

THE CORPORATE (MISCELLANEOUS PROVISIONS) ACT, 2015-1

SUMMARY

The Corporate (Miscellaneous Provisions) Act, 2015-1 provides for the strengthening of the corporate regulatory framework in Barbados by amending several enactments which are administered by the Department of Corporate Affairs and Intellectual Property.

All new and revised forms which are required under the several enactments are included in the full listing of online forms and may be downloaded from the Department's website at www.caipo.gov.bb

1. Administrative Arrangements at Corporate Affairs and Intellectual Property Office

The Corporate Affairs and Intellectual Property Office Act, Cap.21A has been amended to achieve greater efficiency to the operations of the Department by increasing the complement of Officers who are authorised to perform Notarial acts. The full complement comprises:

- (i) Registrar
- (ii) Deputy Registrar
- (iii) Assistant Registrar; and
- (iv) Legal Examiner

Likewise, Section 409 of the Companies Act, Cap.308 has been amended to bring greater efficiency to the operations of the Corporate Registry by increasing the complement of Officers who are authorised to issue certificates and certify documents. In addition to the Registrar and Deputy Registrars, the Assistant Registrars and Legal Examiner are now authorised to perform these functions.

2. Companies Act, Cap.308 and Companies Regulations, 1984

Amendments to the Companies Act, Cap.308 include the following:

(i) Filing of Annual Returns in respect of domestic companies

With the provision of a new subsection (5) to Section 15A a Director or an authorised Officer is now required to certify in an annual return that the information relating to shareholders of the company and beneficial ownership is maintained at the registered office.

A new Form 35 has been introduced to the Third Schedule of the Companies Regulations, 1984 for use in the filing of Annual Returns under Section 15A of the Companies Act. By virtue of a 2001 amendment to the Companies Regulations a fee of \$100.00 is payable in respect of the filing of an annual return under Section 15A. Similarly in 2001, the Companies Act was amended to provide at Section 15A (2) that a company which is in default of filing an annual return is liable to a penalty of \$10 payable to the Registrar for every day which the default continues; and every director and officer of the company who knowingly authorises or permits the default is liable to this penalty. In accordance with Section 15A (4) the Registrar will issue Administrative Directions with respect to the filing of Annual Returns.

(ii) Information to be maintained at Registered Office

Section 170 (2) has been amended to include a new paragraph (d) which requires that a company maintains at its registered office a record of its beneficial ownership

(iii) Penalties for non-compliance with record keeping requirements

A new Section 175A has been created to impose a fine of \$10,000 for failure to comply with the record keeping requirements of Section 170 (1), (2) and (3) and Section 172 (1), (2) and (3) respectively

(iv) External companies

- Registration - Under an amendment to Section 330 (2) an external company seeking to register in Barbados is now required to file a Registrar's Certificate or its equivalent at the time of filing documents at the Corporate Registry

- Time Limits for Filing Notice of Fundamental Changes – By virtue of an amendment to Section 342 (1) the time limit in respect of fundamental change for the filing of Notice with the Registrar within an external company has been increased from thirty (30) days to sixty (60) days.
- General administration of external companies - Section 346 has been amended to expand the scope of the general administrative provisions of the Companies Act to include external companies

(v) Dissolution of Companies

The provisions for dissolution of companies have been amended to provide better regulation of the process. The new provisions provide for the following:

Dissolution by resolution

- A company that has not issued any shares and has no liabilities may be dissolved at any time by resolution of all the directors,
- In all cases, the submission of articles of dissolution to the Registrar shall be accompanied by Certificates of Clearance indicating that the company has paid all taxes or contributions as required by any enactment,
- Section 367 (2) now requires that there be 28 day waiting period after the official publication of the Notice of Intent to Dissolve before the filing of Articles of Dissolution and the issuance of a Certificate of Dissolution by the Registrar,
- Provided that a Certificate of Intent to Dissolve a company has not been revoked and the company has complied with the requirements of Section 367 (4) the company shall prepare articles of dissolution and there shall be a waiting period of 28 days prior to the filing of Articles of Dissolution.

(vi) Appointment of a Liquidator

The new provision at Section 378A provides for the appointment of a liquidator by a company where the company decides by special resolution to go into voluntary liquidation and dissolution in accordance with Section 366 (3).

Where the office of liquidator is vacant, the company may appoint a new liquidator by an ordinary resolution or apply to the court under Section 368 to supervise the liquidation and dissolution of the company pending a new appointment of a new liquidator by the company.

With this amendment, it is therefore clear that the provision at Section 378 "Appointment of Liquidator" applies to cases where a liquidator is appointed by the court

(vii) General Administration of Companies

- Refusal of Articles under Section 417 - The circumstances in which the Registrar may refuse to accept articles of incorporation or amendment now include instances where for any reason the proposed name is offensive to the name or reputation of an individual, company or institution.
- Refusal of proposed name for incorporation/registration - Regulation 5 under Part III of the companies Regulations, 1984 has been amended to provide an additional ground on which the Registrar may refuse incorporation or registration, namely, the proposed name is confusingly similar to the name of a company that was registered or incorporated within 20 years prior to the date of the application to the Registrar.
- The amendment to Section 432(1) increases the penalty from \$5,000 to \$10,000 as a deterrent against breach of the reporting requirements under the Act.

(viii) Offences and Penalty Provisions

A. Companies

- Filing of Annual Returns by Domestic Companies – The prescribed form under the Companies Regulations for use in the filing of Annual Returns by domestic companies under Section 15A of the Act has been settled and persons should therefore be mindful of the penalty for late filing.

The Companies Act already makes provision for a penalty under a 2001 amendment which provides as follows:

“a company that is in default in complying with the requirements of subsection (1) (which subsection provides for the filing of an annual return not later than 31st January in every year) is liable to a penalty of \$10 payable to the Registrar for every day during which the default continues; and every director and officer of the company who knowingly authorises or permits the default is liable to that penalty”.

- Record keeping requirements – A new Section 175A has been created under the Companies Act to impose a fine of \$10,000 for failure to comply with the record keeping requirements of Section 170 (1), (2) and (3) and Section 172 (1), (2) and (3) respectively.
- Untrue statement or omission of material fact in the making of a Report, Return, Notice or other document to the Registrar – Section 432(1) of the Companies Act has been amended to increase the penalty from \$5,000 to \$10,000 in circumstances where the information required to be sent to the Registrar under the Companies Act or Companies Regulations containing an untrue statement of a material fact or omits to state a material fact that is required.
- Company Offences - The amendment to Section 434 of the Companies Act brings the following changes:

New provisions at subsections (3) and (4) provide for penalties for a breach of Section 152 (1) (which provision relates to the filing of annual financial statements), making both the company as well as its director(s) or any officer of the company liable if found guilty. Therefore, where the company within reasonable excuse fails to comply with the filing requirements under Section 152 (1), the company, if found guilty is liable on summary conviction to a fine of \$750. In the case of a director or an officer, the legislation makes provision on summary conviction for a fine of \$750 or to imprisonment for a term of 6 months, or both.

B. Societies with Restricted Liabilities

Contravention of the record keeping requirement under Sections 24 and 26 of the Societies with Restricted Liabilities Act, Cap.318B gives rise to a

criminal offence for which there is a penalty of \$10,000 on summary conviction.

3. Companies Regulations, 1984

Amendments to the Companies Regulations, 1984 include the following:

- (i) Regulation 5 now provides an additional ground on which the Registrar may refuse incorporation or registration, namely, the proposed name is confusingly similar to the name of a company that was registered or incorporated within 20 years prior to the date of the application to the Registrar.
- (ii) Part XII of the Regulations which prescribes the fees payable under the Act has been amended to provide for the payment of a \$100.00 fee for the late filing of a Notice of Change of Directors under Section 74 of the Act.
- (iii) Form 28 provides for the Application for Registration of an External Company which appears in the Third Schedule to the Companies Regulations has been amended to bring it into conformity with the substantive provisions of Section 330 of the Companies Act.
- (iv) Form 31 which is the prescribe form used in the filing of Annual Returns in respect of external companies has been amended to bring it into conformity with the substantive provisions of Section 343 of the Companies Act.
- (v) The new Form 35 has been introduced to the Third Schedule of the Companies Regulations for use in the filing of Annual Returns under Section 15A of the Companies Act.

4. Societies with Restricted Liabilities Act, Cap.318B

The amendments to the Societies with Restricted Liabilities Act, Cap.318B introduced the following provisions:

- Provision of a definition of "quota" as a stake of the capital in a society with restricted liability organised under section 5 of the Act

- A requirement that a society shall prepare and maintain at its registered office a record of the beneficial ownership of the society. This is in addition to the other recording requirements under Section 24
- Contravention of the record keeping requirements under Sections 24 and 26 of the Act gives rise to a criminal offence for which there is a penalty of \$10,000 on summary conviction

5. Registration of Business Names Act, Cap.317 and Business Names Rules, 1940

The amendments to the Registration of Business Names Act, Cap.317 introduce new provisions which are similar to the provisions at Sections 416 and 417 of the Companies Act, Cap.308 and are aimed at achieving greater transparency and better regulation in the administration of business name applications.

The new provisions take effect as Section 3A (Prohibited Names) and Section 3B (Power of Refusal) and provide as follows:

Prohibited Names

A proposed business name is prohibited from registration where it is the same or similar to an existing registered business name and is likely to confuse or mislead.

The issue of similarity may be resolved by means of the following:

- (i) Obtaining and filing the consent in writing of the owner of the earlier registration,
- (ii) Compliance with the Registrar's request that the registrant(s) cancel the registration or change the registration to a dissimilar name; or
- (iii) Cancellation of the business name registration at the instance of the Registrar where there is a refusal to comply with the Registrar's request for a change to a dissimilar name

In addition, the registration of a business name is prohibited where the proposed name:

- (i) Suggests or implies a connection with the Crown, or the Government or of any Ministry, department, branch, bureau, service, agency or

activity of the Government, unless consent in writing to the proposed name is duly obtained from the appropriate Minister;

- (ii) Suggests or implies a connection with a political party or a leader of a political party unless consent in writing to the proposed name is obtained from the political party or a leader of the party concerned;
- (iii) Suggests or implies a connection with a university or a professional association recognised by the laws of Barbados, unless the university or professional association concerned consents in writing to the use of the proposed name.

Power of Refusal

The Registrar may refuse to register the name of an individual or a firm under the Registration of Business Names Act where

- (i) the name is deceptively inaccurate in describing the business, goods or services in association with which it is proposed to be used;
- (ii) the name is likely to be confusing with that of a company that was dissolved;
- (iii) the name contains the word or words "credit union", "cooperative", or "co-op", when it connotes a co-operative venture;
- (iv) the name is, for any reason offensive to the name or reputation of an individual, company or institution;
- (v) the name is a registered trademark under the Trade Marks Act, Cap.319 or the name resembles that mark.

Prescribed Fees

Paragraph 5 of the Second Schedule to the Registration of Business Names Act has been amended to provide for a \$5.00 fee to be payable in respect of each inspection under Section 17 of documents filed by the Registrar.

The Business Names Rules, 1940 have been amended as follows:

- (i) The Statement giving notice of changes (Form 3) has been amended to require the provision of additional details of the business name registrant(s).
- (ii) The Certificate of Registration (Form 6) which is issued by the Registrar on completion of the registration of the business name has been amended to allow for better presentation of the registration details.

6. Evidence Act, Cap. 121

Given the greater reliance on electronic functions in the modern business environment and the pending full implementation of on-line filing at the Department of Corporate Affairs and Intellectual Property, a new Part VA has been added to the Evidence Act to allow for the general admissibility of electronic evidence in court and the general administration in matters related thereto.

7. Property Transfer Tax Act, Cap.84A

Section 2 of the Property Transfer Tax Act, Cap.84A has been amended to provide for the following:

- (i) The expressed inclusion of the Registrar, Corporate Affairs and Intellectual Property in the definition of the term "Registrar"
- (ii) The inclusion of "quota" in the definition of the term "share"
- (iii) The definition of "quota" as a stake of the capital in a society organised under the Societies With Restricted Liability Act, Cap.318B
- (iv) The amendment to Section 9 (1) brings clarity to the procedure relating to the valuation and adjudication of instruments of share transfers by providing that the valuation of property consisting of shares shall be determined by the Commissioner of Inland Revenue after consultation with the Commissioner of Valuations