

ANTIGUA AND BARBUDA
THE COMPANIES (AMENDMENT), ACT 2006
ARRANGEMENT OF SECTIONS

Sections

1. Short title
2. Commencement
3. Amendment of section 2 of 66
4. Amendment of section 368
5. Insertion of section 493A
6. Amendment of section 511
7. Amendment of section 543
8. Insertion of Schedule

ANTIGUA AND BARBUDA
THE COMPANIES (AMENDMENT) ACT, 2006

NO. OF 2006

A BILL FOR

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

ENACTED by the Parliament of Antigua and Barbuda as follows:

PART 1

PRELIMINARY

1. This Act may be cited as the Companies (Amendment) Act, 2006. Short title

2. (1) Section 3 of this Act shall be deemed to come into force from September 1, 2005. Commencement
2006.

(2) Sections 7 and 8 of this Act shall come into operation on a date appointed by the Minister by notice published in the Gazette.

3. The Act is amended by deleting subsection 66(2) and inserting 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 re-election as a director for that company unless two years have elapsed after he last served except for a public company where a shareholding of over 40% is held by that individual.”

4. Section 368 of the Act is amended- Amendment of
section 368
 - (a) in subsection (2) by deleting the word “court” and substituting the word “Registrar”;
 - (b) by deleting subsections (3) and (4);
 - (c) by inserting the following new subsection-

“(3) Notwithstanding subsection (1) any former Act company that has not applied to be continued or deemed to be continued before January 1, 2005 shall be struck off the register.”

5. The Act is amended by inserting after section 493 the following new section-

Insertion of section 493A

Waiver of fees licence

493A. The Registrar may waive any fees prescribed under this Act in the case of-

- (a) a wholly state owned body corporate or
- (b) a wholly owned body corporate of any international, regional or local agency for which the waiver of fees has been approved by Cabinet.”

6. Section 511 of the Act is amended by deleting subsection (5) and inserting the following new sections-

Amendment of section 511

“(5) Where a company or other body corporate is struck off the register, the Registrar may, upon receipt of an application in the prescribed form within two years from the date the body corporate was struck off, and upon payment of the prescribed fee, restore it to the register and issue a certificate in a form adapted to the circumstances.

(6) The Registrar shall cause to be published in the Gazette the name of any body corporate restored under this section.

(7) The name of any body corporate struck off the Register and not restored within the time period specified in subsection (5) shall be available for use.”

7. Section 543 of the Act is amended -

Amendment of section 543

(a) in the definition of “external company”, by inserting the words “or another Member State and is a national of that Member State ” after the words “Antigua and Barbuda”; and

(b) inserting in their appropriate alphabetical order the following-

“Member State” means a Member State of the Caribbean Community or the Organisation of Eastern Caribbean States listed in the Schedule;

“national” means a company or other legal entity that is constituted in a Member State in conformity with the laws thereof and which that State regards as belonging to it, provided that such company or other legal entity has been formed for gainful purposes and has its registered office and central administration, and carries on substantial activity within the Community and is substantially owned and effectively controlled by a person who:

- (a) is a citizen of that Member State; or
- (b) has a connection with that State of a kind which entitles him or her to be regarded as belonging to or, if it be so expressed, as being a native or resident of the State for the purposes of the laws thereof relating to immigration;

For the purposes of this definition, a company or other legal entity is –

- (i) substantially owned if more than fifty percent of the equity interest of the company is beneficially owned by persons mentioned in paragraphs (a) or (b);
- (ii) effectively controlled if the persons mentioned in paragraphs (a) and (b) have the power to name a majority of its directors or otherwise legally to direct its actions;”.

8. The Act is amended by inserting immediately after section 550 the following-

Insertion of
Schedule

“SCHEDULE

Member States

- (i) Barbados
- (ii) Belize
- (iii) Commonwealth of Dominica
- (iv) Grenada
- (v) Guyana
- (vi) Jamaica
- (vii) Montserrat
- (viii) St Christopher and Nevis
- (ix) Saint Lucia
- (x) Saint Vincent and the Grenadines
- (xi) Suriname
- (xii) Trinidad and Tobago.”.

Passed the House of Representatives
this day of 2006

Passed the Senate
this day of 2006

Speaker

President

Clerk to the House of Representatives

Clerk to the Senate

EXPLANATORY MEMORANDUM

This Bill seeks to amend the Companies Act by making an exception the current provision for limiting the tenure of directors of public companies in instances where the director owns over 50% of the shares, by making administrative provisions with respect to companies being struck off the register, and by making the Act compliant with Antigua and Barbuda's obligations under the CARICOM Single Market Economy (CSME).

Clause 3 makes an exception to the current provision for limiting the tenure of directors of public companies in instances where the director owns over 50% of the shares.

Clause 4 makes provisions to tidy up some administrative provisions.

Clause 5 allows the Registrar to waive any fees prescribed under the Act in the case of a wholly state owned body corporate or a wholly owned body corporate of any international, regional or local agency approved by Cabinet.

Clause 6 allows for the restoration of a company by the Registrar upon application within two years from the date the body corporate was struck off and allows for the name of any body to be available for use.

Clauses 7 and 8 make provisions to bring the Act CSME compliant.