

## OBJECTS AND REASONS

This Bill would amend the *Companies Act, Cap. 308* to *inter alia* make provision for a corporate body to be an auditor of a company.

### *Arrangement of Sections*

#### *Section*

1. Short title.
2. Amendment to section 153 of Cap. 308.
3. Repeal and replacement of section 154 of Cap. 308.
4. Amendment to section 157 of Cap. 308.
5. Amendment to section 163 of Cap. 308.
6. Amendment to section 164 of Cap. 308.
7. Amendment to section 165 of Cap. 308.
8. Amendment to section 166 of Cap. 308.
9. Repeal and replacement of section 167 of Cap. 308.
10. Amendment to section 179 of Cap. 308.
11. Amendment to section 448 of Cap. 308.

BARBADOS

A Bill entitled

An Act to amend the *Companies Act*.

ENACTED by the Parliament of Barbados as follows:

1. This Act may be cited as the *Companies (Amendment) Act, Short title. 2007.*

Amend-  
ment to  
section 153  
of  
Cap. 308.

2. Section 153 of the *Companies Act*, in this Act referred to as the principal Act, is amended by deleting subsections (1) and (2) and substituting the following:

"(1) Subject to section 154, a person who satisfies the requirements of subsection (2) is qualified for appointment as an auditor of a company.

(2) A person qualifies for appointment as an auditor of a company, where

- (a) in the case of an individual, that person is a member of the Institute of Chartered Accountants of Barbados, in this section called "the Institute" and holds a practising certificate from that Institute;
- (b) in the case of a body corporate
  - (i) not less than 75 per cent of the body of persons who have responsibility for the governance and affairs of that body corporate satisfy the requirements of paragraph (a); and
  - (ii) the principal business of that body corporate as specified in its articles is the business of providing accounting and auditing services; or
- (c) that person is for the time being authorised to be appointed as an auditor of a company under subsection (3)."

3. Section 154 of the principal Act is repealed and the following section is substituted:

"Disqualifying auditor.

**154.** (1) Subject to subsection (7), an individual or a body corporate is not qualified to be an auditor of a company if that individual or body corporate is not independent of the company, of its affiliated companies and of the directors and officers of the company and its affiliated companies.

(2) For the purposes of this section, whether or not an individual or a body corporate is independent is a question of fact to be determined having regard to all the circumstances.

(3) An individual or a body corporate is presumed not to be independent of a company if the individual or body corporate or the business partner or affiliate of the individual or body corporate, as the case may be

- (a) is a business partner or affiliate, a director, an officer or an employee of the company or any of its affiliates, or a business partner or affiliate of any director, officer or employee of any such company or its affiliates;
- (b) beneficially owns or controls, directly or indirectly, a material interest in the shares or debentures of the company or any of its affiliates; or
- (c) has been a receiver, receiver-manager, liquidator or trustee in bankruptcy of the company or any of its affiliates within 2 years of the proposed appointment of the individual or body corporate as auditor of the company.

Repeal and replacement of section 154 of Cap. 308.

(4) The provision of secretarial services by or on behalf of an individual, a business partner, a body corporate or an affiliate does not by itself deprive an individual, a business partner, a body corporate or an affiliate of the independence of the individual, the business partner, the body corporate or the affiliate for the purposes of this section.

(5) An auditor who becomes disqualified under this section must, subject to subsection (7), resign forthwith after that auditor becomes aware of the disqualification.

(6) An interested person may apply to a court for an order declaring an auditor disqualified under this section and the office of auditor vacant.

(7) An interested person may apply to the court for an order exempting an auditor from disqualification under this section and the court may, if it is satisfied that an exemption would not adversely affect the shareholders, make an exemption order on such terms as it thinks fit; and the order may be given retroactive effect."

Amend-  
ment to  
section 157  
of  
Cap. 308.

4. Section 157 of the principal Act is amended by deleting subsection (1) and substituting the following:

- "(1) An auditor of a company ceases to hold office when
- (a) in the case of an individual, the individual
    - (i) dies or resigns; or
    - (ii) is removed pursuant to section 158; or
  - (b) in the case of a body corporate, the body corporate
    - (i) is wound up or dissolved;
    - (ii) goes into receivership; or
    - (iii) is removed pursuant to section 158."

5. Section 163 of the principal Act is amended by deleting

Amend-  
ment to  
section 163  
of  
Cap. 308.

(a) subsection (1) and substituting the following:

"(1) An auditor who

(a) resigns;

(b) receives a notice or otherwise learns of a meeting of shareholders called for the purpose of removing that auditor from office;

(c) receives a notice or otherwise learns of a meeting of directors or shareholders at which another person is to be appointed to fill the office of auditor, whether because of the resignation or removal of the incumbent auditor or because that auditor's term of office has expired or is about to expire; or

(d) receives a notice or otherwise learns of a meeting of shareholders at which a resolution referred to in section 156 is to be proposed,

may submit to the company a written statement giving the reasons for the resignation or the reasons why that auditor opposes any proposed action or resolution."; and

(b) subsections (3) and (4) and substituting the following:

"(3) No individual or body corporate may accept appointment, consent to be appointed or be appointed as auditor of a company if that individual or body corporate is replacing an auditor who has resigned, been removed or whose term of office has expired or is about to expire, until the individual or body corporate has requested and received from the former auditor, a written statement of the circumstances and the reasons that, in that auditor's opinion, that individual or body corporate is to be replaced.

(4) Notwithstanding subsection (3), an individual or body corporate otherwise qualified may accept appointment or consent to be appointed as auditor of a company if, within 15 days after making the request referred to in that subsection, that individual or body corporate does not receive a reply to it."

Amendment to section 164 of Cap. 308.

6. Section 164 of the principal Act is amended by deleting subsection (1) and substituting the following:

"(1) An auditor of a company must make the examination that is in the auditor's opinion necessary to enable a report to be made in the prescribed manner on the financial statements required by this Act to be placed before the shareholders, except such financial statements or parts thereof that relate to the immediately preceding financial year referred to in sub-paragraph (ii) of paragraph (a) of subsection (1) of section 147."

Amendment to section 165 of Cap. 308.

7. Section 165 of the principal Act is amended by deleting the word "him" appearing

(a) in the closing words of subsection (1) and substituting the words "the auditor"; and

(b) in subsection (2)(a) and substituting the words "the auditor".

Amendment to section 166 of Cap. 308.

8. Section 166 of the principal Act is amended by deleting subsection (2) and substituting the following:

"(2) When the auditor or a former auditor of a company is notified or becomes aware of an error or misstatement in a financial statement upon which that auditor has reported to the company, and in the auditor's opinion, the error or misstatement is material, the auditor shall inform each director of the company accordingly."

9. Section 167 of the principal Act is repealed and the following section is substituted:

Repeal and replacement of section 167 of Cap. 308.

"Privilege of auditor.

**167.** An auditor is not liable to any person in an action for defamation based on any act done or not done, or any statement made by that auditor in good faith in connection with any matter which the auditor is authorised or required to do under this Act."

10. Section 179(4C) of the principal Act is amended by deleting the words "8(3)" appearing therein and substituting the words "8(4)".

Amendment to section 179 of Cap. 308.

11. Section 448 of the principal Act is amended by deleting paragraph (d) and substituting the following:

Amendment to section 448 of Cap. 308.

"(d) "auditor" includes a partnership of auditors and a body corporate that satisfies the requirements of section 153(2)(b);".