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**MEMORANDUM**

**ON**

**ACCOUNTS & AUDIT REQUIREMENTS**

**1. INTRODUCTION**

The Companies Act 1981 (as amended) requires that a Bermuda company hold an Annual General Meeting in each calendar year at which the audited financial statements of the Company are approved. Companies that are not conducting a restricted or fiduciary business or listed on an appointed stock exchange may waive the requirement for audited financial statements and the appointment of an auditor if all shareholders and all directors agree to such waiver.

**1.1. *Restricted Business, Fiduciary Business or Listed on Appointed Stock Exchange (Filing of Audited Financial Statements):***

If the Bermuda company is conducting any of the following business activities, there is a statutory requirement that such entities produce audited financial statements or audited statutory financial returns (in the case of certain insurance companies) and file such audited financial statements or audited statutory financial returns with the appropriate regulatory authority:

- (1) Restricted Business activity (i.e. banking, money services as set forth in the Ninth Schedule to the Companies Act);
- (2) Fiduciary Business activity (i.e. insurance, investment services, fund administration or trustees services);
- (3) Listed on an Appointed Stock Exchange

**1.2 *Other Business Activities (No Filing of Audited Financial Statements):***

Bermuda companies that are **not** conducting any of the above-mentioned restricted categories of business, there is a statutory requirement prescribed by the Companies Act, as follows:

- (1) to keep proper records of account at the registered office of the company or such other place as the directors think fit and such records shall at all times be open to inspection by the directors and resident representative [Section 83(1)-(4)]; and
- (2) to lay audited financial statements and the auditor's report for a particular period before a General Meeting unless such audit and the appointment of an auditor has been waived by all Members and all Directors [Section 84(1)];

With respect to Bermuda companies that are not conducting a restricted or fiduciary business or listed on an appointed stock exchange, there is no statutory requirement that audited financial statements must be filed with a regulatory authority.

Companies that fall within this category may also waive the appointment of an auditor and the preparation of audited financial statements provided that the consent of all members and all directors is obtained in each case [Section 88].

## **2. PREPARATION OF PROPER ACCOUNTS**

This memorandum will review the law and the appropriate action that should be taken in circumstances where a company prepares "proper accounts" but such accounts are not audited.

### ***2.1 Requirement to keep proper records of account: [Section 83]***

Every Bermuda company shall cause to be kept "proper records of account" with respect to:

- (i) Sums received and spent;
- (ii) Sales and purchases;
- (iii) Assets and liabilities

The records of account shall be kept at the registered office of the Company or at such other place as the directors think fit and shall at all times be open to inspection by the directors or a resident representative.

If the records of account are kept outside of Bermuda, there shall be kept at the office of the company in Bermuda such records as will enable the directors or a resident representative to ascertain with reasonable accuracy the financial position of the company at the end of each quarter except where the company is listed on an appointed stock exchange, there shall be kept such records as will enable the directors or a resident representative to ascertain with reasonable accuracy the financial position of the company at the end of each six month period.

As this requirement is distinct from the requirement to present audited financial statements, we are of the opinion that Bermuda companies must provide its directors with

a balance sheet and profit/loss statement on a quarterly basis in order to meet the requirements prescribed by Section 83(2).

Failure to keep proper records of account will render every officer of the company liable to a fine of \$500. The Secretary is, of course, an officer of the Company.

**2.2 *Audited Financial Statements to be laid before General Meeting:*** (Section 84)

Unless all members and all directors agree or consent to a waiver of an audit and the appointment of an auditor, the directors must lay before the members at the annual general meeting audited financial statements for the period to include:

- (i) a statement of the results of operations for the period;
- (ii) a statement of retained earnings or deficit;
- (iii) a balance sheet at the end of such period;
- (iv) a statement of changes in financial positions or cash flows for the period;
- (v) notes, including a description of the general accepted accounting principals used in the preparation of statements.

Financial statements shall before being laid before a general meeting of a company be signed on the balance sheet page by two of the directors of the Company.

Where audited financial statements are not being prepared or presented, the Manager must consider whether accounts provided by the company or its auditors qualify as "financial statement" under section (84) (see above criteria).

It is unlikely that management accounts or statements prepared by anyone other than the company's auditor will qualify.

If, and only if, the unaudited accounts qualify as financial statements, then such statements should be considered by the directors, approved (if appropriate) and the balance sheets signed by two directors. Such statement will then be presented at the annual general meeting with an appropriate resolution and waiver of the auditor's reports.

**2.3 *Right of Members to receive copy of the Audited Financial Statements:***

Section 87(1) of the Companies Act sets out the Members rights to receive a copy of the financial statements of a company five days before the general meeting. If not provided for as aforesaid, a member may place a resolution before the meeting that it be adjourned for five days.

With respect to companies that list their shares on an appointed stock exchange, a member has a right to receive summarized financial statements accompanied by the auditor's report thereon and a notice informing the member that he may elect to receive full financial statements for the specified period. If the member so elects, Section 87B requires the company send a copy of the full audited financial statements to the member within seven days of receipt of the member's election.

**2.4 *Listed Companies***

A Bermuda company which has listed its shares on an appointed stock exchange is required to make a copy of the full financial statements available for inspection by the public at the Company's registered office [Section 87C].

## **2.5 Appointment of Auditor**

Section 89(1) requires the members of a company at each annual general meeting (subject to the waiver requirements prescribed by Section 88) to appoint one or more auditors to hold office until the close of the next annual general meeting and if the members fail to do so, the directors shall forthwith make such appointment or appointments or the previously appointed auditor shall continue in office.

Section 89(3) prescribes that a person shall not be capable of being appointed auditor at an annual general meeting unless notice in writing of an intention to nominate that person to the office of auditor has been given not less than 21 days before the annual general meeting and a copy of such notice must be sent to the incumbent auditor and at least 7 days notice to the members.

## **2.6 Unaudited Accounts (Management Accounts):**

If unaudited accounts are prepared by management, it must consider whether such accounts should be approved by the directors. The unaudited accounts should not be approved by the directors unless the manager or the directors are satisfied that the information contained in the accounts is accurate.

Where management is not so satisfied with the management accounts, such accounts could be presented to the Directors' meeting with an indication as to who prepared the accounts. Any accounts which do not "qualify" under section 84 should not be signed by two directors on the balance sheet. They may, however, be presented to members at the AGM provided that it is noted that they are only management accounts tabled for the information of the members.

A reason why the financial statements have not been audited must be provided in the minutes. It is not sufficient on its own to say that the Members do not want an audit or do not wish to incur expense of an audit. The reason must make it clear why the Directors believe that an audit is not necessary and must reflect their confidence that they are aware of the company's financial positions.

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