

OBJECTS AND REASONS

This Bill would amend the *Societies with Restricted Liability Act*, Cap. 318B to provide for

- (a) the amalgamation of societies with restricted liability;
- (b) the submission of certain documentary evidence with regard to the affairs of a society prior to the dissolution of the society;
- (c) a waiting period between the giving of the notification of the intent to dissolve a society and the granting of the certificate of dissolution for the society; and
- (d) related matters.

Arrangement of Sections

Section

1. Short title.
2. Amendment of section 18 of Cap. 318B.
3. Insertion of Part VA into Cap. 318B.
4. Insertion of section 31A into Cap. 318B.

BARBADOS

A Bill entitled

An Act to amend the *Societies with Restricted Liability Act*.

1. This Act may be cited as the *Societies with Restricted Liability* Short title.
(Amendment) Act, 2012.

Amendment of section 18 of Cap. 318B.

2. Section 18 of the *Societies With Restricted Liability Act*, in this Act referred to as the principal Act, is amended by deleting subsections (2) and (3) and substituting the following:

"(2) A manager shall be elected annually by the members in the manner provided for in the by-laws of the society and shall hold the office of manager and have the responsibilities accorded thereto by the members and set out in the by-laws.

(3) Within 15 days after a change of a manager by the members of a society or otherwise, the society must send to the Registrar a notice of the change in the prescribed form, and the Registrar shall file the notice."

Insertion of Part VA into Cap. 318B.

3. The principal Act is amended by inserting immediately after Part V the following as Part VA:

"PART VA
AMALGAMATION OF SOCIETIES

Amalgamation of societies.

29A. Two or more societies, including international societies, may amalgamate and continue to operate as a single society.

Amalgamation agreement.

29B. (1) Each society proposing to amalgamate must enter into an agreement setting out the terms and means of effecting the amalgamation and, in particular, setting out

- (a) the provisions that are required to be included in articles of organization under section 6;
- (b) the name and address of each proposed manager of the amalgamated society;

- (c) the manner in which the quotas of each amalgamating society are to be converted into quotas of the amalgamated society;
 - (d) the procedure to be followed where any of the quotas or debentures of an amalgamating society are not to be converted to quotas or debentures of the amalgamated society and, where applicable, indicate the amount of money quotas or debentures which the holders of those quotas are to receive for their quotas;
 - (e) whether the by-laws of the amalgamated society are to be those of one of the amalgamating societies, and, if not, a copy of the proposed by-laws for the amalgamated society; and
 - (f) the details of any arrangements necessary to perfect the amalgamation and to provide for the subsequent management and operation of the amalgamated society.
- (2) Where the quotas of one of the amalgamating societies are held by or on behalf of another of the amalgamating societies, the amalgamation agreement must provide for the cancellation of those quotas when the amalgamation becomes effective, without any repayment of capital in respect thereof; and no provision may be made in the agreement for the conversion of those quotas into quotas of the amalgamated society.

Approval
by
members.

29C. (1) Managers of each amalgamating society must submit the amalgamation agreement for approval at a meeting of the members of the amalgamating society of which they are managers, and subject to subsection (4), to a meeting of the holders of each class of quotas or series of quotas for that amalgamating society.

(2) A notice of the meeting of the members of the society prepared in the prescribed form must be sent not less than 21 days nor more than 50 days before the meeting to each member of an amalgamating society as well as to the auditor of the Society and the notice must

- (a) include or be accompanied by a copy or summary of the amalgamation agreement; and
- (b) state that a dissenting member is entitled to be paid the fair value of his quota in accordance with 29I;

but failure to make the statement referred to in paragraph (b) does not invalidate an amalgamation.

(3) Each member of an amalgamating society has the right to vote in respect of an amalgamation, whether or not his class of quota carries the right to vote.

(4) The members of an amalgamating society who hold quotas of a class or of a series of quotas are entitled to vote separately as a class or series in respect of an amalgamation where the amalgamation agreement contains a provision that, if contained in a proposed amendment to the articles, would entitle those members to vote as a separate class.

(5) An amalgamation agreement is adopted when the majority of the members of each amalgamating society approve the amalgamation by a resolution of the members or a resolution of each class or series of the members entitled to vote on the amalgamation.

(6) An amalgamation agreement may provide that at any time before the issue of a certificate of amalgamation, the agreement can be terminated by the managers of an amalgamating society notwithstanding approval of the agreement by the members of all or any of the amalgamating societies.

Vertical
short-form
amalgama-
tion.

29D. A holding society and one or more of its wholly owned subsidiary societies may amalgamate and continue as a single society without complying with sections 29B and 29C if

- (a) the amalgamation is approved by a resolution of the managers of each amalgamating society; and
- (b) the resolution provides that
 - (i) the quotas of each amalgamating subsidiary society will be cancelled without any repayment of capital in respect of the cancellation;
 - (ii) the articles of amalgamation will be the same as the articles of organisation of the amalgamating holding society; and
 - (iii) no quotas or debentures will be issued by the amalgamated society in connection with the amalgamation.

Horizontal
short-form
amalgama-
tion.

29E. Two or more wholly-owned subsidiary societies of the same holding society may amalgamate and continue as one society without complying with sections 29B and 29C if

- (a) the amalgamation is approved by a resolution of the managers of each amalgamating society; and
- (b) the resolution provides that
 - (i) the quotas of all but one of the amalgamating subsidiary societies will be cancelled without any repayment of capital in respect of the cancellation;
 - (ii) the articles of amalgamation will be the same as the articles of organisation of the amalgamating subsidiary society whose quotas are not cancelled; and
 - (iii) the stated capital of the amalgamating subsidiary societies whose quotas are cancelled will be added to the stated capital of the amalgamating subsidiary society whose quotas are not cancelled.

Articles of
amalgama-
tion.

29F. (1) Subject to subsection (6) of section 29C, after an amalgamation has been adopted under section 29C or approved under section 29D or 29E, the articles of amalgamation in the prescribed form and in accordance with section 61 shall be sent to the Registrar together with the documents required by sections 18 and 23.

(2) Where 2 or more societies amalgamate, the amalgamated society

- (a) the name of one of the amalgamating societies;

- (b) a name which is a distinctive combination of the names of the amalgamating societies where that name is not similar to or is likely to be confused with the name of any of the amalgamating societies; or
- (c) a new name

which shall comply with the requirements of sections 10, 11 and 12.

(3) There must be attached to the articles of amalgamation a statutory declaration of a manager of each amalgamating society that establishes to the satisfaction of the Registrar

- (a) that there are reasonable grounds for believing that
 - (i) each amalgamating society is able to pay and the amalgamated society will be able to pay its liabilities as they become due; and
 - (ii) the realisable value of the assets of the amalgamated society will not be less than the aggregate of its liabilities and stated capital of all classes; and
- (b) that there are reasonable grounds for believing that
 - (i) no creditor will be prejudiced by the amalgamation; or
 - (ii) adequate notice has been given to all known creditors of the amalgamating societies, and no creditor objects to the amalgamation otherwise than on grounds that are frivolous or vexatious.

(4) For the purposes of subsection (3), adequate notice is given to creditors by a society, where

- (a) a notice in writing is sent to each known creditor having a claim against the society that exceeds \$1000;
- (b) a notice is published once in a newspaper published or distributed in Barbados; and
- (c) each notice states that the society intends to amalgamate with one or more specified societies in accordance with this Act, and that a creditor of the society can object to the amalgamation within 30 days from the date of the notice.

Certificate
of amalga-
mation.

29G (1) Upon receipt of articles of amalgamation, the Registrar shall issue a certificate of amalgamation in the prescribed form, and in accordance with section 61.

(2) On the date shown in the certificate of amalgamation in respect of an amalgamated society

- (a) the amalgamation of the amalgamating societies and their continuance as one society becomes effective;
- (b) the property of each amalgamating society becomes the property of the amalgamated society;
- (c) the amalgamated society becomes liable for the obligations of each amalgamating society;
- (d) any existing cause of action, claim or liability to prosecution is unaffected;

- (e) a civil, criminal or administrative action or proceeding pending by or against an amalgamating society may be continued by or against the amalgamated society;
- (f) a conviction against or a ruling, order or judgement in favour of or against an amalgamating society may be enforced by or against the amalgamated society; and
- (g) the articles of amalgamation are the articles of organisation of the amalgamated society and the certificate of amalgamation is the certificate of organization of the amalgamated society.

Dissenter's
Rights and
Obligations.

29H. (1) A member of a society may dissent if the society resolves to amalgamate with another society, otherwise than under section 29D or 29E.

(2) In addition to any other right he has, but subject to section 29O, a member who complies with this section is entitled, when the action approved by the resolution from which he dissents becomes effective, to be paid by the society the fair value of the quotas held by him in respect of which he dissents; and the fair value is to be determined as of the close of business on the day before the resolution was adopted.

(3) A dissenting member may not claim under this section except only with respect to all the quotas of a class or series

- (a) held by him on behalf of any one beneficial owner; and
- (b) registered in the name of the dissenting member.

(4) A dissenting member shall send to the society, at or before any meeting of members of the society at which a resolution referred to in subsection (2) is to be voted on, a written dissent from the resolution, unless the society did not give notice to the member of the purpose of the meeting and of his right to dissent.

(5) When a member of a society has dissented pursuant to subsection (4) to a resolution referred to in section 29C, the society shall, within 10 days after the members of the society adopt the resolution, send to the member notice that the resolution has been adopted; but the notice need not be sent to the member if he has voted for the resolution or has withdrawn his dissent.

(6) A dissenting member shall within 20 days after he receives a notice under subsection (5) or, if he does not receive that notice, within 20 days after he learns that a resolution under that subsection has been adopted, send to the society a written notice containing

- (a) his name and address;
- (b) the number and class or series of quotas in respect of which he dissents; and
- (c) a demand for payment of the fair value of the quotas.

(7) A dissenting member shall, within 30 days after sending a notice under subsection (6), send the certificates representing the quotas in respect of which he dissents to the society.

(8) A dissenting member who fails to comply with subsection (7) has no right to make a claim under this section.

(9) A society shall endorse on any quota certificate received by it under subsection (7) a notice that the holder of the quota is a dissenting member under this section, and forthwith return the quota certificate to the dissenting member.

(10) After sending a notice under subsection (6) a dissenting member ceases to have any rights as a member, other than the right to be paid the fair value of his quotas as determined under this section, unless

- (a) the dissenting member withdraws his notice before the society makes an offer under section 29I;
- (b) the society fails to make an offer in accordance with section 29I and the dissenting member withdraws his notice; or
- (c) the managers terminate the amalgamation agreement

in which case the rights of the dissenting member are re-instated, as of the date the notice mentioned in section 29H(6) was sent.

Offer to pay
for Quotas.

29I. (1) A society shall, not later than 15 days after the day on which the action approved by the resolution is effective or the day the society received the notice referred to in section 29H(6), whichever is the later date, send to each dissenting member who has sent such a notice

- (a) a written offer to pay for his quotas in an amount considered by the managers of the society to be the fair value of those quotas, which must be accompanied with a statement showing how the fair value was determined; or
- (b) if section 29O applies, a notification that it is unable lawfully to pay dissenting members for their quotas.

(2) Every offer made under subsection (1) for quotas of the same class or series must be on the same terms.

(3) Subject to section 29O, a society shall pay for the quotas of a dissenting member within 10 days after an offer made under subsection (1) has been accepted; but the offer lapses if the society does not receive an acceptance of the offer within 30 days after the offer has been made.

Application
to court.

29J. (1) Where a society fails to make an offer under section 29I or where a dissenting member fails to accept the offer made by the society, the society may, within 50 days after the action approved by the resolution is effective, apply to the court to fix a fair value for the quotas of any dissenting members.

(2) Where a society fails to apply to the court in the circumstances described in subsection (1), a dissenting member may within a further period of 20 days apply to the court to fix a fair value for the quotas of any dissenting members.

Joined parties.

29K. Upon an application to the court under section 29J

- (a) all dissenting members whose quotas have not been purchased by the society are to be joined as parties and are bound by the decision of the court; and
- (b) the society must notify the dissenting member of the date, place and consequences of the application and of his right to appear and be heard in person or by an attorney-at-law.

Court powers.

29L. (1) Upon an application to the court under section 29J, the court may determine whether any other person is a dissenting member who should be joined as a party, and the court shall fix a fair value for the quotas of all dissenting members.

(2) The court may appoint one or more appraisers to assist the court to fix a fair value for the quotas of dissenting members.

(3) The final order of the court shall be made against the society in favour of each dissenting member of the society for the fair value of the quotas of the dissenting member as fixed by the court.

Payment of interest. **29M.** The court may allow a reasonable rate of interest on the amount payable to each dissenting member and interest so allowed shall be payable from the date the action approved by the resolution is effective until the date of payment by the society, and where the court so determines, the interest shall be included in the order made under section 29L.

Recourse of dissenting member. **29N.** (1) Where section 29O applies, the society shall, within 10 days after the making of an order under subsection (3) of section 29L, notify each dissenting member that it is unable lawfully to pay the dissenting members for their quotas.

(2) Where section 29O applies, a dissenting member, by written notice delivered to the society within 30 days after receiving a notice under subsection (1)

- (a) may withdraw his notice of dissent, in which case, the society consents to the withdrawal and the member is re-instated to his full rights as a member; or
- (b) may retain a status as a claimant against the society entitled to be paid as soon as the society is lawfully able to do so, or, in a liquidation, to be ranked subordinate to the rights of creditors of the society, but in priority to the members of the society.

Prohibition of payment. **29O.** A society shall not make a payment to a dissenting member under section 29I where there are reasonable grounds for believing

- (a) the society is or would, after the payment, be unable to pay its liabilities as they become due; or

- (b) the realisable value of the society's assets would thereby be less than the aggregate of its liabilities.

Definition of control, holding and subsidiary.

29P. For the purposes of this Act,

- (a) a society with restricted liability is a holding society of another society with restricted liability if that society is its subsidiary;
- (b) a society with restricted liability is a subsidiary of another society with restricted liability if it is controlled by that other society; and
- (c) a society with restricted liability controls another society with restricted liability if it owns or controls a number of quotas which carry voting rights sufficient to elect a majority of the managers of that other society."

4. The principal Act is amended by inserting the following section after section 31:

Insertion of section 31A into Cap. 318B.

"Registrar may request certification in respect of required tax clearance.

31A. (1) The Registrar shall not issue a certificate of dissolution of a society until at least 28 days after the publication of the intent to dissolve.

(2) The Registrar shall request where necessary certification of clearance in respect of payment of

- (a) income tax;
- (b) value added tax;
- (c) national insurance; and
- (d) land tax, where applicable,

prior to the issuing of a certificate of dissolution."