

**ANTIGUA AND BARBUDA**

**No. of 2004**

**BILL FOR**

**AN ACT** to amend the Companies Act No. 18 of 1995.

[ ]

**ENACTED** by the Parliament of Antigua and Barbuda as follows –

**1.** This Act may be cited as the Companies (Amendment) Act, 2004. Short title.

**2.** The Companies Act, in this Act referred to as the “principal Act” is amended in section 66, by the renumbering of subsection (2) as subsection (4) and by the insertion after subsection (1) of the following — Amendment of section 2 of 66.

“(2) Subject to subsection (3), no individual who has served as a director of a public company for six consecutive years shall be qualified for reelection as a director for that company unless two years have elapsed after he last served.

(3) Any person who, at the commencement of this Act, is serving as a director of a public company but would,

ANTIGUA 2     *The Companies (Amendment) Act, 2004*     No.     of 2004  
AND  
BARBUDA

for purposes of subsection (2), be disqualified, shall continue to serve as director until his term of office expires.

Amendment of  
section 111.

**3.** Section 111 of the principal Act is amended by the repeal of subsection (1) and the substitution of the following —

“(1) Notice of the time and place of a meeting of shareholders and the minutes of the last meeting shall be sent not less than seven days before the meeting —

- (a) to each shareholder entitled to vote at the meeting;
- (b) to each director; and
- (c) to the auditor of the company”.

Amendment of  
section 112.

**4.** Section 112 of the principal Act is amended by the repeal of paragraphs (a) - (f) and the substitution of the following —

- (a) the confirmation of minutes;
- (b) the matters arising out of minutes;
- (c) the consideration of financial statements;
- (d) the directors’ report, if any;
- (e) the auditor’s report if any;
- (f) the sanction of dividends;
- (g) the election of directors; and
- (h) the reappointment of the incumbent auditor.

Insertion of  
section 195A.

**5.** The principal Act is amended by the insertion immediately after section 195 the following —

“Share transfer to be registered and stamped to be valid.	195.A(1)	No transfer of stock or shares of a company shall be valid unless the instrument of transfer is presented in
---	----------	--

duplicate to the Registrar of Companies and a copy thereof is registered by him in the companies registry.

(2) The Registrar of Companies shall not register any transfer until he is satisfied that the stamp duty payable in respect thereof has been duly paid.

(3) The stamp duty payable to the Commissioner of Inland revenue on a transfer of a stock or shares shall be at the rate of two and one half percent of the market value of the shares or the value of the shares calculated on the net assets of the company which ever is the higher.

(4) The Schedule to the Stamp Act shall not apply in respect of the stamp duty payable on transfer of stock or shares of any company incorporated under the Companies Act. Cap. 410.

No. 18 of 1995.

**6.** Section 457 of the principal Act is amended by the repeal of subsection (1) and the substitution of the following — Amendment of section 457.

- (a) Any amount owing to an employee as severance pay;
- (b) all taxes, rates, charges, assessment or impositions, whether imposed or made by the Government or by any public authority under the provisions of any Act, and having become due and unpayable within twelve months next before the relevant date.

ANTIGUA 4     *The Companies (Amendment) Act, 2004*     No.   of 2004  
AND  
BARBUDA

- (c) all wages or salary (whether or not earned wholly or in part by way of commission or for time or piece work) of any employee, not being a director, in respect of services rendered to the company during four months next before the relevant date;

Passed the House of Representatives	Passed the Senate
this     day of                    2004	this     day of                    2004
<i>Speaker</i>	<i>President</i>

*Clerk to the House of Representatives*     *Clerk to the Senate*

#### **EXPLANATORY MEMORANDUM**

This Bill seeks to amend the Companies Act by making provision for limiting the tenure of directors of public companies, for the registration of transfer of shares and for the rearrangement of preference payment in the event of winding up of a company.

Clause 2 of the Bill is intended to protect the shareholders of public companies. The Government recognises the need for public companies to be more open and to offer opportunity to every shareholder who is willing to serve to become a director. To achieve this objective, clause 2 introduces a term limit for the number of years a director may serve at any one time. The effect of the amendment is to ensure that a director who has served as a director for six consecutive years should step down for two years before offering himself again for reelection.

The proposed amendment in clause 3 would impose an obligation on the directors of a company to circulate the minutes of the last meeting to shareholders at the same time the notice of the meeting is sent out.

Although it is a common and acceptable practice to confirm minutes of previous meetings, and to deal with matters arising out of the minutes, the practice is however not always followed by some companies. Minutes and decisions of meetings of companies become part of the official record without due process. Clause 4 seeks to ensure that all decisions of meetings of the shareholders are confirmed before they become part of the official record.

Clause 5 of the Bill reenacts the provisions of section 65 A of the former Companies Act. Since the current Companies Act recognises shares of a company as

personal estate which may be sold and bought for money or moneys worth, it is necessary that the validity of the shares and records of share transfers should be easily ascertained by the tax authorities of the state as well as a prospective purchaser of such shares, hence the necessity for registration of shares issued by the company with the Registrar of Companies.

For purposes of calculating the stamp duty payable on the transfer of shares, it is proposed to change the present basis on which the stamp duty is calculated. Under the Stamp Act, stamp duty on transfer of shares is calculated on the consideration paid. It is proposed that stamp duty payable on transfer of stock or shares should now be calculated on the market value of the shares or the value of the shares calculated on the net assets of the company whichever is higher.

The purpose of clause 6 is to rearrange the order of priority in the payment of a company's debt in the event of a winding up of a company. This rearrangement is one more demonstration of the Government's commitment to the policy of a people centered agenda and is consistent with section C.55 of the Antigua and Barbuda Labour Code.

Justin L. Simon Q.C.,  
Attorney General and  
Minister of Justice and  
Legal Affairs

**ANTIGUA AND BARBUDA**

**THE COMPANIES (AMENDMENT) ACT 2004**

**ARRANGEMENT OF SECTIONS**

**Section**

1. Short title.
2. Amendment of section 2 of 66.
3. Amendment of section 111.
4. Amendment of section 112.
5. Insertion of section 195 A.
6. Amendment of section 457.