

PRACTICE DIRECTIVE

Companies (Amendment) Act, 2019-19

Companies (Amendment) (No 2) Act, 2019-51

Societies with Restricted Liability (Amendment) Act, 2019-42

Limited Partnerships (Amendment) Act, 2019-47

The aim of this Directive is to provide general guidance in respect to several of the changes which will be implemented with effect from the 15th day of June, 2020 at the Corporate Registry consequent upon the recent enactment of the following legislation:

Companies (Amendment) Act, 2019-19

Companies (Amendment) (No 2) Act, 2019-51

Societies with Restricted Liability (Amendment) Act, 2019-42

Limited Partnerships (Amendment) Act, 2019-47

This legislative amendments may be found on the Department's webpage together with a summary of the provisions.

Section 2 – Definitions

Prominent Public Office

Section 66 – Notice of directors

Section 170 – Records of company

This amendment inserts a definition of “prominent public office” in section 2 and requires, in section 66, the prescribed form giving notice of the names of directors of the company to include the name of any director who holds or has held a prominent public

office whether in Barbados or elsewhere. Companies are also required to include, in their records on shareholders maintained in accordance with section 170, information on whether shareholders hold or have held prominent public office in Barbados or elsewhere.

Notice of the date of implementation of this provision will be conveyed to you shortly as we await finalisation of the approved Form.

Beneficial Ownership

Section 170 – Records of company

Section 448 – Definition of technical words

The amendment updates the definition of “beneficial owner” and “ownership” in section 448. It modifies the requirement to keep a record of beneficial ownership of companies in the register of shareholders, by including a requirement that this record of beneficial ownership be up to date and accurate.

Annual return Section 15A (1) and (2)

The most recent amendments correctly reposition subsections (2) and (5) of section 15A which were introduced by the Companies (Amendment) Act, 2019-19 and provide for better management of a company’s affairs as the requirement to file an annual return by the 31st day of January has been removed. Companies have been given an extended period of six months for so doing and in accordance with subsections 2 (a) and (b), a company which was incorporated, for example, between 1st January and 30th June, 2019 is required to file an annual return at the Corporate Registry for the year 2019 before the 30th June, 2020. Whereas a company which was incorporated between 1st July and 31st December, 2019 is required to file an annual return at the Corporate

Registry before 31st December, 2020. In all circumstances a company must file an annual return at the Registry.

Notwithstanding the statutory provisions, any company which can provide all of the information which is required in the Annual Return, and is therefore in a position to file before the statutory deadline, may do so.

A company that is in default in complying with the requirements of subsections (1) and (2) is liable to a penalty, not exceeding \$3,000.00, of \$10 payable to the Registrar for every day during which the default continues and every director and officer of the company who knowingly and wilfully authorises or permits the default is also liable to that penalty. This means therefore that the late penalty provision of \$10.00 per day which is payable by **a company** that has defaulted in filing **an annual return** will not exceed \$3,000.00 for each annual return filing.

(4) “Pursuant to section 412, the Registrar may strike off the register a company that neglects or refuses to file an annual return required under this section.”

I wish to inform you that with effect from 15th June, 2020 this provision will be strictly enforced at the Corporate Registry as, any company which neglects or refuses to file an annual return will be struck from the Register of Companies in accordance with Section 412. In this regard your attention is drawn to the new subsection (1A) of Section 362, as a company which is seeking to be revived must settle all outstanding penalties and fees which were due and owing at the time of that striking off.

(5) “The Registrar may issue guidelines or administrative directions for the efficient administration of this section including directions in respect of the submission of the annual return in electronic format.”

Accordingly persons who are registered with the Department as Agents and who have been submitting annual returns electronically may continue to do so. We are eagerly looking forward to the implementation of a straight through online processing system which facilitates the electronic filling of documents without the requirement for the user to be registered with the Office as an Agent as this will significantly improve the ease for the submission and processing of documents.

(6) "A Director or an authorised officer of a company shall certify in an annual return filed under subsection (1), that information related to shareholders and beneficial ownership is maintained at the registered office of the company in accordance with section 170."

I wish to remind you that a director or an authorised officer of the company **must certify** in the annual return filed under subsection (1) that all records pertaining to the company including **beneficial ownership are being maintained at the registered office of the company in accordance with Sections 170 to 172 of the Companies Act.**

(7) "Subsection (1) does not apply to

- (a) an exempt insurance company;
- (b) an international business company;
- (c) an international society with restricted liability;
- (d) an international financial service entity;
- (e) a private trust company;
- (f) a foreign sales corporation;
- (g) an entity that holds a valid foreign currency permit;
- (h) a company, the gross revenue of which, as shown in the most recent financial statements referred to in section 147, exceed \$1 000 000; and
- (i) such other entity as the Minister may by order designate."

Responsibility for the Management of Companies and Limited Partnerships –

Sections 15A (7); and Section 392A of the Companies (Amendment) (No.2) Act, 2019-51

Section 4A (1) of the Limited Partnerships (Amendment) Act, 2019-47

The recent changes which have been made by virtue of Section 15 (7), and Section 392A of the amendment to the Companies Act have introduced the requirement for a company whose gross revenue has shown in the most recent financial statement exceeds \$1 000 000 to appoint a service provider who is licenced pursuant to the Corporate and Trust Service Providers Act, 2015. Similarly, an external company that does not hold a licence under the Financial Institutions Act, Cap.324A and is not registered or licensed under the Financial Services Commission Act, 2010 must appoint and identify the service provider at the time of its registration as an external company. However a company that was registered as an external company or a limited partnership that was registered at the 3rd day December, 2019 must in each circumstances appoint a licenced provider on or before the 1st day of June, 2020 and must submit details of the appointment on or before the 24th day of June, 2020. Notice of the appointment of a service provider must be accompanied by a sworn declaration attesting to this fact.

Any change by a company in the appointed service provider must be filed with the Corporate Registry within 28 days of the change and notification must also be accompanied by a sworn declaration.

In circumstances where the gross revenue of a company which was previously managed by a service provider falls **beneath** the \$1 000 000 threshold during the reporting period, the company must file a sworn declaration attesting to these facts. Similarly, any subsequent change in the company's gross revenue beyond \$1 000

000 will necessitate the appointment of a service provider and notification of the Corporate Registry accordingly.

A company whose gross revenue falls beneath the \$1 000 000 threshold will also be subject to monitoring for compliance with our national AML/CFT obligations and for the maintenance of accurate and up to date beneficial ownership information at its registered office. Further details relative to the monitoring of companies which fall beneath this threshold will be provided in a subsequent Directive.

In addition, the Amendment created by Section 4A (1) makes it mandatory for the appointment of a service provider who is licenced pursuant to the Corporate and Trust Service Providers Act, 2015 to perform the corporate services of a limited partnership, in circumstances where one of the partners is an entity that has been incorporated, registered or otherwise constituted outside of Barbados. The service provider must be appointed no later than the 1st day of June, 2020. Details of the appointment must be submitted to the Registry on or before the 24th day of June, 2020 in circumstances where the partnership was registered prior to the 3rd day of December, 2019. Where the partnership was registered after the 3rd day of December, 2019 then such details must be provided at the time of registration.

Any change by a limited partnership in the appointed service provider must be filed with the Corporate Registry within 28 days of the change and notification must also be accompanied by a sworn declaration.

The appointed service provider is responsible for ensuring that the company whose corporate services he, she or it is required to manage is in compliance with all statutory and regulatory obligations to satisfy our national AML/CFT requirements. The service provider will also be subject to monitoring for AML/CFT compliance and must ensure, among other things that the requirements for the company to maintain up to date and accurate beneficial ownership information at the registered office are being met.

Striking Off Policy

With effect from 15th day of June, 2020 the Corporate Registry will vigorously implement its striking off policy and any company which fails to file:

- (I) an annual return in accordance with Section 15A; or
- (II) audited financial statements in accordance with Section 323D of the Companies Act, as amended, will be struck off the register pursuant to Section 412 of the Act.

Section 362 – Revival of company

Section 339 – Revival of registration of an external company

Section 412 – Striking off register

In accordance with subsection (1A) of Section 362 any company which is seeking to be revived including an external company whose registration was cancelled or ceased to be valid in accordance with Section 339; as well as a company which was removed from the register in accordance with section 412 must settle all outstanding penalties and fees which were due and owing at the time of dissolution, cancellation or striking off.

Section 370 – Right to Dissolve

Section 371 – Dissolution by the Registrar

Section 372 – Dissolution by the Court

Section 376 – Court Powers

Section 381 – Settlement of final accounts after a Court order

Section 383 – Record custody

The amendments to these sections all of which provide for the dissolution of a company in varying circumstances now stipulate the requirement in the amended Section 383 for the companies records to be maintained by a person in Barbados for six years after its dissolution. In so doing the discretion of the court to vary the time for keeping records or to order the disposal of the records has been removed by the amendment to Section 381 (4) (b).

An amendment has also been made to subsection (2) of Section 370 to require the submission of the name and address of the custodian of the documents and records of the company upon dissolution and this information must be submitted at the time of filing Articles of Dissolution with the Registry.

Proof of Documents:

Section 407 – Proof of Documents

The Registrar may require any document that has been signed outside of the jurisdiction to be verified on oath. The persons who may verify such documents have been identified and are:

- (a) a diplomatic or consular representative for Barbados;
- (b) a judge of a superior court of record;
- (c) a mayor of any city;
- (d) a notary public; or
- (e) such other person as appears to the Registrar to be empowered to administer such oaths.

All share transfers, instruments of charge, releases, verification of corporate instruments, affidavits and declarations must be verified in accordance with the above provision.

Societies with Restricted Liability

- (i) Amendments have been made to Sections 32, 34 and 35 of the Act to require the giving of notice to the Registrar of Companies of the name and address of the person who has been appointed by the Society to take custody of the records and documents of the Society upon its dissolution.

Dated this **26th day of May, 2020**



Heather A. Clarke

Registrar of Companies

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