

**The English version shall prevail in case of any discrepancies.**

No.60



**BERMUDA**

**1992: No. 60**

**MANSION HOLDINGS LIMITED COMPANY ACT, 1992**

[10th July, 1992]

WHEREAS a petition has been presented to the Legislature by Mansion Holdings Limited, a company incorporated pursuant to the Companies Act 1981 on 5th May, 1992, requesting the enactment of certain provisions in relation to the Company and exemption for the Company from, and variation in relation to the Company of, certain requirements of the Companies Act 1981 as the same may from time to time be amended or re-enacted, as herein appears:

AND WHEREAS it is deemed expedient to pass an Act to give effect to the prayer of the petition:

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

1. This Act maybe cited as the Mansion Holdings Limited Company Act,1992.

Short title

2. In this Act, unless the context otherwise requires–

Interpretation

“appointed stock exchange” shall have the meaning ascribed thereto in subsection (1) of Section. 25 of the Companies Act;

“bye-laws” means the bye-laws for the time being of the Company;

“the Company” means Mansion Holdings Limited or every wholly-owned subsidiary of the Company incorporated pursuant to the Companies Act as an exempted company of which notice has been given pursuant to Section 6 of this Act;

“the Companies Act” means the Companies Act 1981 as amended from time to time;

“holding company” means Mansion Holdings Limited unless the context otherwise requires when it shall mean a company incorporated pursuant to the Companies Act as an exempted company and which controls a subsidiary within the meaning of this Act;

“Minister” means the Minister of Finance or such other Minister as may be appointed to administer the Companies Act;

“register” and “Registrar” shall have the meanings ascribed to those terms in Section 2(1) of the Companies Act;

“subsidiary” shall mean, unless otherwise expressly provided or the context otherwise requires, every wholly-owned subsidiary of the holding company, whether directly or indirectly wholly-owned, incorporated pursuant to the Companies Act as an exempted company and, for the purpose of this definition, “wholly-owned” shall mean either legal or beneficial ownership of all the issued share capital of the subsidiary the shares of which carry the right to attend and vote at any general meeting of the subsidiary.

Exemption  
from Section  
130 of the  
Companies Act  
and the  
appointment  
of a Resident  
Representative.

3. (1) The Company shall not be required to comply with the provisions of Section 130 of the Companies Act, provided that subject to the provisions of subsection 2 (a) of this Section, the following conditions are satisfied:
  - (a) the Company shall have obtained a listing or quotation, as the case may be, on an appointed stock exchange or shall take steps and have obtained the same within six months of the date of enactment hereof, or within such longer period as the Minister shall, in his discretion, permit, and shall remain so listed or quoted and for the purposes of this subsection, the Company shall be deemed to have remained so listed or quoted notwithstanding that its shares are suspended from trading by the appointed stock exchange;
  - (b) the Company shall appoint and maintain a Resident Representative, who shall be a person ordinarily resident in Bermuda; and
    - (i) the Company shall, before availing itself of the exemption contained herein, give notice in writing to the Minister of the name of the appointed stock exchange on which the holding company has obtained a listing or quotation, as the case may be, and the date on which such listing or quotation was obtained and of the name and address of its Resident Representative;
    - (ii) without a reason acceptable to the Minister:
      - (a) the Company shall not terminate the appointment of its Resident Representative (unless at the same time appointing another); and

- (b) the Resident Representative shall not cease to act as such, unless it or he shall give not less than thirty days' notice in writing to the Minister of the intention to do so;
- (iii) the Resident Representative shall maintain at its or his office in Bermuda originals or copies of:
  - (a) minutes of all proceedings of general meetings of the Company;
  - (b) all financial statements required to be prepared by the Company under the Companies Act together with the auditors' report thereon;
  - (c) all records of account required by Section 83 of the Companies Act to be kept in Bermuda; and
  - (d) all such documents as may be required in order to provide evidence of the continued listing or quotation of shares of the holding company on the appointed stock exchange;
- (iv) it shall be the duty of the Resident Representative to:
  - (a) make all necessary filings with or applications for approval to the Minister or the Registrar required by this Act or the Companies Act to be made within the time periods therein prescribed;
  - (b) act as agent for the service of process in Bermuda to receive for the Company and on its behalf service of process in any legal action or proceeding against the Company; and
  - (c) within thirty days of reaching the view that there is a likelihood of the Company becoming insolvent or its coming to his or its knowledge, or him or it having reason to believe that an event to which this subsection applies has occurred, to make a report to the Minister setting out all particulars of the case that are available to him or it;
- (v) as respects the Resident Representative, subsection (l)(b)(iv)(c) of this Section applies to any of the following events, that is to say:
  - (a) failure by the Company to comply substantially with any condition or limitation imposed upon the Company in its memorandum of association or by any undertaking given by the Company to the Minister; or
  - (b) involvement of the Company in any criminal proceeding whether in Bermuda or abroad; or

- (c) the Company ceasing to carry on business from within Bermuda; or
    - (d) suspension of dealings in the shares of the holding company on the appointed stock exchange for a consecutive period of more than thirty days or the termination of the holding company's listing or quotation on the appointed stock exchange;
  - (vi) the Company shall during the month of January each year send to the Registrar a declaration in writing signed by its Resident Representative setting out a list of its directors, the address of its principal place of business outside Bermuda and attesting to the holding company's continued listing or quotation on the appointed stock exchange; and
  - (vii) the holding company shall file with the Registrar a copy of the holding company's audited financial statements together with the auditors report thereon for the previous financial year of the holding company not less than seven days before the date of the holding company's annual general meeting nor more than six months after the end of that financial year.
- (2)
  - (a) Upon the failure by the Company to comply with the provisions of subsection (1) of this Section, the Company may apply to the Minister within 30 days of such failure for permission to continue to avail itself of the exemption from the requirement to comply with Section 130 of the Companies Act accorded to the Company by this Act provided that subject to the foregoing, the Company shall comply with Section 130 of the Companies Act on or before the expiration of the said 30 days.
  - (b) Wilful failure by the Resident Representative to comply with the provisions of subsections (1)(b)(ii)(b), (1)(b)(iii) and (1)(b)(iv) of this Section shall be an offence and shall render him or it liable on conviction to a fine not exceeding BD\$5,000.00.
  - (c) For the avoidance of doubt, all filings or written notices required by this Act to be given to the Minister shall be delivered to the Registrar and service of such filings or written notices upon the Registrar shall be deemed to satisfy any such requirement.
- (3) A wholly-owned subsidiary of the holding company, which otherwise conforms to the definition of the Company, shall be entitled to the exemption from the provisions of Section 130 of the Companies Act, provided that the holding company shall have met and shall continue to meet the conditions set out in subsection (1) of this Section in respect of itself and notwithstanding that the said wholly-owned subsidiary has not and cannot meet the said conditions.

Miscellaneous provisions varying or exempting from provisions of general law.

4. Notwithstanding anything contained in the Companies Act or rule of law to the contrary:
- (a) the Company may in accordance with any scheme for the time being in force and approved by the members in general meeting provide money directly or indirectly or other financial assistance direct or indirect for the purpose of or in connection with the purchase of, or subscription for, fully or partly paid shares in the Company or any holding company of the Company, being a purchase or subscription by a trustee of or for shares to be held by or for the benefit of employees of the Company, any of its subsidiaries, any holding company of the Company or any subsidiary of any such holding company in each such case whether incorporated in Bermuda or elsewhere and whether or not a wholly-owned subsidiary of the Company, notwithstanding the definitions thereof in Section 2 of this Act, including any director holding a salaried employment or office with or in any such company and so that the residual beneficiary of any such trust may be or include a charitable object;
  - (b) proviso (c) to subsection (1) of Section 39, and subsection (2) of Section 39 of the Companies Act, shall apply to the Company as if each referred to fully or partly paid shares in the Company or its holding company and as if the persons mentioned therein included directors and bonafide employees of the Company, any of its subsidiaries, any holding company of the Company or any subsidiary of any such holding company in each such case whether incorporated in Bermuda or elsewhere and whether or not a wholly owned subsidiary of the Company, notwithstanding the definitions thereof in Section 2 of this Act, and the provisions of Section 96 of the Companies Act shall be read and construed accordingly;
  - (c) in addition to its common seal for use in Bermuda, the Company may adopt one or more common seals for use in any territory outside Bermuda;
  - (d) the bye-laws of the Company may provide that a member may designate a person who is not a member of the Company his proxy to represent such member and vote on his behalf at any general meeting of the Company or meeting of the holders of any class of shares in the capital of the Company;
  - (e) the directors of the Company shall not be required to be elected at each annual general meeting, but shall (save for any chairman and any managing director) be subject to retirement by rotation in such manner and at such frequency as the bye-laws of the Company may provide;
  - (f) it shall not be necessary for a director or an alternate director to be a member of the Company;
  - (g) (i) no alternate director of the Company shall by virtue of that position be a director for the purposes of the Companies Act, but shall nevertheless be subject to the provisions of the Companies Act in so far as they relate to the duties and obligations of directors (other than the obligation to hold any qualifying share in the capital of the Company) when performing the functions of a director and, subject to the bye-laws of

the Company, shall have the rights and powers given to alternate directors by Section 91(2)(b) of the Companies Act;

- (ii) the election or appointment of an alternate director of the Company shall not be required to be effected or authorised by the Company in general meeting, but shall be effected in such manner as the bye-laws of the Company may provide;
- (iii) an alternate director of the Company shall have such rights and powers, and be entitled to attend and vote at meetings of the directors, as the bye-laws of the Company may provide; and
- (h) the Company may, but shall not be required to have, a president or any vice president, but shall have a chairman and such other officers who shall be appointed in such manner, and hold office for such period, as the bye-laws of the Company may provide.

Relocation  
Provisions.

5. (1) The Company shall in addition to the powers conferred upon it by the Companies Act and those contained in its memorandum of association have power subject to the consent of the Minister to be continued in a foreign country or jurisdiction as if it had been incorporated under the laws of that other country or jurisdiction and to be discontinued under the Companies Act. The consent of the Minister shall be in the form set out in the First Schedule to this Act.
- (2) An application for consent under subsection (1) of this Section shall be in such form and supported by such documents as the Minister may determine which shall include inter alia:—
- (a) a certified copy of a resolution of the members passed in general meeting duly called for the purpose by at least 75% of the votes cast authorising the continuance of the Company in a named foreign country or jurisdiction, provided that, notwithstanding the provisions of the bye-laws of the Company, the quorum necessary for such general meeting shall be two persons at least holding or representing by proxy more than 50% of the issued shares of the Company;
  - (b) a statutory declaration signed by all the directors of the Company that the Company is solvent and can meet all of its liabilities and obligations and that the continuance would not adversely affect the interests or rights of bona fide creditors and shareholders;
  - (c) a copy of a notice published in an appointed newspaper and in a national newspaper in each country or jurisdiction within which the Company carries on a substantial part of its trade or business activities to the effect that the Company intends to continue in the named foreign country or jurisdiction; and
  - (d) an irrevocable deed poll executed by the Company and its directors pursuant to which:—

- (i) the Company and each of its directors may be served with legal process in Bermuda in any proceeding arising out of actions or omissions occurring prior to the discontinuance, and provision is made for the appointment of a person in Bermuda as agent of the Company for such service of process for a period of not less than three years from the date of discontinuance and a signed acceptance of such appointment; or
  - (ii) the Company and each of its directors may be served with legal process at a specified address in the United Kingdom, the United States of America, Hong Kong or any other country or jurisdiction acceptable to the Minister and whereby the Company and such directors submit to the non-exclusive jurisdiction of the courts of that place.
- (3) (a) Subject to obtaining the consent of the Minister, the Company shall file with the Registrar a copy of the instrument of continuance issued to it by the foreign country or jurisdiction within thirty days after the date of issue together with a declaration of discontinuance containing or attached to it the following information:-
  - (i) a copy of the irrevocable deed poll required by subsection (2)(d) of this Section;
  - (ii) the name of the country or jurisdiction under the laws of which the Company has been continued; and
  - (iii) the address of the registered office or principal business address of the Company in that country or jurisdiction.
- (b) The instrument of continuance and the declaration of discontinuance shall be documents open to public inspection.
- (c) On receipt of the instrument of continuance issued to the Company by the foreign country or jurisdiction and on receipt of the Minister's consent required under this Section 5, the Registrar shall file the instrument of continuance and issue a Certificate of Discontinuance (which shall be in the form set out in the Second Schedule hereto) and thereupon the Company shall cease to be registered as a company in Bermuda.
- (4) The consent of the Minister shall expire six months after the date thereof unless within the six month period the Company is continued under the laws of the named foreign country or jurisdiction.
- (5) This Act and the Companies Act shall cease to apply to the Company on the date upon which the Company is continued under the laws of the other country or jurisdiction as stated in the instrument of continuance and in the declaration of discontinuance.

(6) The Company shall not be continued as a body corporate under the laws of any other country or jurisdiction unless:—

(a) such country or jurisdiction is approved by the Minister for the purposes of this Act; and

(b) the laws of such country or jurisdiction provide in effect that when the Company is continued as a body corporate in such country or jurisdiction:—

(i) the property of the Company continues to be the property of such corporation;

(ii) such corporation continues to be liable for the obligations of the Company;

(iii) an existing cause of action, claim or liability to prosecution is unaffected;

(iv) a civil, criminal or administrative action or proceeding pending by or against the Company may be continued to be pursued or prosecuted by or against such corporation; and

(v) a conviction against, or ruling, order or judgement in favour of or against the Company may be enforced by or against such corporation.

6. (1) A subsidiary entitled to avail itself of the provisions of this Act shall within fourteen (14) days of becoming so entitled, or such later period as the Registrar may in his discretion permit, deliver to the Registrar written notice of such entitlement.

Delivery of  
Notice to the  
Registrar.

(2) A notice under subsection (1) of this Section shall be given in the prescribed form set out in the Third Schedule to this Act.

(3) The Registrar shall, upon receipt of a notice given under subsection (1) of this Section, enter such notice on the register together with the effective date of the receipt thereof.

(4) In the event that the subsidiary shall cease to be qualified to avail itself of the provisions of this Act, it shall, within thirty (30) days of ceasing so to qualify, give written notice to the Registrar thereof, the form of which is set out in the Fourth Schedule to this Act, and the Registrar shall enter such notice on the register together with the effective date of receipt thereof.

7. Nothing in this Act contained shall be construed to affect the rights of Her Majesty, Her heirs and successors or of any body politic or corporate or of any other person or persons except such as are mentioned in this Act, and those claiming by, from or under them.

Saving of  
rights of  
Crown and  
others.



**MANSION HOLDINGS LIMITED COMPANY ACT, 1992**

**FIRST SCHEDULE**

**CONSENT**

Pursuant to Section 5(1)

In terms of Section 5(1) of the Mansion Holdings Limited Company Act, 1992, the Minister of Finance hereby gives his consent to

[name of company]

to be discontinued in Bermuda as an exempted Company incorporated under the laws of Bermuda.

Dated this            day of

Minister            of            Finance

**MANSION HOLDINGS LIMITED COMPANY ACT, 1992**

**SECOND SCHEDULE**

**BERMUDA**

**CERTIFICATE OF DISCONTINUANCE**

**PURSUANT TO SECTION 5(3)(c)**

[name of company]

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Name of Company

I HEREBY CERTIFY THAT THE ABOVE-MENTIONED COMPANY, INCORPORATED UNDER THE LAWS OF BERMUDA, WAS DISCONTINUED AS AN EXEMPTED COMPANY UNDER SECTION 5 OF THE MANSION HOLDINGS LIMITED COMPANY ACT, 1992.

\_\_\_\_\_ Registrar of Companies

\_\_\_\_\_ Date of Discontinuance

SEAL

**MANSION HOLDINGS LIMITED COMPANY ACT, 1992**

**THIRD SCHEDULE**

**NOTICE PURSUANT TO SECTION 6(2)**

I [name and address of person giving notice] a duly authorised representative of [the subsidiary] hereby give you notice pursuant to Section 6(2) of the Mansion Holdings Limited Company Act, 1992 that [the subsidiary] is a wholly-owned subsidiary of Mansion Holdings Limited, incorporated on the [date of incorporation of subsidiary] pursuant to the Companies Act 1981 as an exempted company and is therefore entitled to avail itself of the provisions of the Mansion Holdings Limited Company Act, 1992.

Yours faithfully,

[signature of the person giving notice]

Date of Notice: [day, month and year]

Received: [by the Registrar]

**MANSION HOLDINGS LIMITED COMPANY ACT, 1992**

**FOURTH SCHEDULE**

**NOTICE PURSUANT TO SECTION 6(4)**

I [name and address of person giving notice] a duly authorised representative of [the subsidiary] hereby give you notice pursuant to Section 6(4) of the Mansion Holdings Limited Company Act, 1992, that [the subsidiary] ceased to be entitled to avail itself of the provisions of the Mansion Holdings Limited Company Act, 1992 on the [day, month and year].

Yours faithfully,

[signature of the person giving notice]

Date of Notice: [day, month and year]

Received: [by the Registrar]