

CAYMAN ISLANDS



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**A BILL FOR A LAW TO ESTABLISH A BODY TO BE KNOWN AS THE
BUILDERS BOARD; TO PROVIDE FOR THE REGISTRATION OF
BUSINESS ENTITIES AND QUALIFIED INDIVIDUALS; AND FOR
INCIDENTAL AND CONNECTED PURPOSES**

THE BUILDERS BILL, 2007

MEMORANDUM OF OBJECTS AND REASONS

This Bill will establish the Builders Board to help safeguard and promote high standards of workmanship in the building industry in the Islands. The Board will have responsibility for registering business entities involved in the building industry and qualifying individuals who will actually perform the work.

Part I has the preliminary provisions

Clause 1 provides the short title and commencement.

Clause 2 has the definitions.

Clause 3 contains the meaning of certain additional expressions.

Part II deals with the establishment of the Builders Board.

Clause 4 establishes the Builders Board.

Part III provides for the registration of business entities

Clause 5 provides for the registration of business entities.

Clause 6 sets out the criteria for the registration of business entities as contractors.

Clause 7 deals with penalties for improper exercise of voting rights and other matters.

Clause 8 provides for the return of shareholdings to be made before commencing business and annually thereafter.

Clause 9 imposes certain restrictions on allotment and transfer of shares.

Clause 10 prescribes certain powers of directors to make inquiries aimed at enforcing the provisions of the Law.

Clause 11 makes provision in relation to reconstruction of companies.

Clause 12 makes certain stipulations regarding a company's duty to supply information relating to control.

Clause 13 provides for the issuance and expiry of the registration of business entities.

Clause 14 prescribes application fees and licence fees for business entities.

Clause 15 provides for the disciplining of business entities in the circumstances specified there, as well as provides for related matters such as conferring a right of appeal.

Part IV provides for the registration of qualified individuals.

Clause 16 provides for the registration of qualified individuals.

Clause 17 sets out the criteria for the registration of qualified individuals.

Clause 18 provides for the issuance and expiry of the registration of qualified individuals.

Clause 19 prescribes application fees and licence fees for qualified individuals.

Clause 20 provides for the disciplining of qualified individuals in the circumstances specified there, as well as for related matters such as conferring a right of appeal.

Part V provides for offences and legal proceedings.

Clause 21 makes it an offence for any person (that is, an individual, group of persons, whether incorporated or not) who is not registered as a builder to hold himself out as being so registered.

Clause 22 makes it an offence to carry out construction when one is not registered at all or not registered for a particular type of work.

Clause 23 makes it an offence to make fraudulent entries in the register.

Clause 24 makes provision for the appointment of enforcement officers who have power to enter business premises to ensure that the law is being complied with.

Clause 25 creates the offence of obstructing any person acting in the execution of powers conferred under the Law.

Clause 26 empowers the Board to issue non-compliance notices, which require breaches to be remedied.

Clause 27 provides for the powers of the courts in relation to non-compliance notices.

Clause 28 stipulates the criminal liability of business entities, their directors, partners or managers.

Clause 29 sets out a number of provisions relating to the filing of appeals with respect of certain actions taken under the Law.

Part VI deals with public complaints.

Clause 30 provides for the right of the public to complain.

Part VII has a miscellany of provisions.

Clause 31 protects the information that is provided to the Board by stipulating that it may be used only in proceedings for an offence under the Law or a report of those proceedings.

Clause 32 provides for the service of documents.

Clause 33 provides that a company shall have the onus to prove that it has the right to carry on business.

Clause 34 provides for certification of facts by the Chairman of the Board.

Clause 35 makes it necessary for the Attorney-General or a person authorised by him to give prior approval for any prosecution.

Clause 36 makes provision for offences committed by corporate bodies.

Clause 37 clarifies that the validity of business transactions shall not be affected by any breach of the Law.

Clause 38 makes it clear that the Memorandum of Association of a company will still have to permit a company to carry out business carried out under the Law.

Clause 39 empowers the Governor to give directions to the Board with regard to matters of policy.

Clause 40 empowers the Governor to make regulations.

Clause 41 provides for a transitional provision whereby the recognition of business entities and qualified individuals who may not meet the qualifications prescribed in this Law can be registered.

Schedule 1 contains a number of provisions relating principally to the internal organisation of the Board.

Schedule 2 contains fees for purposes of registration of business entities and qualified individuals.

THE BUILDERS BILL, 2007

ARRANGEMENT OF CLAUSES

**PART I
PRELIMINARY**

1. Short title and commencement.
2. Interpretation.
3. Construction of other expressions.

**PART II
THE BUILDERS BOARD**

4. Builders Board.

**PART III
REGISTRATION OF BUSINESS ENTITIES**

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6. Criteria for registration of a business entity as a contractor.
7. Penalty for improper exercise of voting rights, etc.
8. Return of shareholdings to be made before commencing business and annually.
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14. Fees for business entities.
15. Removal, suspension, etc., of business entities from register.

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16. Registration of qualified individuals.
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21. Holding out as being registered.
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25. Obstruction, etc., of officers of the Board.
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Schedule 1-The Builders Board

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ENACTED by the Legislature of the Cayman Islands.

**PART I
PRELIMINARY**

1. (1) This Law may be cited as the Builders Law, 2007.

Short title and
commencement

(2) This Law shall come into force on such date as the Governor may by Order appoint and different dates may be appointed for the coming into force of different provisions of this Law.

2. (1) In this Law -

Interpretation

“application” means an initial application after this Law comes into operation, a renewal or application by way of re-categorisation;

“ancillary building” has the meaning assigned thereto in regulation 2 of the Development and Planning Regulations (2006 Revision);

(2006 Revision)

“application” means the first application for registration after commencement of this Law, an application for renewal and an application seeking re-categorisation;

(2005 Revision)

“Appeals Tribunal” means the Appeals Tribunal established under section 46 of the Development and Planning Law (2005 Revision);

“Board” means the Builders Board established by section 3;

“building contractor” means a business entity which -

- (a) constructs commercial, industrial, institutional, residential or other buildings, including their ancillary buildings, none of which projects exceed three storeys or 25, 000 square feet; or
- (b) repairs, improves, extends or renovates buildings of any size where such work does not affect the structural integrity of the building,

and building construction shall be construed accordingly;

“business entity” means an individual or a company that carries on business or proposes to lawfully carry on business, and includes a charitable organisation or other non-governmental organisation;

“business premises” means a place registered as a place of business for purposes of this Law or other place at which business is carried on;

(2006 Revision)

“Caymanian” means a person who possesses Caymanian status under the Immigration Law (2006 Revision) or any earlier law providing for the same or similar rights and includes a person who acquired that status under Part III of that Law;

“civil contractor” means a business entity which builds roads, bridges, docks, utilities infrastructure and other similar constructions as the Board may under section 6 (4) determine, and “civil construction” shall be construed accordingly;

“construction” means the carrying out of any building, engineering or other operations in, on, over or under land, including renovations, but does not include-

- (a) the carrying out of agricultural or landscaping operations; or
- (b) the carrying out of work to one’s own dwelling or its ancillary buildings or facilities by an individual or by the beneficial owner of a body corporate which owns the dwelling except in so far as such work forms part of a course of conduct that amounts to a trade or business; or

(c) the carrying out of maintenance work.

“contractor” means a business entity referred to in section 6 (4);

“days” means days other than Saturdays, Sundays and public holidays;

“enforcement officer” means a natural person appointed under section 24;

“general contractor” means a business entity which performs any type or description of construction, other than civil construction, and “general construction” shall be construed accordingly;

“Governor” means the Governor in Cabinet;

“joint venture” means a business entity formed by two or more business entities that is formed for the purpose of carrying out construction work;

“licence” means a licence issued under section 13 or 18;

“project” means an activity involving a construction which is carried out on a more or less continuous basis or simultaneously and complying with such criteria, if any, as the Board may determine and any project that has been broken down into smaller parts in order to defeat the spirit and purpose of this Law shall be deemed to be a project for the purpose of this definition;

“proper address” means -

- (a) for an individual, his business premises or last known place of business;
- (b) for a body corporate, the registered office or, in the case of a statutory corporation, its business premises; and
- (c) for an unincorporated body, its business premises;

“qualified individual” means an individual registered as such under section 16;

“record” means any means by which information may be stored and retrieved;

“register” means the register established under section 4 (8);

“registered” means-

- (a) in relation to a business entity, registered in one of the categories specified in section 6 (4) or other category determined thereunder; and

- (b) in relation to a qualified individual, registered as such under section 16 (1),

to undertake work in relation to which the registration relates and includes temporary registration under section 5 (2) and re-registration by way of re-categorisation under section 5 (3) or otherwise;

“residential contractor” means a business entity which constructs, repairs, renovates, extends or improves any building comprising up to four dwelling units, not exceeding three storeys in height, and their ancillary buildings, and “residential construction” shall be construed accordingly;

(2006 Revision)

“storey” has the meaning assigned thereto in regulation 2 of the Development Planning Regulations (2006 Revision);

“sub-trade contractor” means a business entity that does not fall under the purview of a general contractor, residential contractor, building contractor or civil contractor, but which includes other work such as tiling, drywalling, welding, painting, roofing, masonry, mechanical work (that is, heating, ventilation and air-conditioning), cabinet making, glazing, swimming pool construction, building of prefabricated building systems and such other work as may be determined by the Board under section 6 (4), and “sub-trade construction” shall be construed accordingly.

(2) The expression “carry on business in the Islands”, in relation to a company, includes carrying on business of a kind that requires registration under this Law by that company, either alone or as a joint venture, except-

- (a) carrying on, from a principal place of business in the Islands, business exterior to the Islands;
- (b) doing business in the Islands with any person, firm or corporation in furtherance only of the business of that company carried on exterior to the Islands;
- (c) effecting or concluding contracts in the Islands and exercising in the Islands all other powers, so far as may be necessary for the carrying on of the business of that company exterior to the Islands.

(3) For the purposes of this Law, a company shall be deemed to be a wholly owned subsidiary of another company if the latter company enjoys the beneficial interest in all the shares of the former company through beneficial ownership or as beneficiary under a trust, express or implied, or through a nominee shareholder, to the exclusion of any other person, and control in the former company cannot, by means of any arrangement, artifice or device, be exercised either directly or indirectly by persons who are not Caymanians.

(4) In the application of any provision in this Law in relation to a project or a construction, whether or not those expressions are used, regard shall be had to the definition of “project” or “construction” contained in this section.

3. (1) No share shall be deemed to be beneficially owned by a Caymanian if- Construction of other expressions
- (a) that Caymanian is in any way under any obligation to exercise any right attaching to that share at the instance of, or for the benefit of, any person who is not Caymanian;
 - (b) that share is held jointly or severally with any person who is not Caymanian; or
 - (c) that share is owned by a subsidiary company of the company concerned.

(2) For the purposes of this Law, a company shall be deemed to be Caymanian controlled if the Board is satisfied that effective control is not, either directly or indirectly, or by reason of any arrangement, artifice or device vested in, or permitted to pass to, persons who are not Caymanians.

(3) Notwithstanding subsection (1), a share shall be deemed to be beneficially owned by a Caymanian if-

- (a) it is owned by a Caymanian as trustee and every person having a beneficial interest in the trust is a Caymanian;
- (b) it is owned by a Caymanian as nominee for another who is also a Caymanian and no one is in any way under any obligation to exercise any right attaching to that share at the instance of, or for the benefit of, any person who is not a Caymanian:

Provided that this subsection shall not apply to any ownership of shares to which paragraph (c) of subsection (1) applies.

(4) For the purposes of subsection (1), a company shall be deemed to be a subsidiary of another company (in this subsection referred to as “the parent company”) if-

- (a) the parent company owns more than fifty per cent of the shares in that company;
- (b) the parent company is in a position to exercise more than fifty per cent of the voting rights in that company; or
- (c) by means of any agreement, artifice or device, effective control in that company can be exercised either directly or indirectly by the parent company.

PART II THE BUILDERS BOARD

4. (1) There is hereby established a body to be known as the Builders Board, which shall register business entities and qualified individuals and otherwise exercise the powers and perform the duties conferred or imposed on it by or under this Law.

(2) The Board may delegate any of its functions conferred under this Law or regulations made hereunder.

(3) The Board shall consist of -

- (a) eight voting members appointed by the Governor comprising -
 - (i) one person who is registered as a building contractor, but in the case of the first Board the Governor shall appoint a person who, in his opinion, would qualify for registration as such;
 - (ii) one person who is registered as a residential contractor, but in the case of the first Board the Governor shall appoint a person who, in his opinion, would qualify for registration as such;
 - (iii) one person who is registered as a general contractor, but in the case of the first Board the Governor shall appoint a person who, in his opinion, would qualify for registration as such;
 - (iv) two persons who are registered by recognised bodies as professionals in architecture, engineering, quantity surveying or any other profession relevant to the work of the Board;
 - (v) two other persons;
 - (vi) one person qualified to practise law,and no two persons appointed under subparagraphs (iv) or (v) shall be from the same profession; and
- (b) the two members referred to in subsection (4).

(4) In addition to the members specified in subsection (3), the Board shall also comprise the following, who shall have no vote and shall not be counted for purposes of a quorum, that is,-

- (a) the Director of Planning; and
- (b) the Director of Labour.

(5) A member referred to in subsection (4) may depute a person from his board or department, as the case may be, to attend in his stead and such person shall, subject to the general or specific directives of the substantive member, exercise all the rights and be subject to all the obligations of the substantive member at that meeting.

(6) The Governor shall appoint -

- (a) one member to be Chairman and another to be Deputy Chairman;
and
- (b) a full-time Secretary of the Builders Board, who shall be nominated by the chief officer of the relevant ministry under the general powers conferred by the Public Service Management Law, 2005, and who shall keep all minutes of the meetings, proceedings and decisions of the Board. (Law 27 of 2005)

(7) The provisions of Schedule 1 shall apply to the Board; the Governor may by Order delete from, add to or vary that Schedule. Schedule 1

(8) The Board shall establish and maintain a Register of Business Entities and Qualified Individuals, which shall be maintained in such a way as to conveniently reflect the registration of business entities and qualified individuals.

(9) Subject to appropriation by the Legislative Assembly of the requisite funds, the cost of the administration and giving effect to this Law shall be a charge on the Treasury.

PART III REGISTRATION OF BUSINESS ENTITIES

5. (1) The register shall indicate which business entities are-

Registration of business
entities

- (a) individuals (sole or as a group) operating as business entities;
- (b) bodies corporate; and
- (c) such other categories or sub-categories of the categories in paragraphs (a) and (b) as the Board may determine.

(2) The Board may register business entities temporarily under such terms and conditions as it may determine.

(3) The Board shall enter in the register the name and prescribed particulars of every business entity which, being qualified for registration under section 6, has applied in the prescribed manner for registration or registration by way of re-categorization, has paid the prescribed fee and has satisfied the Board as to its suitability for registration.

(4) Where a business entity is applying for registration having been registered before (whether or not it is applying for registration in the same category as that in which it was previously registered) it shall not be registered unless, in addition to paying the registration fee and meeting all the other requirements of this Law relating to registration, it pays all the fees that it would

have paid had it been registered during the period when its registration had lapsed.

(5) The register shall be available for public inspection at reasonable times upon payment of such fees as the Governor may by regulation prescribe.

(6) Upon the creation of the first register after the entry into force of this Law, the Board shall inform the Immigration Board of the business entities that are registered and shall, from time to time, inform the Board of any changes to such registrations.

Criteria for registration
of a business entity as a
contractor

6. (1) Subject to the other provisions of this section, a business entity shall, on application made to the Board in the prescribed manner and on payment of the prescribed fee, be entitled, subject to regulations made under section 40 (2) (g), to be registered if the entity satisfies the other requirements for registration under this Part, but the Board may refuse to register an entity if-

(Law 12 of 2003)

(a) the Superintendent of Health Insurance appointed under the Health Insurance Commission Law, 2003 informs the Board in writing (on his own initiative or upon inquiry by the Board), which power and duty are hereby conferred, that the business entity concerned is not up-to-date with health insurance contributions;

(2001 Revision)

(b) the Director of Labour appointed under the Labour Law (2001 Revision) informs the Board in writing (on his own initiative or upon inquiry by the Board) which power and duty are hereby conferred, that the business entity concerned has an outstanding breach of the said Law, the Workmen's Compensation Law (1996 Revision) or any other Law (other than the Laws specified in paragraphs (a) and (c)), the enforcement of which falls under the Director of Labour;

(1996 Revision)

(2000 Revision)

(c) the Superintendent of Pensions referred to in section 79 of the National Pensions Law (2000 Revision) informs the Board in writing (on his own initiative or upon inquiry by the Board), which power and duty are hereby conferred, that the business entity concerned is not up-to-date with pension contributions; or
(d) the business entity concerned does not have public-liability insurance at all or to such extent as may be prescribed in regulations made under this Law.

(2) In addition to the other requirements of this Part, the Board shall not register a business entity unless it is satisfied that such business entity has under its control a sufficient number of persons who are qualified to carry out the work in the category for which the entity is applying and the entity is otherwise suitable for registration in that category.

(3) Subject to any general directions which the Governor may from time to time give in respect of the consideration of applications, the Board may grant an application either conditionally or subject to such terms and conditions as it thinks fit, or may refuse the application, and shall, in deciding whether or not to grant a licence, have regard, among other things, to the following matters-

- (a) the economic situation of the Islands and the due protection of persons already engaged in business in the Islands;
- (b) the nature and previous conduct of the company and the persons having an interest in that company whether as directors, shareholders or otherwise;
- (c) the advantage or disadvantage which may result from that company carrying on business in the Islands;
- (d) the desirability of retaining in the control of Caymanians the economic resources of the Islands;
- (e) the efforts made by the company to obtain Caymanian participation;
- (f) the number of additional people from outside the Islands who would be required to reside in the Islands were the application to be granted;
- (g) whether the company, its directors and employees have and are likely to continue to have the necessary professional, technical and other knowledge to carry on the business proposed by the company;
- (h) the finances of the company and the economic feasibility of its plans;
- (i) whether the true ownership and control of the company have been satisfactorily established; and
- (j) the environmental and social consequences that could result from the carrying on of the business proposed to be carried on by the company,

but the considerations in this subsection shall not apply to a company that is wholly-owned by Caymanians.

(4) A business entity may be registered in the category of -

- (a) general contractor;
- (b) building contractor;
- (c) residential contractor;
- (d) sub-trade contractor; or
- (e) civil contractor,

and the Board may determine from time to time, the categories of work that shall comprise any of the categories in paragraphs (a) to (e) or the respective sub-trades and may, in addition but without recategorising a business entity, permit a

business entity to undertake work of a kind that belongs to another category of registration and such permission may relate to a particular project or class of projects, or both.

(5) A contractor having been registered by the Board in one of the categories specified in paragraph (a) to (d) may additionally be registered in category specified in paragraph (e) if considered by the Board to be so qualified.

(6) A body corporate shall be registered under this Law only if -

- (a) it is empowered by its Memorandum of Association to carry on business in the Islands in relation to which it seeks registration;
- (b) it is Caymanian-controlled;
- (c) at least sixty per cent of its shares are beneficially owned by Caymanians; and
- (d) at least sixty per cent of its directors are Caymanians,

but a company need not comply with the requirements in paragraphs (a) to (d) if that business entity existed at the time of this Law coming into effect and it operated on the basis of a licence issued under section 11 of the Local Companies (Control) Law (1999 Revision), and the business entity has been operating as a construction entity in the Islands for a period of twenty years or more.

(1999 Revision)

(7) If, for reasons beyond its control, more than sixty per cent of the shares in a business entity cease to be beneficially owned by Caymanians, the company shall be taken to be complying with this section until-

- (a) a director becomes aware of the cessation; or
- (b) a director should, with reasonable diligence, have become aware of the cessation,

whichever is the sooner, and shall then continue to be taken to be complying with this section if-

- (i) the directors immediately act in accordance with subsection (7); and
- (ii) the period mentioned in subsection (9) has not expired.

(8) For the purpose of subsection 7 (b) (i), the directors must serve written notice on the person who is not a Caymanian and whose beneficial ownership of shares in the company results in the percentage of shares in the company owned by Caymanians falling below sixty percent requiring him to divest himself of at least so many of those shares as will result in at least sixty percent of the shares in the company being beneficially owned by Caymanians.

(9) The period referred to in subsection (7) (b) (ii) is-

- (a) the period of three years starting on the date of the service of the notice under subsection (8); or
- (b) such longer period as the Board may allow.

(10) For purposes of clarification, it is declared that the holding of a licence under the Local Companies (Control) Law (1999 Revision) does not entitle a business entity to registration under this Law. (1999 Revision)

7. (1) If a person, after being served with a notice under section 6 (8)-
- (a) exercises any voting rights; or
 - (b) fails to divest himself of his shares in accordance with the notice within the period referred to in section 6 (9),
- Penalty for improper exercise of voting rights, etc.

he shall be liable to forfeit those shares to the Government if a court of summary jurisdiction is satisfied that he-

- (i) exercised those voting rights; or
- (ii) failed to divest himself of his shares in accordance with the notice within the period referred to in section 6 (9).

(2) The liability to forfeiture under subsection (1) shall not arise in any case where the owner can prove to the satisfaction of the court of summary jurisdiction that, by reason of the company concerned having ceased to carry on business in the Islands at the relevant time, it would be inequitable for forfeiture to ensue.

(3) Any shares forfeited under subsection (1) shall be vested in the Governor for the benefit of the Islands and may be disposed of in such manner as the Governor in Cabinet may think fit.

8. (1) Before any business entity first commences business the company shall forward to the Board a return of shareholdings in the company, as at the date of making the return, signed by the directors of the company.
- Return of shareholdings to be made before commencing business and annually

(2) Every business entity shall, in the month of January in each year after the year in which the company first commenced business, forward to the Board a return of shareholdings in the company as at the thirty-first day of December of the immediately preceding year signed by two or more directors or one director and the secretary:

Provided that the Board may, in any particular case, grant an extension of time for compliance with this subsection if it is satisfied that non-compliance is not wilful or is due to circumstances beyond the control of the directors of the company.

(3) A return of shareholdings under this section shall contain the following particulars-

- (a) the number and par value of each class of shares issued by the company;
- (b) the voting and other rights attached to each class of shares;
- (c) a statement of the number and par value of each class of shares beneficially owned by Caymanians;
- (d) a statement of the number and par value of each class of shares held by other persons; and
- (e) a statement that the effective control of the company is not, either directly or indirectly or by reason of any artifice or device vested in or permitted to pass to persons other than as specifically shown in the return of shareholdings.

(4) Whenever an allotment or a transfer of shares in a business entity is made or registered, as the case may be, the company shall within twenty-one days thereof forward to the Board a return in the prescribed form signed by two or more directors or one director and the secretary giving particulars of such allotment or transfer.

(5) Any business entity which fails to comply with this section is guilty of an offence and liable on summary conviction to a fine of one hundred dollars for each day the offence continues.

(6) Any person who knowingly and wilfully signs a return made for the purposes of this section which is false in a material particular is guilty of an offence and liable on summary conviction to a fine of two thousand dollars and on conviction on indictment to a fine of five thousand dollars and on any such conviction on indictment the court may, in addition to, or in lieu of, any other penalty which may be imposed, order the forfeiture to the Crown of any shares in connection with which the offence was committed and any shares so forfeited shall be dealt with in such manner as the Governor may direct.

Allotment and transfer
of shares

9. (1) No allotment of shares in a company shall be made by the directors or officers of the company if such allotment will, to the knowledge or belief of them, or any of them, result in the number of shares beneficially owned by persons who are not Caymanians exceeding forty per cent of the total number of the shares issued by the company unless consent is given by the Board in writing.

(2) The directors and officers of a company shall decline to register any transfer of shares in the company if such transfer will, to the knowledge or belief of the directors, or any of them, result in the number of shares beneficially owned by persons who are not Caymanians exceeding forty per cent of the total number

of the shares issued by the company unless prior consent is given by the Board in writing.

(3) No allotment of shares in a company shall be made to any person unless the application for those shares sets out whether or not the applicant is Caymanian.

(4) No transfer of shares in a company shall be registered unless the instrument of transfer of those shares sets out with respect to both the transferor and transferee whether or not they are Caymanians.

(5) Any director or officer of a company who is knowingly a party to any allotment of shares contrary to subsection (1) or (3) or who is knowingly a party to authorising or permitting any transfer, or registration of a transfer, of shares contrary to subsection (2) or (4), is guilty of an offence and liable on summary conviction to a fine of two hundred dollars and on conviction on indictment to a fine of two thousand dollars.

10. (1) In any case where it is stated in an application for allotment, or in an instrument of transfer, of shares in a company that an applicant, transferor or transferee is a Caymanian, the directors of the company may require that person to furnish such proof of the correctness of such statement as the directors consider necessary; and, in the absence of such proof, the directors may decline to allot any shares or register the transfer.

Directors may make inquiries

(2) The directors of a company may, at any time, enquire in writing of any person who owns a share in the company-

- (a) whether or not he is Caymanian;
- (b) whether or not he is the beneficial owner of the shares;
- (c) whether or not he is in any way under any obligation to exercise any right attaching to that share at the instance of, or for the benefit of, another person, and, if so, the name of that other person and whether or not that other person is Caymanian; and
- (d) whether he owns that share jointly or severally with another person and, if so, the name of the other person who has such an interest and whether or not that other person is Caymanian,

and, if it is stated in any reply made to an enquiry under this subsection that any person is Caymanian, the directors may further require the person making that statement to furnish such proof of the correctness of that statement as the directors consider necessary.

(3) Any person of whom an enquiry is made, or to whom a requirement is addressed, under this section shall reply in writing, within fourteen days after the receipt of the enquiry or the requirement and shall give the information required; and no person shall be liable for breach of any contract, trust or other obligation which is binding on him in law for supplying such information.

(4) Any person who fails to reply in accordance with subsection (2) or (3) or who makes a reply or furnishes information or purported proof which is false in a material particular is guilty of an offence and liable on summary conviction to a fine of two thousand dollars and, in addition, to a mandatory fine of two hundred and fifty dollars for every day on which the offence continues after conviction for that offence.

Reconstruction, etc., of
registered company

11. (1) Where a reconstruction of any registered company has occurred or where any registered company makes an arrangement or enters into an agreement for-

- (a) the sale or other disposal of its business by amalgamation or otherwise; or
- (b) the purchase or other acquisition of the business of any other company carrying on business in the Islands,

such company shall, within three months after the occurrence of such reconstruction or the implementation of such arrangement or agreement, inform the Board in writing thereof.

(2) Where any particulars or information are received under this section, the Board, having regard to the nature of such particulars or information and notwithstanding the fact that the company concerned is a licensed company, may direct that company in writing to apply for another licence within such time and in such form as the Board may determine.

(3) The issue of a directive under subsection (2) shall not affect the validity of any licence subsisting at the date of such directive and which was granted to the company to which such directive is issued.

(4) Every licence to which subsection (3) refers shall have effect until-

- (a) it is revoked by the Board under this Law; or
- (b) another licence is granted to the company concerned upon an application made pursuant to a directive under subsection (2),

and thereafter the licence referred to in subsection (3) shall cease to have effect.

12. (1) The Board may, at any time by notice in writing, require the directors of a company to forward to it such information as to the directors of and shareholdings (including the classes of shares and the voting and other rights attached to each class) in the company as the Board may specify.

Company to supply
information relating to
control

(2) A notice under subsection (1) may require that the directors set out in writing within such period as may be specified in the notice the facts in relation to the directors, shareholdings and other matters relating to the operation, financing and control of the company which the directors contend establish that the company is complying with section 6 or is a wholly owned subsidiary of such a company.

(3) The Board may-

- (a) by written notice, summons a director of a company to appear before the Board at the time specified in the notice, being a time during normal working hours; and
- (b) on the appearance of the director in accordance with the notice, put to him questions in respect of the directors, shareholders and other matters relating to the operation, financing and control of the company.

(4) The Board may, at any time by notice in writing, require a Caymanian who claims to be the beneficial owner of shares in a company to forward to it such information as to his ownership of the shares as the Board may specify.

(5) The Board may-

- (a) by written notice, summons a Caymanian who claims to be the beneficial owner of shares in a company to appear before the Board at the time specified in the notice, being a time during normal working hours; and
- (b) on the appearance of the shareholder in accordance with the notice, put to him questions in respect of his ownership of the shares.

(6) If-

- (a) the directors or a shareholder of a company fails to comply with all or any of the requirements specified in a notice issued under subsection(1) or (4); or
- (b) a director or a shareholder in a company-
 - (i) fails to appear before the Board when summoned to do so in accordance with subsection (3) (a) or (5) (a); or
 - (ii) fails to answer any question put to him in accordance with subsection (3)(b) or (5)(b) fully and truthfully,

and by reason of such failure the Board is unable to establish that the company is continuing to comply with section 6 or is a wholly owned subsidiary of a company that is continuing to comply with that section, the Board shall, by notice in the Gazette, declare that, for the purposes of section 6 (1)(a), the company is not to be taken to be a company complying with section 6 or a company that is a wholly owned subsidiary of such a company.

(7) Where a declaration has been published under subsection (6), the company shall not, for the purposes of section 6 (5), be taken to be a company that is complying with section 6 or the wholly owned subsidiary of such a company until such time as the Board publishes a further notice in the Gazette stating that it is satisfied that the company is so complying or is such a subsidiary.

Issuance and expiry of
registration as a business
entity

13. (1) When the Board has registered a business entity under section 5, it shall issue to the entity a licence in the prescribed form.

(2) Every licence shall -

- (a) indicate the category under which the business entity is registered;
- (b) bear the date on which it is issued;
- (c) take effect from the date of issue;
- (d) bear the date on which it expires; and
- (e) contain such other details as may be prescribed.

(3) The Board shall enter in the register the date on which each licence is issued.

(4) The Board shall publish notice of the granting or revocation of a licence in the Gazette.

(5) Every licence shall expire twelve months after its date of issue, unless at the time of issue the Board specifies a shorter time.

Fees for business entities

14. (1) An application for the renewal of registration shall be made at least twenty-eight days before the date of expiry of the registration and shall be accompanied by the appropriate application fee and licence fee set out in the Part I of Schedule 2, the former being non-refundable:

Provided that in the case of a business entity whose registered principal place of business is in Cayman Brac or Little Cayman the application shall be accompanied by a fee of fifty per cent of such fee.

(2) An application for the renewal of registration shall be accompanied by the fee apportioned to the number of unexpired months in the calendar year, part of a month being calculated as one month.

(3) Where, in the opinion of the Board, the business entity qualifies to be registered but in a category different from the one for which it has applied, the Board shall so inform the applicant who shall be given an opportunity to make further submissions to the Board, either in person or in writing as the Board may direct, as to why he should be registered in the category for which he has applied; the Board shall, within fifteen days, give its decision, which shall be final.

(4) A business entity which fails to submit its application within the period specified in subsection (1) shall, if it wishes to continue operating after the expiry of its licence, incur a penalty of-

- (a) 33.3% of the annual fees specified in Part I of Schedule 2 if a valid application, the application fee and licence fee are submitted in the second quarter of the year;
- (b) 66.67% of the annual fee specified in Part I of Schedule 2 if a valid application, the application fee and licence are submitted in the third quarter of the year;
- (c) 100% of the annual fee specified in Part I of the Schedule 2 if a valid application, the application fee and licence fee are submitted in the fourth quarter of the year,

and every director and manager of the company who authorises or permits (including through negligence) such default shall incur the like penalty.

(5) Where more than one year elapses and the business entity has not paid its fees and penalties under this Law, it shall not be eligible for registration until it pays the arrears of penalties, as well as its fees for the licence that it is applying for; and where in the opinion of the Board a new business entity that applies for registration comprises participants who are substantially the same as an entity that fell into arrears without filing with the Board a notice to the effect that it is no longer in business, it may require that all or such portion of the arrears (owed by the company) as the Board may determine be paid before the application is granted .

15. (1) The Board may remove the name of a business entity from the register, suspend the licence of the entity (with or without conditions), re-categorize or reprimand it for any of the following -

Removal, suspension,
etc., of business entities
from register

- (a) the business entity has performed work in a manner which does not display the level of competence expected from a registered business entity;

- (b) the business entity fails to comply with any condition of registration;
- (c) the business entity ceases to be engaged in the business of performing construction;
- (d) the Superintendent of Health Insurance appointed under the Health Insurance Commission Law, 2003 informs the Board in writing (on his own initiative or upon inquiry by the Board), which power and duty are hereby conferred, that the business entity concerned is not up-to-date with health insurance contributions;
- (e) the Director of Labour appointed under the Labour Law (2001 Revision) informs the Board in writing (on his own initiative or upon inquiry by the Board) which power and duty are hereby conferred, that the business entity concerned has an outstanding breach of the said Law, the Workmen's Compensation Law (1996 Revision) or any other Law (other than the Law specified in paragraph (d), the enforcement of which falls under the Director of Labour;
- (f) the Superintendent of Pensions referred to in section 79 of the National Pensions Law (2000 Revision) informs the Board in writing (on his own initiative or upon inquiry by the Board), which power and duty are hereby conferred, that the business entity concerned is not up-to-date with pension contributions; or
- (g) the business entity concerned does not have public-liability insurance at all or to such extent as may be prescribed in regulations made under this Law.

(2) The Board shall remove a name of a business entity from the register or revoke a licence where -

- (a) a court has ordered that the name be removed from the register or that the licence be revoked on the grounds of contravention of this Law or regulations made hereunder;
- (b) the business entity has persistently carried on work in a manner which does not display the level of competence expected from a registered or licensed business entity;
- (c) the business entity ceases to hold the qualifications specified by or under section 6;
- (d) if the company concerned fails to comply with any directive or requirement issued by the Board; or
- (e) if the company concerned fails to pay its renewal fee;
- (f) if any of the matters referred to in subsection (3) occurs;

- (g) the business entity has applied to have its name removed from the register or its licence to be revoked.

(3) Where a business entity -

- (a) is adjudicated bankrupt;
- (b) has been, or one of its directors or partners has been, convicted of a criminal offence (of such a nature as to render the business entity, or the director or partner concerned unsuitable to be involved in the building industry) and is sentenced to a custodial term of imprisonment of one year or more ; or
- (c) is a person in respect of whom a certificate has been issued under section 7 of the Mental Health Law (1997 Revision) ;
- (d) is in receivership; or
- (e) is in liquidation,

(1997 Revision)

the Board shall take such decisions, including decisions referred to in subsection (1), (2) and (3) but not limited thereto, to protect, to the extent possible or necessary, the interests of the business entity, directors, partners, employees, investors, creditors and any other persons who have not been involved in any untoward conduct.

(4) Before revoking a licence under subsection (5) the Board shall give the company concerned notice in writing of its intention to do so specifying therein the grounds on which it proposes to revoke the licence, and shall afford the company concerned an opportunity of submitting to it a written statement and, at the discretion of the licensee, oral submissions, of objections to the revocation of the licence; and thereafter the Board shall advise the company concerned of its decision in the matter and of the company's right of appeal to the Grand Court under section 24 against a decision adverse to it.

(5) Where the Board makes, in relation to a business entity, a decision under subsection (1), (2) or (3) (other than a removal upon request), notice in writing of that decision and of the reasons for it shall be served on that business entity, which may appeal under section 29.

(6) For purposes of clarification it is declared that no appeal shall lie where a name has been removed upon request of the business entity concerned.

(7) A decision made under this section to remove the name of a business entity from the register or to revoke its licence shall not take effect before the expiration of the period allowed for appealing against it, and where an appeal is lodged, the decision shall not take effect before the appeal is disposed of or withdrawn or fails for want of prosecution.

(8) A business entity whose name is removed from the register or licence revoked under this section shall not be entitled to be restored thereto or the licence restored except where, upon its application, the Board decides that the registration or licence be so restored and the Board shall not so decide unless the reason that led to the removal from the register or revocation of the licence no longer exists.

(9) Where the Board receives an application for registration from a business entity in which a person who was culpable in an entity that was disciplined by the Board in the past is involved, the Board shall take into account that fact and may, for that reason, refuse to register or issue a licence.

(10) Except where a business entity is removed from the register or its licence revoked upon the request of the entity concerned, a decision or order under this section for the removal of the business entity's name from the register or revocation of its licence may prohibit an application under subsection (8) by the business entity concerned until the expiration of a period not exceeding twelve months.

PART IV

REGISTRATION OF QUALIFIED INDIVIDUALS

Registration of qualified
individuals

16. (1) The Board shall enter in the register, in the appropriate category of qualified individuals, the name and prescribed particulars of every person who has applied in the prescribed manner for registration as such under this Law, has satisfied the Board as to his suitability for registration and has paid the prescribed fee.

(2) The Board shall enter in the register the name and prescribed particulars of every qualified person who, being qualified for registration under section 9, has applied in the prescribed manner for registration or registration by way of re-categorization, has paid the prescribed fee and has satisfied the Board as to his suitability for registration.

(3) Where an individual is applying for registration as a qualified individual having been registered before (whether or not he is applying for registration in the same category as that in which he was previously registered) he shall not be registered unless, in addition to paying the registration fee and meeting all the other requirements of this Law relating to registration, he pays all the fees that he would have paid had he been registered during the period when his registration had lapsed.

(4) The register shall be available for public inspection at reasonable times upon payment of such fees as the Governor may prescribe.

(5) Upon the creation of the first register after the entry into force of this Law, the Board shall inform the Immigration Board of the qualified individuals that are registered and shall, from time to time, inform the Board of any changes to such registrations.

(6) For the purpose of clarification, it is declared that the purpose of registering qualified individuals is to ensure that all persons, whether or not they are Caymanian, shall not be allowed to perform certain categories of work unless they are registered as qualified individuals; in particular, but without limiting the generality of this subsection, being registered as a qualified individual does not entitle a person to run a business unless, in addition to being registered as such, he is also registered as a business entity under this Law.

17. (1) No person may be registered for the first time as a qualified individual under this Law unless he-

Criteria for registration
as a qualified individual

- (a) has passed an examination set and administered by the Board; or
- (b) has passed an examination set by the Board but administered by an institution in the Islands that is recognized for that purpose; or
- (c) has passed an examination set and administered by an institution outside the Islands which is recognised by the Board; or
- (d) otherwise satisfies the Board that he is capable of undertaking the category of work for which he is applying.

(2) The Board may register an individual either conditionally or subject to such terms and conditions as it thinks fit, or may refuse the application.

18. (1) When the Board has registered a qualified individual under section 16, it shall issue to that person a licence as a qualified individual in the prescribed form.

Issuance and expiry of a
licence as a qualified
individual

(2) Every licence shall-

- (a) indicate the category under which the qualified individual is licensed;
- (b) bear the date on which it is issued;
- (c) take effect from that date;
- (d) bear the date on which it expires; and
- (e) contain such other details as may be prescribed.

(3) The Board shall enter in the register the date on which each licence is issued.

(4) The Board shall publish notice of the granting or revocation of a licence in the Gazette.

(5) Every licence shall expire twelve months after its date of issue, unless at the time of issue the Board specifies a shorter time.

Fees for qualified
individuals

19. (1) An application for the renewal of registration shall be made at least twenty-eight days before the date of expiry of the registration and shall be accompanied by the appropriate application fee and licence fee set out in the Part II of Schedule 2, the former being non-refundable:

Provided that in the case of an individual whose registered principal place of business is in Cayman Brac or Little Cayman the application shall be accompanied by a fee of fifty per cent of such fee.

(2) An application for the renewal of registration shall be accompanied by the fee apportioned to the number of unexpired months in the calendar year, part of a month being calculated as one month.

(3) Where, in the opinion of the Board, an individual qualifies to be registered but in a category different from the one for which he has applied, the Board shall so inform the applicant who shall be given an opportunity to make further submissions to the Board, either in person or in writing as the Board may direct, as to why he should be registered in the category for which he has applied; the Board shall, within fifteen days, give its decision, which shall be final.

(4) A qualified individual who fails to submit his application within the period specified in subsection (1) shall, if he wishes to continue operating after the expiry of its licence, incur a penalty of-

- (a) 33.3% of the annual fees specified in Part II of Schedule 2 if a valid application, the application fee and licence fee are submitted in the second quarter of the year;
- (b) 66.67% of the annual fee specified in Part II of Schedule 2 if a valid application, the application fee and licence are submitted in the third quarter of the year;
- (c) 100% of the annual fee specified in Part II of the Schedule 2 if a valid application, the application fee and licence fee are submitted in the fourth quarter of the year.

(5) Where more than one year elapses and a qualified individual has not paid his fees and penalties under this Law, he shall not be eligible for registration until he pays the arrears of penalties, as well as his application fee and licence fee for the licence that it is applying for; and where a person who was formerly registered applies for registration without having filed with the Board a notice to the effect that he is no longer in practice, it may require that all or such portion of the arrears of penalties as the Board may determine be paid before the application is granted.

20. (1) The Board may remove the name of an individual from the register, suspend his licence(with or without conditions), re-categorize or reprimand him for any of the following-

Removal, suspension,
etc., of qualified
individuals from register

- (a) where the qualified individual ceases to hold the qualifications specified by or under section 17;
- (b) where the qualified individual has performed work in a manner which does not display the level of competence expected from a qualified individual;
- (c) where the qualified individual fails to comply with any condition of registration; or
- (d) where the qualified individual ceases to be engaged in the business of performing construction,

(2) The Board shall remove the name of a qualified individual from the register or revoke his licence where-

- (a) a court has ordered that the name be removed from the register or that the licence be revoked on the grounds of contravention of this Law or regulations made hereunder;
- (b) the qualified individual has persistently carried on work in a manner which does not display the level of competence expected from a qualified individual;
- (c) if the qualified individual concerned fails to comply with any directive or requirement issued by the Board; or
- (d) if the qualified individual concerned fails to pay its renewal fee;
- (e) if any of the matters referred to in subsection (3) occurs; or
- (f) the qualified individual has applied to have his name removed from the register or his licence revoked.

(3) Where the qualified individual-

- (a) is adjudicated bankrupt;
- (b) has been convicted of a criminal offence of such a nature as to render him unsuitable to continue in the category in which he is registered or at all and is sentenced to a custodial term of imprisonment of one year or more; or
- (c) is a person in respect of whom a certificate has been issued under section 7 of the Mental Health Law (1997 Revision),

(1997 Revision)

the Board shall take such decisions, including decisions referred to in subsections (1) and (2) but not limited thereto, to protect, to the extent possible or necessary, the interests of contractors, directors, partners, employees, investors, creditors and any other persons who have not been involved in any untoward conduct.

(4) Before revoking a licence under subsection (1) or (2) the Board shall give the qualified individual concerned notice in writing of its intention to do so specifying therein the grounds on which it proposes to revoke the licence, and shall afford the qualified individual concerned an opportunity of submitting to it a written statement, or at the discretion of the licensee, oral submissions, of objections to the revocation of the licence; and thereafter the Board shall advise the qualified individual concerned of its decision in the matter and of the qualified individual's right of appeal to the Grand Court under section 15 against a decision adverse to it.

(5) Where the Board makes a decision, in relation to a qualified individual, under subsection (1) or (2), notice in writing of that decision and of the reasons for it shall be served on that person, who may appeal under section 29.

(6) For purposes of clarification it is declared that no appeal shall lie where a name has been removed upon request of the qualified individual concerned.

(7) A decision made under this section to remove a qualified individual's name from the register or revoke his licence shall not take effect before the expiration of the period allowed for appealing against it, and where an appeal is lodged the decision shall not take effect before the appeal is disposed of or withdrawn or fails for want of prosecution.

(8) A person whose name is removed from the register or his licence revoked under this section shall not be entitled to be restored thereto or the licence restored except where, upon his application, the Board decides that the registration or licence be restored and the Board shall not so decide unless the reason that led to the removal or revocation no longer exists.

(9) Except where the name of a qualified individual is removed or licence revoked upon the request of the qualified individual concerned, a decision or order under this section for the removal of a person's name from the register or revocation of his licence may prohibit an application under subsection (8) by the individual concerned until the expiration of a period not exceeding twelve months.

PART V OFFENCES AND PROCEEDINGS

Holding out as being
registered

21. (1) Except as provided in subsection (2), any person who, not being registered under this Law, uses or adopts any style, title or description which implies that such person is so registered commits an offence and is liable on

summary conviction to a fine of two thousand dollars and, in addition, to a mandatory fine of two hundred and fifty dollars for every day on which the offence continues and on a second conviction to a like fine or imprisonment for three months, or both.

(2) Subsection (1) does not apply to a person -

- (a) who, having had his name removed from the register, has not yet been given notice in writing by the Board of its removal; or
- (b) in respect of whom a decision under section 15 or 24 has been taken by the Board and such decision has not taken effect.

22. (1) Except as provided in subsection (2), any person who -

Offences relating to
registration

- (a) not registered under this Law carries out any construction; or
- (b) being registered in a particular category carries out work which is in breach of a condition of his registration,

commits an offence and is liable on summary conviction to a fine of two thousand dollars and, in addition, to a mandatory fine of two hundred and fifty dollars for every day on which the offence continues after the person has been convicted of that offence, and on a second conviction to a like fine, or imprisonment for three months, or both.

(2) Subsection (1) does not apply to a person who, having had his name removed from the register or been suspended, has not yet been given notice in writing by the Board of the decision.

23. A person who wilfully procures or attempts to procure the entry of his name in the register by making or producing or causing to be made or produced any false or fraudulent representation or declaration either orally or in writing commits an offence and is liable on summary conviction to a fine of two thousand dollars.

Fraudulent entries in the
register

24. (1) The chief officer responsible for physical planning shall, under the general powers conferred on him by the Public Service Management Law, 2005, appoint in writing enforcement officers for the purposes of this Law and shall issue to such officers a duly authenticated identification document.

Appointment and
powers of enforcement
officers

(Law 27 of 2005)

(2) Subject to subsection (3), an enforcement officer shall, on producing, if so required, the duly authenticated identification document issued under subsection (1), have a right, at all reasonable hours, to enter any business premises for the purposes of ascertaining whether there is on the premises any evidence of any contravention of the provisions of this Law or of regulations made under it; but this section shall not be construed as allowing entry onto

residential premises without a warrant unless such premises are used as business premises.

(3) If a magistrate, on sworn information in writing, is satisfied that there are reasonable grounds for entry into any business premises for the purpose mentioned in subsection (1) and either-

- (a) that an enforcement officer has been refused admission to the business premises or the enforcement officer reasonably believes that entry is unlikely to be granted, and that the enforcement officer has given notice in writing to the owner or occupier of the intention to apply for such a warrant; or
- (b) that an application or the giving of such a notice in writing, would defeat the object of the entry,

the magistrate may by warrant signed by him authorise the enforcement officer to enter the business premises, if need be, by use of reasonable force but shall not allow entry into unoccupied premises.

(4) A warrant granted under this section shall continue in force for a period of one month.

(5) An enforcement officer entering any business premises by virtue of this section, or of a warrant issued under it, may take with him such other persons as he considers necessary or expedient, and on leaving any business premises which he has entered by virtue of such a warrant shall, to the extent that it is reasonably practicable, leave them in the same condition as he found them.

(6) An enforcement officer entering any business premises by virtue of this section, or of a warrant issued under it, may inspect any records (in whatever form they are held) relating to a business of a contractor and, where any such records are kept by means of the computer-

- (a) may have access to, and inspect and check the operation of, any computer and associated apparatus or material which is or has been in use in connection with the records; and
- (b) may require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material to afford him such assistance as he may reasonably require.

(7) Any officer exercising any power conferred by subsection (5) may-

- (a) seize and detain any records, or take copies of them, which he has reason to believe may be required as evidence in proceedings under any of the provisions of this Law; and

- (b) where the records are kept by means of a computer, may require the records to be produced in a form in which they may be taken away.

(8) A business entity shall keep at the business premises all records relating to its business for at least twelve months, but where the records relate to a project that runs for two years or more, the records shall be kept for at least twenty-four months after the end of the project.

25. (1) Any person who-

Obstruction, etc., of
officers of the Board

- (a) intentionally obstructs any person acting in the execution of his duties under this Law; or
- (b) without reasonable cause fails to give to the Board, or to any person acting in the execution of his duties under this Law, any assistance or information which the Board or that person may reasonably require of him for the performance of their respective functions under this Law,

commits an offence and is liable on summary conviction to a fine of two thousand dollars or to imprisonment for three months, or to both.

(2) Any person who, in purported compliance with a requirement mentioned in subsection (1) (b)-

- (a) furnishes information which he knows to be false or misleading in a material particular; or
- (b) recklessly furnishes information which is false or misleading in a material particular,

commits an offence and is liable on summary conviction to a fine of five thousand dollars or to imprisonment for six months, or to both.

(3) Nothing in subsection (1) (b) shall be construed as requiring any person to answer any question or to give information if to do so might incriminate him.

26. (1) Where -

Non-compliance notices
and appeals against them

- (a) the Board has reasonable grounds for believing that a person is carrying out construction in breach of section 22; and
- (b) the Board considers it is expedient to do so having regard to all the circumstances,

the Board may issue a non-compliance notice requiring the breach to be remedied.

- (2) A non-compliance notice shall specify-
 - (a) the matters alleged to constitute a breach of section 22;
 - (b) the construction which the person named in the notice is prohibited from carrying out;
 - (c) any steps which the Board requires to be taken by the person alleged to be in breach in order to remedy the breach, including steps enabling him to comply with the conditions of his registration or to become registered; and
 - (d) the period within which any such steps are to be taken.
- (3) A non-compliance notice shall take effect seven days after the date of service of the notice on the person named in it as being in breach of this section.
- (4) As soon as practicable after the Board has issued a non-compliance notice a copy of the notice shall be served-
 - (a) on the person named in it as being in breach of section 22; and
 - (b) on any person who has an interest in any land or business premises on or in relation to which the breach has occurred.
- (5) A person who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding two thousand dollars and, in addition, to a mandatory fine of two hundred and fifty dollars for every day on which the offence continues after the person has been convicted of that offence, and on a second conviction to a like fine or imprisonment for three months or both.
- (6) The person named in a non-compliance notice may within twenty days of notification of the decision appeal to the summary court against the notice, whether or not a copy of the notice has been or is deemed to have been served on him.
- (7) A non-compliance notice shall cease to have effect on the issuance by the Board of a certificate to the effect that it is satisfied that the person named in the notice-
 - (a) is no longer in breach of section 22 (1) (a); or
 - (b) has taken sufficient steps to ensure that he will no longer be in breach of section 22 (1) (b).
- (8) A certificate referred to in subsection (7) may be issued by the Board -
 - (a) on its own initiative; or
 - (b) on the application of the person named in the non-compliance notice,

and in either case shall be issued as soon as reasonably practicable after the decision is made but in any case within five days.

(9) If the Board determines that a certificate referred to in subsection (7) must not be issued, it shall in five days give notice in writing to the person named in the notice, giving therein reasons for that determination.

27. (1) Subsection (2) applies where, in any proceedings for an offence under this Law, a non-compliance notice has taken effect against the person charged with the offence.

Powers of court in relation to non-compliance notices

(2) In proceedings referred to in subsection (1), the summary court may, whether or not the person charged with the offence is convicted of that offence, cancel or affirm the notice and, if it affirms the notice, it may do so either in its original form or with such modifications as the court may think fit.

(3) If a person is convicted of an offence under this Law, the summary court may, in addition to or in place of any other sentence imposed on that person, make an order requiring the Board to remove his name from the register.

(4) For purposes of clarification it is declared that even in cases where the summary court has ordered the removal of a name from the register and revocation of a licence, the Board shall retain the power to restore the registration and licence where the reason for revoking the licence no longer exists or there is sufficient reason to do so under this Law but this power shall be exercised subject to the restriction contained in sections 15 (9) and 20 (8).

28. Whenever a business entity is found guilty of an offence under this Law,-

Application of offences to business entities

- (a) the business entity shall be liable on summary conviction to a fine not exceeding ten thousand dollars, and to a further fine not exceeding two thousand five hundred dollars for every day on which the offence continues after it has been convicted of that offence; and
- (b) a director or manager of the business entity shall also be guilty of an offence and liable on summary conviction to a fine not exceeding two thousand five hundred dollars, and, in addition, to a fine not exceeding two hundred and fifty dollars for every day on which the offence continues after he has been convicted of that offence unless violation took place without the knowledge or consent of the director or manager concerned.

29. (1) Any person aggrieved by any decision of the Board (other than in relation to a non-compliance notice, in respect of which an appeal may be lodged

Appeals

under section 26 (6)) may, within twenty days from the date on which the notice is issued or decision notified, or such period as the Appeals Tribunal may allow in a particular case, appeal to the Appeals Tribunal, subject to further appeals, but only on points of law, to the Grand Court and Court of Appeal; and the decision of the Court of Appeal shall be final:

Provided that, in an appeal under this section, an appeal by either party shall operate to automatically suspend any order made by the Board unless, due to the gravity of a contravention and other circumstances of the case, the Board directs that, regardless of whether or not an appeal is subsequently lodged, the order shall enter into effect immediately or on a particular date, and this part of the order shall not be subject to appeal.

(2) The procedure on an appeal to the Appeals Tribunal under subsection (1) shall be by way of notice of appeal and be by way of re-hearing.

(3) In any case where an appeal under subsection (1) lies from a decision of the Board, the document notifying the decision of the Board to the person concerned shall state-

- (a) the right of appeal to the Appeals Tribunal; and
- (b) the period within which the appeal may be brought.

(4) In subsection (1) the relevant date is-

- (a) in the case of a non-compliance notice, the date on which the notice takes effect under section 17; and
- (b) in the case of any decision of the Board other than a decision to issue a non-compliance notice, the date on which notice of the decision was given to the person desiring to appeal.

(5) On an appeal against a non-compliance notice, the Appeals Tribunal may either cancel or affirm the notice and, if it affirms the notice, it may do so either in its original form or with such modifications as the Tribunal may think fit.

PART VI COMPLAINTS

Right of public to
complain

30. (1) Any person may file with the Board a complaint against a business entity, a qualified individual or both, on the basis that there has been a failure to comply with this Law or any regulation made hereunder.

(2) A person filing a complaint shall not be required to show that the failure has been in relation to him.

(3) In dealing with a complaint, the Board may call such witnesses and call such other evidence as it considers necessary.

(4) The Board may make such determinations as it considers necessary or expedient as may be set out in regulations to be made for this purpose under this Law but the Board shall not be empowered to order the payment of compensation.

(5) The Governor in Cabinet may make the regulations referred to in subsection (4) as well as regulations otherwise governing the procedures and substantive powers of the Board in relation to complaints.

(6) An action brought under this section shall be without prejudice to the rights of a complainant under any other law.

(7) A decision made by the Board following a complaint under this section shall be subject to appeal and section 29 shall apply as if the decision were of the kind subject to appeal under that section.

PART VII MISCELLANEOUS

31. (1) No information relating to any person that is obtained under or for the purposes of this Law by a member of the Board or any public officer shall be disclosed, except for the purposes of any proceedings for an offence against the Law or a report of those proceedings. Confidentiality

(2) Any person who discloses any such information in contravention of this section commits an offence and is liable on summary conviction to a fine not exceeding two thousand five hundred dollars.

32. Any document required or authorised under this Law to be served shall be served- Service of documents

- (a) for an individual, by delivering it to him or by leaving it at his proper address or by sending it by registered post to him at that address; or
- (b) if the person is a body corporate, by serving it in the manner specified in paragraph (a) but with service being effected on, or sent to, the secretary of that body,

and in each case the person shall require a person who appears to be authorised to receive mail or other responsible person to sign acknowledging receipt and if there is no responsible person willing to sign, the document may be left at the

	business premises and the person serving shall record why the document was not signed for.
Onus of proof	33. In any proceedings under this Law in which the right of any company to carry on business in the Islands is in issue, the onus of proving that the company had, at the relevant time, the right to carry on such business in the Islands shall be on the company.
Proof by certificate	34. A certificate purporting to be under the hand of the Chairman of the Board specifying that any particular company was or was not licensed under this Law during any period specified in the certificate shall be receivable in evidence in any proceedings under this Law without further proof and shall be <i>prima facie</i> evidence of the facts specified therein.
Precondition for prosecution	35. No prosecution in respect of any offence committed under this Law shall be instituted except by or with the consent of the Attorney-General or any person authorised by him.
Offences by officers, etc., of corporate bodies	36. Where an offence under this Law which has been committed by a company is proved to have been committed with the consent or connivance of, or to be attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such person as well as that company shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
Effect of infringement on business transactions	37. For the avoidance of doubt it is hereby declared that no business transaction shall be void or voidable by reason only that, at the relevant time, any party thereto is in breach of this Law.
Powers of company limited to those set out in incorporating documents	38. Nothing in this Law or any licence shall confer on any company any power to do anything which it is not authorised to do by virtue of its Memorandum and Articles of Association or any other provision of law.
Directives	39. (1) The Governor may give policy directives to the Board in writing but such directives shall not derogate from this Law or any regulations made under this Law. (2) In the exercise of the functions conferred on the Board by or under this Law, the Board shall comply with any such directives.
Regulations	40. (1) The Governor may make regulations generally for giving effect to this Law and for prescribing any matter which under this Law may be prescribed.

(2) Without limiting the generality of subsection (1), regulations under this section may prescribe-

- (a) the fees payable by applicants for registration under this Law and the particulars of applicants to be registered;
- (b) the forms to be used and the procedure -
 - (i) for making applications for registration and issuing licences under this Law; and
 - (ii) for the issuing of notices under the Law and date on which they shall become effective;
- (c) conditions of registration, including conditions as to registration applicable to any class or description of construction;
- (d) qualifications that may be approved or recognised for the purposes of this Law;
- (e) relevant experience for the purposes of this Law, being experience in such description of work as may be prescribed;
- (f) categories for qualified individuals and the pre-requisite for each category;
- (g) make provision for all matters consequential on the making of an order for the revocation of a licence under section 20 (5);
- (h) make provision for the notification of any change in relation to a shareholder in a business entity becoming or ceasing to be Caymanian and the determination of any question of whether or not a shareholder is Caymanian;
- (i) prescribe the forms, notices, licences, books, registers and other documents to be used and the information and particulars to be given for the purposes of, and in connection with, this Law; and
- (j) provide for the giving of public notice of an application or other matter or under, or pursuant to, this Law;
- (k) the procedures for ensuring that a business entity does not begin operating until it has been registered under this Law; and
- (l) appeals under this Law.

(3) The power of the Governor to make regulations under this section includes power-

- (a) to make different provision in relation to different cases or classes of case (including different provision for different classes of person); and
- (b) to provide for such exceptions, limitations and conditions, and to make such supplementary incidental, consequential or transitional provisions, as the Governor considers necessary or expedient.

41. (1) Except as provided in subsection (2), where a business entity or qualified individual does not meet the formal requirements for registration under

Transitional

this Law, the Board may register such entity or individual if that business entity or individual proves to the Board by written submission, as may be permitted or allowed by the Board, that the entity or individual was, immediately before the entry into force of this Law, engaged, or had the capacity to engage, in the same activity as that in which it or he requires registration and its or his record in that regard is satisfactory.

(2) The Board may determine that a business entity or qualified individual who is to be registered under subsection (1) shall, on the basis of its or his own quality of construction, upon application, be registered in a category less onerous than one in which it or he has been engaged.

SCHEDULE 1

THE BUILDERS BOARD

(Section 4 (7))

1. The Builders Board shall be a body corporate with perpetual succession and a common seal.

2. (1) A member of the Board shall, subject to the provisions of this Law, hold office for a period not exceeding two years and such member shall be eligible for re-appointment, and the Governor shall, making appointments, ensure that two members retire every two years.

(2) The Governor may appoint any person to act temporarily in the place of the Chairman or a member of the Board in the case of the absence or inability to act of the Chairman or of such member on account of conflict of interest or for any other cause, as the case may be.

(3) If the Chairman or Deputy Chairman ceases to be a Chairman or Deputy Chairman, he shall automatically cease to be a member of the Board unless the Governor directs otherwise.

(4) A member may at any time, by notice in writing addressed to the Governor, resign his membership.

(5) The Governor shall terminate the appointment of a voting member who-

- (a) resigns his office;
- (b) becomes incapable of performing his duties due to mental or physical illness;
- (c) has been adjudged to be bankrupt, suspends payment to or compounds with his creditors;

- (d) is convicted in the Islands or in any other jurisdiction of an offence involving dishonesty, fraud or any indictable offence;
- (e) is guilty of serious misconduct in relation to his duties; or
- (f) is otherwise unable or unfit (through ill-health, failure to attend meetings or otherwise) to discharge the functions of member.

(6) Where a member ceases to be a member before the normal expiration of his term, the Governor may appoint another person to hold that office for the remainder of the term.

3. (1) Where a member of the Board is in any way directly or indirectly interested in an application for registration made to the Board or in any other matter which is to be determined by the Board, he shall disclose the nature of his interest at a meeting of the Board as soon as reasonably practicable after the relevant circumstances have come to his knowledge.

(2) Any disclosure so made by such a member shall be recorded in the minutes of the Board and that member shall not, after disclosure, take part in the deliberations or decision of the Board with respect to the application or matter.

(3) For purposes of clarification it is declared that after a disclosure is made, or the Chairman determines that a member has an interest that should have been disclosed, the member making the disclosure or the member affected by the Chairman's determination, as the case may be, shall not be in the place where the deliberations are being held.

4. (1) The Board may co-opt any person whom it considers able to assist it in the performance of its functions.

(2) Any person co-opted may attend and participate in meetings of the Board, but shall not be entitled to vote and shall not be counted for the purpose of constituting a quorum.

5. (1) Except as otherwise specified in this Law, the Board may determine their own procedure.

(2) The quorum of the Board is five.

(3) The Board shall meet at least once in every month.

(4) The Chairman shall call a meeting of the Board if so directed by the Governor or if requested to do so in writing by three voting members of the Board; and such a direction or request must include a statement of the agenda proposed for the meeting.

(5) The Board shall reach its decisions by a majority of the votes of the members present and voting at the meeting.

(6) At meetings of the Board, the Chairman shall preside and-

- (a) in the absence of the Chairman, the Deputy Chairman shall preside;
- (b) in the absence of both the Chairman and the Deputy Chairman, the members present shall elect one of their number to preside at that meeting.

6. The Board shall provide the Governor with such information as he may from time to time require with respect to the activities or proposed activities of the Board; but a requirement imposed under this paragraph shall not impose upon the Board the duty of providing the Governor with information which the Board does not possess and cannot reasonably be expected to obtain.

7. The validity of any proceedings of the Board shall not be affected by any vacancy in its membership or by any defect in the appointment, or any disqualification of, any of the members of the Board, so long as a quorum is present.

8. Members of the Board shall be paid such sitting allowances as the Governor may determine and be reimbursed for expenditure reasonably incurred in the performance of their duties.

9. (1) The application of the seal of the Board shall be authenticated by the signature of the Chairman or the Deputy Chairman and the secretary.

(2) All documents issued by the Board, other than those required by law to be under seal, and all decisions of the Board, shall be signed by the Chairman, the Deputy Chairman or the secretary.

(3) Any document purporting to be one issued by the Board, and to be sealed or signed on behalf of the Board in accordance with this paragraph, shall be received in evidence and shall be deemed to be such a document without further proof unless the contrary is shown.

10. In carrying out its functions under this Law the Board may, with the approval of the Governor, enter into arrangements with any department of the Government for the use of the personnel, facilities and services of the department to any extent compatible with the department's operations.

SCHEDULE 2
FEES FOR BUSINESS ENTITIES AND QUALIFIED INDIVIDUALS
 (Sections 14 and 19)

Part I
Fees for Business Entities

(Section 14)

Item	Category	Application fee	Licence fee (up to 10 employees)	Licence fee (more than 10 employees)
(a)	General contractor	\$ 75	\$ 5, 000	\$ 5, 000
(b)	Building contractor	\$ 75	\$ 3, 500	\$ 3, 500
(c)	Residential contractor	\$ 75	\$ 1, 250	\$ 2, 500
(d)	Sub-trade contractor	\$ 75	\$ 500	\$ 1, 000
(e)	Civil contractor	\$ 75	\$ 5, 000	\$ 5, 000

Notes for civil contractors: The fees specified in Item (e) are for a business entity whose sole licence is that of civil contractor. Where a business entity is already registered in another category and seeks to be registered also as a civil contractor, the fee payable for registration as a civil contractor shall be \$ 1, 000 instead of \$ 5, 000. This shall also be the case where the application for civil contractor accompanies the application to be registered in another category.

Part I
Fees for Qualified Individuals

(Section 19)

Category	Application fee	Licence fee
Sub-trade	\$ 35	\$ 100

Notes for sub-trades: Where an individual seeks to be registered in one or more categories, the fees shall be as indicated in this Part. However, where an individual has a subsisting registration in one or more sub-trades and seeks to add one or more sub-trades, the second or subsequent application shall be treated as a new application to the extent that a new application fee shall be payable. However, no licence fee shall be payable.

Passed by the Legislative Assembly the day of , 2006.

Speaker.

Clerk of the Legislative Assembly.