

2019-11-26

OBJECTS AND REASONS

This Bill would amend the *Companies Act*, Cap. 308 and provide for related matters.

Arrangement of Sections

1. Short title
2. Repeal and replacement of section 15A of Cap. 308
3. Amendment of section 105 of Cap. 308
4. Amendment of section 170 of Cap. 308
5. Amendment of section 339 of Cap. 308
6. Amendment of section 362 of Cap. 308
7. Amendment of section 370 of Cap. 308
8. Amendment of section 371 of Cap. 308
9. Amendment of section 372 of Cap. 308
10. Amendment of section 376 of Cap. 308
11. Amendment of section 381 of Cap. 308
12. Repeal and replacement of section 383 of Cap. 308
13. Insertion of Part IVA into Cap. 308
14. Amendment of section 407 of Cap. 308
15. Amendment of section 412 of Cap. 308

BARBADOS

A Bill entitled

An Act to amend the *Companies Act*, Cap. 308 and provide for related matters.

ENACTED by the Parliament of Barbados as follows:

Short title

1. This Act may be cited as the *Companies (Amendment) (No.) Act, 2019*.

Repeal and replacement of section 15A of Cap. 308

2. *Section 15A of the Companies Act, Cap. 308, in this Act referred to as the principal Act, is repealed and the following substituted:*

“Annual return

15A.(1) Subject to this section, every company except an external company to which section 343 applies, shall

- (a) file with the Registrar an annual return in the manner and form prescribed; and
 - (b) at the time of filing under paragraph (a) pay the prescribed fee.
- (2) A company where incorporated
- (a) between 1st January and 30th June in any year shall file its annual return no later than 30th June;
 - (b) between 1st July and 31st December in any year shall file its annual return no later than 31st December

in every succeeding year after incorporation.

- (3) A company that is in default in complying with the requirements of subsections (1) and (2) is liable to a penalty, not exceeding \$3000, 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.

- (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.
- (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.
- (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.
- (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.
- (8) The exemption specified in subsection (7) in respect of a company described in paragraph (h) of that subsection does not apply where the company is a service provider that holds a licence under the *Corporate and Trust Service Providers Act, 2015* (Act 2015-12).

(9) In subsection (8), “service provider” has the meaning assigned to it in section 392B.”.

Amendment of section 105 of Cap. 308

3. *Section 105(a) of the principal Act is amended by deleting the word “15” and substituting the word “12”.*

Amendment of section 170 of Cap. 308

4. *Section 170 of the principal Act is amended by*

(a) deleting subsection (2) and substituting the following:

“(2) A company shall maintain a register of shareholders showing

- (a)* the name and the latest known address of each shareholder;
- (b)* a statement of the shares held by each shareholder;
- (c)* the date on which a person was entered on the register as a shareholder, and the date on which any person ceased to be a shareholder; and
- (d)* an up to date and accurate record of the basic and beneficial ownership information of the company, whether incorporated or registered in Barbados.”; and

(b) inserting after subsection (4), the following:

“(5) The registers referred to in subsections (2), (3) and (4) shall be maintained at the registered office of the company.”.

Amendment of section 339 of Cap. 308

5. *Section 339 of the principal Act is amended by deleting subsection (1) and substituting the following:*

“(1) Subject to subsection (4), where the registration of an external company has been cancelled under section 338 or has ceased to be valid by virtue of section 342(3), the Registrar may revive the registration of the external company where the company

- (a) files with him such documents as he may require; and
- (b) pays the prescribed fee and all penalties and fees due in respect of the company and outstanding at the time of cancellation of its registration or cessation of the validity of its registration.”.

Amendment of section 362 of Cap. 308

6. *Section 362 of the principal Act is amended by inserting after subsection (1), the following:*

“(1A) The Registrar shall not approve an application for the revival of a company unless all penalties and fees due in respect of the company and outstanding at the time of its dissolution have been paid.”.

Amendment of section 370 of Cap. 308

7. *Section 370 of the principal Act is amended by deleting subsection (2) and substituting the following:*

“(2) The articles of dissolution in the prescribed form shall be sent to the Registrar accompanied by

- (a) certificates of clearance indicating that the company has paid all the taxes and contributions required by any enactment; and

- (b) the name and address of the person appointed by the company to take custody of the documents and records of the company upon its dissolution.”.

Amendment of section 371 of Cap. 308

- 8.** *Section 371 of the principal Act is amended by inserting after subsection (3), the following:*

“(3A) Notwithstanding subsections (1), (2) and (3), the Registrar shall not dissolve a company unless the Registrar has applied for and obtained from the court an order directing such person as the court thinks fit to take custody of the documents and records of the company.”.

Amendment of section 372 of Cap. 308

- 9.** *Section 372 of the principal Act is amended by inserting after subsection (3), the following:*

“(3A) Where the court makes an order to dissolve the company, the court must also make an order directing such person as the court thinks fit to take custody of the documents and records of the company.”.

Amendment of section 376 of Cap. 308

- 10.** *Section 376 of the principal Act is amended by deleting paragraph (i) and substituting the following:*

“(i) an order directing such person as the court thinks fit to take custody of the documents and records of the company;”.

Amendment of section 381 of Cap. 308

11. *Section 381(4) of the principal Act is amended by deleting paragraph (b) and substituting the following:*

“(b) directing such person as the court thinks fit to take custody of the documents and records of the company;”.

Repeal and replacement of section 383 of Cap. 308

12. *Section 383 of the principal Act is deleted and the following substituted:*

“Record custody

383. Any person who has taken or has been granted custody of the documents and records of a dissolved company under this Division remains liable to keep those documents and records in Barbados for 6 years following the date of the company's dissolution and to produce them where so required.”.

Insertion of Part IVA into Cap. 308

13. *The principal Act is amended by inserting after Part IV, the following:*

“PART IVA

COMPANIES REQUIRING SERVICE PROVIDERS

Certain companies required to have service provider

392A.(1) The following companies shall have its corporate services performed by a service provider who holds a licence issued under the *Corporate and Trust Service Providers Act, 2015* (Act 2015-12):

- (a) any company described in section 15A(7)(h) that
 - (i) does not hold a licence under the *Financial Institutions Act, Cap. 324A*;
 - (ii) is not registered or licensed under the *Financial Services Commission Act, 2010* (Act 2010-21); and
 - (iii) is not itself a service provider who holds a licence issued under the *Corporate and Trust Service Providers Act, 2015* (Act 2015-12); and
 - (b) any 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* (Act 2010-21).
- (2) Subsection (1) takes effect in respect of
- (a) a company described in subsection (1)(a), within 180 days of
 - (i) the commencement of the *Companies (Amendment) (No.) Act, 2019* (Act 2019 -); or
 - (ii) the company becoming a company described in subsection (1)(a),
- whichever is later; and

- (b) an external company described in subsection (1)(b)
 - (i) upon registration of the company as an external company, where such registration occurs after the commencement of the *Companies (Amendment) (No.) Act, 2019* (Act 2019 -);
 - (ii) within 180 days of the commencement of the *Companies (Amendment) (No.) Act, 2019* (Act 2019 -).

Interpretation of Part IVA

392B. In this Part,

“corporate service” has the meaning assigned to it by section 2 of the *Corporate and Trust Service Providers Act, 2015* (Act 2015-12);

“service provider” has the meaning assigned to it by section 2 of the *Corporate and Trust Service Providers Act, 2015* (Act 2015-12).”.

Amendment of section 407 of Cap. 308

14. *Section 407 of the principal Act is amended by inserting after subsection (3), the following:*

“(3) Notwithstanding subsections (2) and (3), the Registrar may require any document required or sent to him pursuant to this Act, that is signed outside Barbados, to be verified on oath before

- (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.”.

Amendment of section 412 of Cap. 308

15. *Section 412 of the principal Act is amended by deleting subsection (5) and substituting the following:*

“(5) Where a company or other body corporate is struck off the register, the Registrar may, upon

- (a) receipt of an application in the prescribed form; and
- (b) payment of the prescribed fee and all penalties and fees due in respect of the company and outstanding at the time that it was struck off the register,

restore the company to the register and issue a certificate in a form adapted to the circumstances.”.

Read three times and passed the House of Assembly this
day of _____, 2019.

Speaker

Read three times and passed the Senate this _____ day of
, 2019.

President