gazette No. 4 dated 10th January, 2013.

THE COMPANIES (AMENDMENT) LAW, 2012

(LAW 6 OF 2012)

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CAYMAN ISLANDS

Law 6 of 2012.

I Assent

Duncan Taylor

Governor.

10th January, 2013

**A LAW TO AMEND THE COMPANIES LAW (2011 REVISION) TO
UPDATE PENALTY PROVISIONS; AND TO PROVIDE FOR
INCIDENTAL AND CONNECTED PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

1. This Law may be cited as the Companies (Amendment) Law, 2012. Short title

2. The Companies Law (2011 Revision), in this Law referred to as the “principal Law”, is amended in section 2(1) by deleting the definition of the words “public notice” and substituting the following definition - Amendment of section 2
- definitions and
interpretation

“ “public notice” means a public notice (whether in digital form or not) affixed by the Registrar at such place as may be determined, from time to time, by the Registrar;”.

3. The principal Law is amended in section 4 by repealing subsection (2) and substituting the following subsection - Amendment of section 4
- signature of Registrar

“ “ (2) In subsection (1) -
“signature” includes a facsimile of a signature however reproduced and a digital signature.”.

4. The principal Law is amended by repealing section 11 and substituting the following section - Repeal and substitution
of section 11 - location
of registered office may
be changed

“Address of
registered office
may be changed

11. (1) A company may, by resolution of the directors, change the address of the registered office of the company to another address in the Islands, and shall, within thirty days from the date on which the resolution is made, file with the Registrar a certified copy of the resolution of the directors authorising the change together with the prescribed amendment fee.

(2) Until subsection (1) is complied with, the company shall not be deemed to have complied with this Law with respect to having a registered office.”.

Amendment of section
17 - registration of order
and minute of reduction

5. The principal Law is amended in section 17(1) by deleting the words “delivery to him” and substituting the words “filing with him”.

Amendment of section
19 - penalty for
concealment of names of
creditors

6. The principal Law is amended in section 19 by deleting the words “commits a misdemeanor and is liable on summary conviction to fine of two hundred dollars or to imprisonment for six months” and substituting the words “commits an offence and is liable on summary conviction to a fine of five thousand dollars or to imprisonment for a term of one year, or to both”.

Amendment of section
26 - registration

7. The principal Law is amended in section 26(1) by deleting the words “delivered in duplicate to the Registrar who shall file and” and substituting the words “filed in duplicate with the Registrar who shall”.

Amendment of section
29 - copies of
memorandum and
articles to be given to
members

8. The principal Law is amended in section 29 by deleting the words “to a penalty of two dollars” and substituting the words “to a penalty of one hundred dollars”.

Amendment of section
30- restrictions on
registration of certain
names

9. The principal Law is amended in section 30(2) as follows -

- (a) in paragraph (b) by deleting the word “or” appearing after the semi-colon;
- (b) in paragraph (c) as follows -
 - (i) by inserting after the word “ “insurance” ” the word “ , “trust” ”;
 - (ii) by deleting the word “four”; and
 - (iii) by deleting the full stop and substituting the word “; or”; and
- (c) by inserting after paragraph (c) the following paragraph -

- “ (d) contains the word “gaming” or “lottery” or any similar word which in the opinion of the Registrar connotes any such activity or any derivative of such words or of such similar word, whether in English or in any other language, or in the opinion of the Registrar suggests or is calculated to suggest any such activity.”.

10. The principal Law is amended in section 31 as follows -

Amendment of section
31- change of name

- (a) in subsection (1) by inserting after the words “special resolution” the words “filed with the Registrar in accordance with subsection (2)”;
- (b) in subsection (2) by deleting the words “the Registrar, on receiving the special resolution authorising the same” and substituting the words “the company shall, within thirty days of the change being made, file with the Registrar a special resolution authorising the same and the Registrar on receiving the special resolution”;
- (c) in subsection (4) by deleting the words “under subsection (3)” and substituting the words “under subsection (2) or (3)”;
- (d) by inserting after subsection (4) the following subsection -
 - “ (5) For the avoidance of doubt a change of name made pursuant to subsection (1) shall not take effect until the special resolution has been filed with the Registrar in accordance with subsection (2).”.

11. The principal Law is amended in section 40(2) as follows -

Amendment of section
40 - register of members

- (a) by deleting the words “ten dollars for every day during which the default continues” and substituting the words “ten thousand dollars”; and
- (b) by deleting the word “contravention” and substituting the word “default”.

12. The principal Law is amended in section 40A(5) by deleting the words “a fine and, for continued contravention, to a daily default fine on the same basis as is set out in section 40(2)” and substituting the words “a penalty of ten thousand dollars; and every director or manager of the company who knowingly and wilfully authorises or permits such default shall incur the like penalty.”.

Amendment of section
40A - branch registers of
members

13. The principal Law is amended in section 41(1) as follows -

Amendment of section
41 - annual list of
members and return of
capital, shares, calls etc.

- (a) in paragraph (f) by deleting the word “and”;
- (b) in paragraph (g) by deleting the full stop and substituting the word “; and”;

- (c) by inserting after paragraph (g) the following paragraph -
“(h) names and addresses of directors and officers of the company and the position or office that they hold.”.
- Amendment of section 44 - inspection of register
14. The principal Law is amended in section 44 as follows -
- (a) by deleting the words “or, in the case of an exempted company, at any other place within or without the Islands”; and
 - (b) by deleting the words “four dollars and a further penalty of four dollars for every day during which such refusal continues” and substituting the words “five thousand dollars”.
- Amendment of section 50 - registered office of company
15. The principal Law is amended in section 50 as follows -
- (a) by renumbering section 50 as section 50(1);
 - (b) in subsection (1) as renumbered by inserting after the words “registered office” the words “in the Islands”; and
 - (c) by inserting after subsection (1) the following subsection -
“(2) In the case of an exempted company or a non-resident company, the address of the registered office referred to in subsection (1) shall be the same as the address of the person licensed by the Authority who provides company management services for the exempted company or non-resident company except where the registered office was located at a different address in the Islands immediately prior to the date of commencement of this provision and remains at such address on or after the date of commencement of this provision.”.
- Amendment of section 53 - penalties on non-publication of name
16. The principal Law is amended in section 53 by deleting the words “ten dollars for not so painting or affixing its name, and for every day during which such name is not so kept painted or affixed” and substituting the words “one thousand dollars”.
- Amendment of section 54 - register of mortgages
17. The principal Law is amended in section 54 as follows -
- (a) in subsection (2) by deleting the words “one hundred dollars” and substituting the words “one thousand dollars”; and
 - (b) in subsection (3) by deleting the words “four dollars for every day during which such refusal continues” and substituting the words “five thousand dollars”.
- Repeal and substitution of section 55 - list of directors to be sent to Registrar
18. The principal Law is amended by repealing section 55 and substituting the following section -

“List of directors, including alternate directors, and officers

55. Every company shall keep at its registered office a register containing the names and addresses of its directors, including alternate directors, and officers, and shall -

- (a) send a copy of such register to the Registrar within ninety days of the registration of the company; and
- (b) notify the Registrar of any change that takes place in such directors or officers including a change of the name of such directors or officers, within thirty days of any such change.”.

19. The principal Law is amended by repealing section 56 and substituting the following section -

Repeal and substitution of section 56 - penalty on company not keeping a register of directors

“Penalty for failure to keep register of directors or notify the Registrar of any change

56. A company who fails to comply with -

- (a) section 55(a) shall incur a penalty of ten thousand dollars and a further penalty of ten dollars for every day during which the default continues; or
- (b) section 55(b) shall incur a penalty of ten dollars for every day during which the default continues;

and a director or manager of the company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.”.

20. The principal Law is amended in section 59(1) by inserting after the word “kept” the words “at its registered office”.

Amendment of section 59 - accounts and audits

21. The principal Law is amended by repealing section 62 and substituting the following section -

Repeal and substitution of section 62 - recording of special resolutions

“Recording of special resolutions

62. (1) A company shall file with the Registrar a copy of any special resolution passed by such company under this Law within thirty days of such special resolution being passed.

(2) A company who fails to comply with subsection (1) shall incur a penalty of ten dollars for every day during which the default continues; and a director or manager of the company who knowingly and wilfully authorizes or permits

such default shall incur the like penalty.”.

- Amendment of section 63 - copies of special resolutions
22. The principal Law is amended in section 63(3) by deleting the words “two dollars” and substituting the words “two hundred dollars”.
- Amendment of section 65 - powers of inspectors
23. The principal Law is amended in section 65 by deleting the words “not exceeding forty dollars” and substituting the words “of five thousand dollars”.
- Amendment of section 77 - general penalty; application of fines
24. The principal Law is amended in section 77 by deleting the words “one hundred dollars” and substituting the words “ten thousand dollars”.
- Amendment of section 80 - circumstances in which the Governor may licence a company to be registered without “limited” in its name
25. The principal Law is amended in section 80(1) by deleting the words “, directors or managers”.
- Amendment of section 86 - power to compromise with creditors and members
26. The principal Law is amended in section 86 as follows -
- (a) in subsection (3) by deleting the words “delivered to the Registrar” and substituting the words “filed with the Registrar”;
 - and
 - (b) in subsection (4) by deleting the words “two dollars” and substituting the words “two hundred dollars”.
- Amendment of section 87 - provisions for facilitating reconstruction and amalgamation of companies
27. The principal Law is amended in section 87(3) by deleting the words “delivered to the Registrar” and substituting the words “filed with the Registrar”.
- Amendment of section 134 - fraud, etc. in anticipation of winding up
28. The principal Law is amended in section 134(1) by deleting the words “on conviction to a fine and to imprisonment for five years” and substituting the words “on summary conviction to a fine of twenty thousand dollars or to imprisonment for a term of five years, or to both”.
- Amendment of section 135 - transactions in fraud of creditors
29. The principal Law is amended in section 135 by deleting the words “on conviction to a fine and to imprisonment for five years” and substituting the words “on summary conviction to a fine of twenty thousand dollars or to imprisonment for a term of five years, or to both”.
- Amendment of section 173 - penalty for false declaration
30. The principal Law is amended in section 173 by deleting the words “one thousand dollars and to imprisonment for three months” and substituting the

words “five thousand dollars or to imprisonment for a term of one year, or to both”.

31. The principal Law is amended in section 176 by deleting the words “one hundred dollars” and substituting the words “one thousand dollars”.

Amendment of section 176 - penalty for carrying on business contrary to this Part

32. The principal Law is amended in section 184 as follows -

Amendment of section 184 - documents etc., to be delivered to Registrar by foreign companies

- (a) in the marginal note by deleting the words “delivered to Registrar” and substituting the words “filed with Registrar”;
- (b) in subsection (1) as follows -
 - (i) by deleting the words “deliver to the Registrar” and substituting the words “file with the Registrar”; and
 - (ii) in paragraph (b) by deleting the words “delivery to the Registrar” and substituting the words “filing with the Registrar”; and
- (c) by inserting after subsection (1) the following subsection -

“ (1A) Where a document required to be filed by a foreign company under subsection (1) is in a language other than the English language, the document shall be filed together with a certified translation of the document in the English Language prepared by a certified translator.”.

33. The principal Law is amended in section 185 as follows -

Amendment of section 185 - power of certain companies to hold land

- (a) in subsection (1) by deleting the words “delivered to the Registrar” and substituting words “filed with the Registrar”; and
- (b) in subsection (4) by deleting the words “delivered by the company to the Registrar” and substituting the words “filed with the Registrar by the company”.

34. The principal Law is amended in section 187 as follows -

Amendment of section 187 - return to be delivered to Registrar where documents etc., altered

- (a) in the marginal note by deleting the words “delivered to Registrar” and substituting words “filed with Registrar”; and
- (b) by deleting the words “deliver to the Registrar” and substituting the words “file with the Registrar”.

35. The principal Law is amended in section 189 as follows -

Amendment of section 189 - service on foreign company to which this Part applies

- (a) by deleting the words “delivered to the Registrar” and substituting the words “filed with the Registrar”;
- (b) in paragraph (a) of the proviso by deleting the words “delivering to the Registrar” and substituting the words “filing with the Registrar”; and

- (c) by deleting the words “so delivered” wherever they appear and substituting the words “so filed”.

Amendment of section 192 - removing company's name from register

36. The principal Law is amended in section 192 by deleting the words “deliver any document to the Registrar” wherever they appear and substituting the words “file any document with the Registrar”.

Amendment of section 193 -penalties for failing to comply with this Part

37. The principal Law is amended in section 193 by deleting the words “one hundred dollars or, in the case of a continuing offence, a further fine of ten dollars for every day during which the default continues” and substituting the words “one thousand dollars and if the offence is a continuing one to a fine of one hundred dollars for every day during which the offence has continued”.

Amendment of section 195 - power of Registrar to prohibit sale

38. The principal Law is amended in section 195 by deleting the words “one thousand dollars and, in default of payment by any director or officer, to imprisonment for three months” and substituting the words “two thousand dollars and, in default of payment by any director or officer, to imprisonment for six months”.

Amendment of section 199 - fees in lieu of other provisions

39. The principal Law is amended in section 199(3) by deleting the words “five hundred dollars” wherever they appear and substituting the words “one thousand dollars”.

Amendment of Part XI - general

40. The principal Law is amended in Part XI by inserting after section 200 the following section -

“Certificate of good standing.

200A.(1) The Registrar may on application made by a company issue a certificate of good standing to a company that is in good standing in accordance with subsection (2).

(2) A certificate of good standing is evidence of the fact that the company is in good standing on the date that the certificate of good standing is issued.

(3) A company shall be deemed to be in good standing where the Registrar is satisfied that the company is in compliance with the provisions of this Law and that all fees and penalties under this Law have been paid.”.

Amendment of section 201 - application for continuation

41. The principal Law is amended in section 201 as follows -

(a) in subsection (2) as follows -

(i) by repealing paragraph (c) and substituting the following paragraph -

- “ (c) the registrant has filed with the Registrar the documents listed in paragraphs (a) to (d) of section 184(1) (in this Part referred to as “the charter documents”) and where a charter document is in a language other than the English language, the charter document shall be filed together with a certified translation of the charter document in the English Language prepared by a certified translator;” and
- (ii) in paragraph (l) by deleting the words “delivered to the Registrar” and substituting the words “filed with the Registrar”; and
- (b) in subsection (9) by deleting the words “deliver, to the Registrar” and substituting the words “file with the Registrar”.
42. The principal Law is amended in section 206(2) as follows -
- (a) by inserting after the words “de-register an applicant if” the words “the applicant is in good standing and”;
- (b) in paragraph (i) by deleting the words “delivered to the Registrar” and substituting the words “filed with the Registrar”; and
- (c) in paragraph (m) by deleting the word “Governor” and substituting the word “Authority”.
43. The principal Law is amended in section 210(1)(b) by deleting the words “delivered to the Registrar” and substituting the words “filed with the Registrar”.
44. The principal Law is amended in section 211(1)(a) by deleting the words “delivered to him” and substituting the words “filed with him”.
45. The principal Law is amended in section 233 as follows -
- (a) in subsection (9)(e) -
- (i) by deleting the words “director’s declaration” and substituting the word “statement”; and
- (ii) by deleting the word “declaration” and substituting the word “statement”; and
- (b) in subsection (14) by deleting the words “twenty thousand dollars” and substituting the words “fifty thousand dollars”.
46. The principal Law is amended in section 237(4) deleting the words “twenty thousand dollars” and substituting the words “fifty thousand dollars”.
- Amendment of section 206 - deregistration of exempted companies including companies registered under this Part
- Amendment of section 210 - ordinary non-resident company may be registered as an exempt company
- Amendment of section 211 - effect of registration of ordinary non-resident company as an exempted company
- Amendment of section 233 - merger and consolidation
- Amendment of section 237 - merger and consolidation with overseas company

Passed by the Legislative Assembly the 29th day of August, 2012.

Mary J. Lawrence

Speaker.

Zena Merren-Chin

Clerk of the Legislative Assembly.