

STATE OF ANJOUAN
THE REGISTERED AGENT LICENSING ACT, 002 of
2005

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SCHEDULE

STATE OF ANJOUAN

ACT No. 002 OF 2005
I ASSENT

AN ACT to make provision for licensing and regulation of Offshore Representation, which includes acting as a company registered agent or manager in the State of Anjouan.

[By Order]

BE IT ENACTED by the President by and with the advice and consent of the Parliament of the State of Anjouan and by the authority of the same, as follows:

1. Short title and commencement

This Act may be cited as The Registered Agent Licensing Act, 2005, and comes into operation on such a date as the President may publish by proclamation in the Official Gazette.

PART I PRELIMINARY

2. Interpretation and definitions

In this Act unless the context otherwise requires-

“auditor” means a person who is licensed and in good standing as a member of an association of chartered or public accountants or other similar body approved by the Authority as a reputable auditing association;

“Authority” means the Offshore Finances Authority created pursuant to the Anjouan Offshore Finance Authority Act, 2005;

“business of Offshore Representation” means the provision of services relating to Offshore Representation for profit or reward in or from or within the State;

“certificate of compliance” means the Certificate of Compliance issued under paragraph (c) of subsection (1) of section 18;

“Companies Act” means the Companies Act of Anjouan;

“court” means the Court of the State, or a judge thereof;

“dollars” or “\$” means United States dollars;

“financial fiduciary” means and includes a licensee who engages or intends to engage in activities as a trustee, nominee, intermediary, or manager with respect to the money, securities or financial assets or instruments of a client or customer in the course of such licensee’s business of Offshore Representation;

“International Companies Act” means the International Business Companies Act 2005, as the same may be amended or supplemented from time to time;

“Offshore Inspector” means the Offshore Finance Inspector appointed under the Anjouan Finance Authority Act, 2005;

“Licence” means a licence issued under Part II of this Act;

“Licensee” means a person holding a current and valid licence to undertake the business of Offshore Representation under this Act;

“Minister” means the Minister of Finance for the State;

“Offshore Representation” means and includes one or more of the following acts or activities:

- (a) acting as agent or representative in the establishment, registration, renewal or continuation of company under the International Business Companies Act 2005;
- (b) providing registered office or registered agent services in the State for companies incorporated, licensed or continued under any previous offshore companies legislation;
- (c) providing or appointing nominee directors, nominee shareholders or nominee officers for companies incorporated under the International Business Companies Act or the International Banks Act 2005; or

Providing that the following activities shall not constitute “Offshore Representation” for the purposes of licensing under this Act:

- (i) The activities of a barrister or solicitor who is admitted to practice law in the State in connection with the formation or professional representation of any entity referenced in the foregoing definition; or

(ii) The activities of an accountant or auditor licensed to do business as such in the state in connection with the formation or professional representation of an entity referenced in the foregoing definition.

“Person” means a natural person, company or other corporation, partnership or limited partnership;

“Offshore Finance Authority Act” means the Anjouan Finance Authority Act 2005, as amended; and

“State” means the State of Anjouan.

3. Corporate Relationship

(1) For the purposes of this Act, a body corporate is controlled by a person if the shares of the body corporate carrying voting rights is sufficient to elect a majority of the directors of the body corporate are, except by way of security only, held directly or indirectly by or on behalf of or for the benefit (on trust or otherwise) of that person.

(2) For the purposes of this Act-

(a) a body corporate is the holding body corporate of another if that other body corporate is its subsidiary; and

(a) a body corporate is a subsidiary of another body corporate if it is controlled, directly or indirectly, by that other body corporate.

PART II LICENCES

4. Requirement for licence; exemptions

(1) No person shall carry on any element of the business of Offshore Representation, directly or indirectly, in, for, from or within the State unless that person has obtained and holds a valid and subsisting licence to do so under this Act.

(2) The body corporate known as Anjouan Offshore Finance Authority Limited, originally created pursuant to the Anjouan Offshore Finance Authority Act 2004 and to be henceforth known as the “Anjouan Offshore Finance Authority Limited” shall not require a licence under this Act to undertake Offshore Representation from within the State, but in any such representation it shall otherwise be bound by the duties and responsibilities of a licensee hereunder.

(3) Notwithstanding any provision contained herein to the contrary, any company that is duly authorised by agreement with Anjouan Offshore Finance Authority Limited to carry on one or more aspects of the business of Offshore Representation or to represent the activities of the Anjouan Offshore Finance Authority Limited outside the State prior to the effective date of this Act shall continue to have the right to conduct the activities authorised by any such agreement, to have the exclusive right to maintain offices outside the State to engage in the business of Offshore Representation for the remaining initial effective period of the applicable agreement, and to maintain one or more agents or places of business in any jurisdiction outside the State during such period (notwithstanding any territorial restrictions to the contrary set forth in such agreement); provided, that at the expiration of the remaining initial period under any such agreement, such company shall cease such activities unless the agreement is renewed.

(4) Unless otherwise prohibited in whole or in part by this Act, a licensee hereunder may hold one or more other licences or authorisations to conduct businesses or professions other than the business of Offshore Representation, but any such other licences, business or professions must be disclosed in the application for a licence hereunder.

5. Application for licence

(1) A licence may be issued to a natural person, a partnership, a company that is incorporated and in good standing under the Companies Act, or a foreign bank having an Anjouan Registered company banking licence under the Banking Act, who or which makes proper application to the Authority, and who or which provides the information and materials specified in the Schedule to this Act.

(2) If the Authority, on advice from the Offshore Finance Inspector, is satisfied that an application for a licence meets the requirements of this act and that the applicant is qualified to carry on the business of Offshore Representation, it may grant the application and issue to the applicant a licence subject to such terms and conditions as it shall direct, if any.

(3) Any decision of the Authority refusing to issue, continue or renew a licence shall be subject to appeal as provided in section 10.

(4) The Authority shall cause notice of the issue of a licence to be published in the State's official newspaper.

6. Capitalisation

No licence shall be issued unless the applicant can show evidence of sufficient net worth, as set forth in the schedule attached hereto or regulations promulgated hereunder.

7. Duration and scope of licence

(1) Subject to sections 8 and 9, a licence issued under this Act is valid until the 31st of December of the year in which it is issued, but it is renewable during the month of January in the following year for a further period of one year upon payment of the prescribed annual fee as set forth in the regulations promulgated under this Act.

(2) A licence is renewable for an extended period of time not exceeding fifteen years, subject to terms and conditions as may be specified by regulations promulgated under this Act.

(3) Except as expressly provided in subsection (4), no person shall have issued a licence to carry on a business of Offshore Representation, or to act or hold itself out as agent, affiliate or representative of a licensee hereunder, from a place of business outside the State.

(4) A licensee may-

- i. Call on its clients or customers located outside of the State;
- ii. Attend meetings held outside of the State relating to the business of Offshore Representation conducted by the licensee;
- iii. Distribute materials or information to clients or customers or potential clients or customers located outside of the State

8. Suspension of licence

(1) Where the Offshore Finance Inspector is of the opinion that a licensee:

(a) is carrying on the business of Offshore Representation in a manner detrimental to the public interest of the State, or of the companies or trusts or their respective shareholders or beneficiaries being managed or represented by such licensee; or

(b) has contravened a requirement of or condition attached to the licence, or a requirement made by or under this Act; or

(c) has ceased to carry on the business of Representation; or

(d) is insolvent

the Offshore Finance Inspector may require that the licensee forthwith take such steps as the Offshore Finance Inspector may deem necessary to rectify the matter, and may forthwith suspend the licence pending the receipt of information or evidence that the matter has been rectified. The specific nature of the infraction shall be set forth in writing from the Offshore Finance Inspector reasonably detailing the steps the licensee must take to rectify the matter.

(2) Upon suspension of the licence, the Offshore Finance Inspector shall immediately provide written notice of suspension to:

(a) the officers of the companies, and the co-trustees or beneficiaries of the trusts, in respect of whom the licence to carry on the Offshore Representation was issued (to the extent the same are a matter of public knowledge); and

(b) the licensee, who shall be afforded the opportunity to raise objections within 14 days of receipt of the notice or within 5 days before the end of the suspension period, whichever is the sooner, and the Offshore Finance Inspector shall consider any objections duly made.

(5) A suspension of a licence hereunder by the Offshore Finance Inspector shall not exceed 30 days, unless such suspension is extended from time to time by an order of the court on application of the Authority which shall specify:

(a) the grounds upon which the suspension should continue;

(b) the details of any objections made by the licensee;

(c) the period of further suspension requested, such period not exceeding 30 days at any one time.

The suspended licensee, and the officers, co-trustees and/or beneficiaries specified in subsection (2)(a) above, shall be afforded reasonable written notice of any such motion for such an order and an opportunity to contest the same.

(4) Notwithstanding the provisions of subsection (2)(a) above, the suspended licensee shall ensure that representatives or beneficiaries of all companies and trusts represented by the suspended licensee have notice of the suspension, and the failure to provide such notice shall be grounds for revocation of the licensee's licence.

(5) Upon suspension of a licence, the companies or trusts for which the licensee was providing Offshore Representation must as soon as practicably possible provide to the Offshore Finance Inspector details of an alternate licensee to serve as their agent in the State under applicable law.

(6) Subject to the sub-section (5) above, a suspension of a licence hereunder shall not in itself result in the deregistration of a trust or company for which the licensee was providing Offshore Representation.

9. Revocation of licence

(1) The Authority may revoke a licence upon the occurrence of any of the following:

(a) voluntary or involuntary bankruptcy, liquidation or winding up of the licensee or a person controlling the licensee; or

(b) the conviction of the licensee or a person controlling the licensee of any crime for which the penalty is imprisonment for 2 years or more; or

(c) the failure of the licensee to rectify the matter or matters causing the suspension of the licensee's licence within a reasonable amount of time, and in any event not more than 60 days, following a suspension under section 8.

(2) The Authority shall, before it revokes a licence-

(a) give the licensee written notice of the ground or grounds on which it intends to do so;

(b) afford the licensee an opportunity to make written objections within 30 days after the mailing of the notice; and

(c) take any such objections into consideration.

And, if the Authority decides to revoke a licence, it shall cause the documents revoking the licence to be served on the licensee and the persons described in section 8 (2)(a) above.

(3) Subject to the provisions of section 10, the revocation of a licence takes effect on the date of service on the licensee of the document revoking the licence.

10. Appeals

(1) An appeal lies to the Court from any decision of the Authority to suspend or revoke a licence under sections 8 or 9, or from a decision to refuse to grant or refuse to renew a licence under section 5.

(2) Any person described in subsection (1) may appeal to the court if the Authority:

(a) in the exercise of its powers under section 5 refuses to grant a licence to the said business; or

(b) in the exercise of its powers under subsection (1) section 5 grants the person a licence subject to conditions.

(3) An appeal under this section must be brought within 14 days after mailing of the relevant notice or documentation to the person whose licence has been denied, not renewed, suspended or revoked, as the case may be.

(4) The decision of the court on appeal may be further appealed as provided under applicable law.

(5) The Authority shall cause notice of the court's decision to be published in the State's official newspaper.

11. Change in particulars of licence

Where a change occurs in the particulars of a licensee as specified in the Schedule, the licensee shall, as soon as possible thereafter, inform the Offshore Finance Inspector in writing of the change.

12. Display of licence

A licence issued under this Act shall be prominently displayed on each premises where the business of Offshore Representation is carried on.

13. Surrender of licence

(1) A licensee who has ceased to carry on the business of Offshore Representation in respect of which the licence was granted may surrender his licence upon production of :

(a) in case of a licensee who is a natural person, evidence that he has repaid all deposits and has transferred all assets held or administered on behalf of companies or trusts or for which he has provided Offshore Representation; or

(b) in the case of a licensee which is a company or other entity, evidence that it is being wound-up voluntarily and that the company is solvent and is able on demand to repay all deposits held by it and all its other creditors, and has transferred all assets held by or administered on behalf of companies or trusts managed by it or for which it has acted as trustee.

(2) In the case of a surrender of licence under paragraph (b) of subsection (1), the Government's legal representative may apply to the court for an order that the licensee be wound-up either by the court or subject to the supervision of the court, and where the court so orders, the provisions of the Companies Act relating to the winding-up of a company by or subject to the supervision of the court, apply having made the necessary changes.

PART III TRANSFER OF SHARES AND INTEREST

14. Transfer of shares or interests

No shares or other interests, whether legal or equitable, in a company or partnership licensed under this Act shall be issued, transferred or otherwise disposed of without the prior written approval of the Offshore Finance Inspector, except that the Authority may exempt any company or partnership, from the provisions of this section, subject to such terms and conditions as it thinks fit.

PART IV ADMINISTRATION

15. Offshore Finance Inspector

(1) The Offshore Finance Inspector shall be appointed and employed by the Authority, as provided in the Anjouan Offshore Finance Authority Act, for the purpose of ensuring the proper administration of this Act and of other laws relating to the registration and regulation of international companies.

(2) The functions of the Offshore Finance Inspector under this Act shall include:

(a) monitoring, on behalf and in the name of the Authority, the business of Offshore Representation conducted in the State and elsewhere;

(b) where he thinks fit or when required by the Authority, the examination in such manner as he considers necessary of the affairs or business of any licensee hereunder for the purpose of satisfying himself that the provisions of this Act are being complied with and that such licensee is in a sound financial position and is carrying on its business in a satisfactory manner;

(c) reporting to the Authority regarding the examination of any documents produced to the Offshore Finance Inspector in the course of the performance of his functions hereunder;

(d) examining and making recommendations to the Authority with respect to all applications for licences;

(e) undertaking all responsibilities and authority assigned to him under the laws and regulations of the State, including, without limitation, the State of Anjouan Offshore Finance Authority Act 2004, the International Business Companies Act, and the International Banks Act 2004; and

(3) In the performance of his duties under this Act, the Offshore Finance Inspector may at all reasonable times:

(a) require a licensee to produce for examination such books, records and other documents that the licensee is required to maintain pursuant to section 18; and

(b) require a licence to supply such information or explanation as the Inspector may reasonably require for the purpose of enabling him to perform his functions under this Act.

(4) Notwithstanding subsection (3), the Offshore Finance Inspector shall not have access to any document or other confidential information of a company managed by a licensee or to any information, matter or thing relating to or concerning the affairs of any such company except under the circumstances described in the Exchange of Information Act 2004 or without having first obtained

(a) the written consent of that company or of the beneficiaries or of each other trustee of a trust, as the case may be; or

(b) an order of the court made on the grounds that there are no other reasonable means of obtaining such document, information matter or thing.

(5) The Offshore Finance Inspector, with the written approval of the Authority, may authorise in writing any person to assist him in the performance of his functions under this Act.

(6) All activities of the Offshore Finance Inspector or his assistants shall be governed at all times by the confidentiality provisions contained in this Act and in the Exchange of Information Act 2004..

16. Restrictions in use of certain terms

(1) No person other than a licensee shall-

(a) use any word, either in English or in any other language, in the description or title under which such person carries on business in or from within the State or otherwise that, in the opinion of the Authority, suggest the business of Offshore Representation as described in this Act; or

(b) make any representation in any document or in any other manner that is likely to suggest that such person is licensed to carry on the business of Offshore Representation as described in this Act when he is not.

(2) Without limiting the provisions of section 4(2) or (3), the Authority may require a licensee who carries on the business of Offshore Representation under a name which is-

(a) identical to that of any other person, whether within or outside the State, or which so nearly resembles that name as to be likely or calculated to deceive or create confusion as to the source of services rendered;

(b) calculated to suggest falsely the patronage of or connection with some person whether within or outside the State; or

(c) calculated to suggest falsely that he has special status in relation to or derived from the Government of the State or has official approval of, or acts on behalf of the government of the State or of any of its departments or officials, forthwith to change the name, and in default of compliance the Authority may revoke the licence.

17. Duties of licensee

A licensee shall maintain its principal place of business within the State and at or through such principal place of business shall maintain, in respect of its business of Offshore Representation,

(a) such books or records as accurately reflect the business of Offshore Representation of the licensee;

(b) to the extent expressly required to be maintained in the State pursuant to the International Companies Act 2004 and the International Banks Act 2004, separate accounts in the books or records in respect of each company the licensee manages or represents and of each trust or registered trust of which the licensee acts as trustee; and

(c) if the licensee is engaged as a financial fiduciary, one or more separate bank accounts for each company into which shall be deposited all moneys held on behalf of each company which the licensee represents or manages and of each trust for which it serves as trustee.

18. Annual returns, etc.

A licensee shall within 6 months of the end of each calendar year:

(a) prepare annual accounts for its business of Offshore Representation in accordance with generally accepted accounting principles, and if the licensee is engaged in such business in any respect as a financial fiduciary, the accounts relating to such financial activities shall be audited by an independent auditor;

(b) furnish to the Offshore Finance Inspector the annual accounts described in the preceding paragraph, which in the case of a licensee who or which is engaged as a financial fiduciary, shall be accompanied by a written confirmation from an independent auditor that the annual accounts have been prepared as required hereunder and which shall State whether or not the auditor's certificate for such accounts is unqualified and if qualified, the nature of the qualification; and

(c) furnish to the Offshore Financial Inspector a Certificate of Compliance issued by an independent auditor that the information set out in the application for a licence, as modified by any subsequent notification of change in accordance with section 11, remains correct and gives an accurate summary of the business of the licensee.

(2) A licensee shall, at any time if required by the Offshore Finance Inspector, furnish to the Offshore Finance Inspector a Certificate of Compliance issued in accordance with paragraph (c) of subsection (1), if applicable.

(3) A licensee shall, at any time if required by the Offshore Finance Inspector, produce to the Offshore Finance Inspector reasonable evidence as to the solvency or condition of the licensee's business of Offshore Representation and that the licensee has, in the case of a company or a partnership, maintained the required minimum paid-up capital.

PART V MISCELLANEOUS

19. Insurance policy

(1) As a condition to the grant of a licence, the Authority shall require a licensee to maintain a policy of insurance or a bond with an approved insurance company against

(a) losses arising out of claims of negligence or breach of duty by the licensee or by its employees;

(c) the dishonesty of licensee employees or of the licensee; and

(c) loss or destruction of documents.

(2) The Authority may also require a licensee to maintain adequate insurance against such other risks as the Authority may stipulate, in such amount and of such nature as the Authority determines to be fit and proper, having due regard to the nature and type of business carried on by the licensee.

(3) In the event that the insurance or bond required under this section is withdrawn, cancelled or not renewed, the licensee shall immediately notify the Offshore Finance Inspector and shall cease to carry on its business of Offshore Representation until the insurance has been reinstated or replaced.

20. Confidentiality

Except for the purpose of the performance or exercise of his duties or functions under this Act or when lawfully required to do so by the court under the circumstances described in the Exchange of Information Act 2004, neither the Offshore Finance Inspector nor any person or entity acting under his authority shall disclose, directly or indirectly, any information relating to any application under this Act, or to the affairs of a licensee or of a company managed or represented by a licensee or of a trust for which a licensee acts in Offshore Representation which he has acquired, directly or indirectly, in the performance or exercise of such functions or otherwise.

21. Immunity

No action, suit, prosecution or other proceedings shall be brought or instituted against the Governor-General, the Minister, the Offshore Finance Inspector, the Authority or its board members in respect of any acts undertaken or performed in good faith in the discharge of official functions described in this Act.

22. Regulations

The Minister, on advice of the Authority, may make regulations generally for giving effect to the provisions of this Act and specifically

- (a) prescribing the fees to be charged under this Act;
- (b) exempting any person or business, or class of person or business, from any provision of this Act; and
- (c) Prescribing anything required to be prescribed by this Act.

23. Directions

Without limiting the provisions of section 22, the Offshore Finance Inspector may, from time to time, upon advice of the Authority, issue by publication in the State's official newspaper directions in relation to such matters as he thinks fit, and failure by any licensee to comply with such directions shall be taken into consideration when any action is proposed to be taken under sections 8 or 9 hereof.

24. Offences

(1) Any person who with intent to deceive, or for any purpose of this Act makes any representation that he knows to be false or does not believe to be true is guilty of an offence and liable on summary conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding one year or both.

(2) Any person who

(a) assaults or obstructs the Offshore Finance Inspector or other person in the performance of his functions under this Act;

(b) by the offer of any gratuity, bribe or other material inducement prevents or attempts to prevent the Offshore Finance Inspector or other person from performing his functions under this Act; or

(c) contravenes any provision of this Act for which no penalty is specifically provided, is guilty of an offence and is liable on summary conviction to a fine not exceeding \$4,000 or to imprisonment for a term not exceeding one year or both.

(3) Where an offence is committed by a body corporate and a director or officer of that body corporate knowingly authorised, permitted, or acquiesced in the commission of the offence, the director or officer may also be guilty of the offence and liable on summary conviction to a fine of \$4,000 or to imprisonment for a term of 6 months or both.

25. Existing Business

Except as otherwise expressly set forth in section 4, any person who at the commencement of this Act is carrying on the business of Offshore Representation shall within twelve(12) months of that date, fully comply with the provisions of this Act.

26. Amendment of Schedule

The President may amend the Schedule to this Act by Order published in the State's official newspaper.

SCHEDULE

(Reference Section 5)

PARTICULARS TO BE SPECIFIED IN LICENSE APPLICATIONS

Every natural person, partnership or company applying for a licence under this Act shall furnish in writing to the Authority the following particulars which shall accompany the application:

- (1) Name of applicant.
- (2) Address in the State of the principal office of the applicant and, in the case of a company, its registered office.
- (3) In the Case of a company or partnership, the names and addresses of all partners or directors and their nationalities.
- (4) In case of a company or partnership, the names and addresses of all owners or shareholders and their nationalities.
- (5) In the case of a company or partnership, the names and addresses of all officer sand managers, and of foreign agents or offices of the company or partnership, a description of any material contractual arrangements with such persons, and a written agreement by which such persons and their employees agree to be bound by the provisions of this Act and to submit to the jurisdiction of the court for purposes of enforcement of such agreement.
- (6) Names and addresses of solicitors, if any, of the applicant, together with a letter from such solicitors confirming that they act for the applicant.
- (7) Names and address of auditors of the applicant, together with a letter from auditors confirming that they act for the applicant.
- (8) In the case of a company or partnership,
 - (a) the name and address of one of its officers or partners who is the authorised agent resident in the State to accept on behalf of the applicant service of process and any notices required to be served on it; and
 - (b) The name and address of another of its officers who in the absence or inability to act of the officer named in subparagraph (a) is the authorised agent resident in the State of the applicant for the purposes of subparagraph (a).

(9) In the case of a company, evidence of the proper incorporation of the company in the State under the Companies Act or in the country of incorporation, as the case may be.

(10) Evidence in writing that the applicant himself or some person or company directly or indirectly connected with the applicant is possessed of solid and practical experience in the company management.

(11) The following:

(a) an undertaking in writing to provide and set apart a fully paid-up capital before or at the time it commences business, such as the Authority may in its absolute discretion determine, or by a guarantee under seal of such sum given by a holding or parent or other company approved by the Authority; and

(b) The guarantee referred to in subparagraph (a) shall expressly provide that its formal validity, its essential validity, its interpretation and effect and the rights and obligation of the parties to it are governed exclusively by the law of the State and that the Court of the State shall be the exclusive forum and venue for these purposes.

(12) Character references in writing, together with such other evidence as the Authority may require, that neither the applicant nor, in the case of a company, any director or officer of the company has a criminal record either in the State or elsewhere.

(13) Annual accounts of its holding company, if any, for the preceding 3 years and thereafter annually duly audited and certified by an independent auditor.

(14) Names of all subsidiary companies of the applicant with addresses of their registered offices and names of their registered agents.

(15) In the case of a company, a copy of the Act, charter, certificate of incorporation or memorandum and articles of association of the applicant, as may be appropriate, verified by an affidavit sworn by a director, or officer and duly authenticated as follows:

(a) in the case of a company incorporated in the State, notarised;
and

(b) in the case of a foreign company, certified and authenticated under the public seal of the country, or place under the laws of which such company has been incorporated.

(16) References, including one from an internationally recognised bank.

(17) Statement of assets and liabilities at the end of the month prior to the submission of the application certified by a director or senior officer.

(18) Statement of capital of any other company held, directly or through a subsidiary, as an asset of the applicant.

(19) A statement describing the aspects of Offshore Representation the applicant will seek to undertake, and the experience of the application or its directors or employees in such business.

(20) Evidence that the net worth of the applicant exceeds \$28,000.

(21) Where the applicant intends to Act as a financial fiduciary in connection with his business of Offshore Representation, a detailed statement of the nature of such activities and the applicant's experience as a financial fiduciary.