

**COMMONWEALTH OF DOMINICA**

ACT No.13 OF 2000

I assent



VERNON L. SHAW  
*President*

18th January, 2001

AN ACT TO AMEND THE INTERNATIONAL BUSINESS  
COMPANIES ACT, NO. 10 OF 1996.

(Gazetted 25th January, 2001.)

BE IT ENACTED by the Parliament of the Commonwealth  
of Dominica as follows:

1. This Act may be cited as the -

Short title.

**INTERNATIONAL BUSINESS COMPANIES (IBC)  
(AMENDMENT) ACT, 2000**

Interpretation.  
Act No. 10 of  
1996.  
Amendment of  
section 2 of the  
Act.

**2.** In this Act the International Business Companies (IBC) Act is referred to as “the Act”.

**3.** Section 2 subsection (1) of the Act, is amended by-

(a) inserting the following immediately before the definition of “Articles”-

“ “approved fiduciary” means a registered chartered accountant practising in Dominica or a financial institution domiciled in Dominica approved by the Minister;”

(b) inserting the following immediately after the definition of “authorised capital”-

“ “banking business” means -

(a) the business of accepting deposits, receiving on current or savings deposits or on other similar account, money which is repayable by cheque or order and which may be invested by way of loans or advances to customers or otherwise or which may be withdrawn or repaid on demand or after a fixed period or after notice;

(b) the employment of these deposits in whole or in part by lending or any other means for the account and at the risk of the person accepting such deposits;  
and

(c) advertising for or soliciting such deposits from the general public irrespective of any terms or conditions under which deposits or money are solicited or

received or whether or not certificates or other instruments are issued in respect of such deposits;"

- (c) inserting the following immediately after the definition of "Register"-

“ “registered agent” means a person who, pursuant to section 39, performs the functions of a registered agent of a company incorporated under this Act

- (d) repealing the definition of "Registrar" and substituting the following definition -

“ “Registrar” means the Registrar of Companies, the Deputy Registrar or Assistant Registrar. ”

4. Section 5 of the Act is amended as follows -

Amendment of section 5 of the Act.

- (a) in subsection (1) by -

- (i) deleting paragraphs (a) and (b) and replacing them with the following -

“(a) carry on banking business;

(b) carry on business as an insurance or reinsurance company, insurance agent or insurance broker;”;

- (ii) deleting paragraph (d) and replacing it as follows:

“(d) act as a trustee;”

- (iii) deleting the full stop after the words “subsection 2 (e)” in paragraph (e) and replacing them with the following: “; or” ; and

- (iv) inserting the following as paragraph (f) -

“(f) carry on the business of company management.”

(b) in subsection 2 by replacing the words “subsection (1) (a)” with the words “subsection (1) (c)”.

Amendment of section 9 of the Act.

**5.** Section 9 subsection (1) of the Act is amended by -

(a) deleting the word “and” immediately after the semi colon in paragraph (h);

(b) deleting the full stop after the word “company” in paragraph (i) and replacing it with “; and” ; and

(c) inserting the following as paragraph (j):

“(j) to issue shares in any one or more currencies.”.

Amendment of section 12 of the Act.

**6.** Section 12 of the Act is amended by repealing subsection (3) and replacing it with the following-

“(3) The Memorandum must be subscribed to by the registered agent named in the Memorandum in the presence of another person who must sign his name as a witness and the signatures of both the registered agent and the witness may be electronically reproduced.”.

Amendment of section 13 of the Act.

**7.** Section 13 of the Act is amended by repealing subsection (2) and replacing it with the following -

“(2) The Articles must be subscribed to by the registered agent named in the Memorandum in the presence of another person who must sign his name as a witness, and the signatures of both the registered agent and the witness may be electronically reproduced.”.

Repeal and replacement of section 14 of the Act.

**8.** Section 14 of the Act is repealed and replaced as follows-

“Registration.

14. (1) The Memorandum and Articles must be submitted to the Registrar by delivery or electronic transmission from within or outside of the State.

(2) The Registrar shall not register the Memorandum or the Articles delivered to him unless he is satisfied that all requirements of this Act in respect of registration have been complied with and-

- (a) an attorney engaged in the formation of the company; or
- (b) the registered agent named in the Memorandum;

certifies in writing that the requirements of this Act in respect of registration have been complied with and the written certification delivered to the Registrar is sufficient evidence of compliance.

(3) Subject to subsection (2), the Registrar shall retain and register the Memorandum and Articles submitted to him in a Register to be maintained by him to be known as the Register of International Business Companies.

(4) Upon the registration of the Memorandum and the Articles, the Registrar shall issue a certificate of incorporation under his hand and seal certifying that the company is incorporated.

(5) Where the Memorandum and Articles are submitted to the Registrar by electronic transmission pursuant to subsection (1) the original shall be delivered to the Registrar within thirty days of electronic incorporation, registered

and a Certificate of Incorporation issued.

(6) If an International Business Company is carrying on its business in a manner that contravenes the provisions of this or any other Act, the Registrar, after consulting the International Business Unit from time to time as may seem to him necessary, may require the company forthwith to take such steps as he considers necessary to rectify the matter or may make an order-

- (a) suspending the registration of the company; or
- (b) revoking the registration of the company and requiring its business in Dominica to be wound up.

(7) A person who is aggrieved by a revocation order made under subsection (6)(b) may, within 30 days of the making of the order, appeal against that order to a Judge in Chambers whose decision thereon is final.”.

Amendment of  
section 16 of the  
Act.

**9.** Section 16 of the Act is amended by repealing subsection (2) and replacing it as follows -

“(2) A company that amends its Memorandum or Articles shall, within fourteen days immediately following the passing of the resolution to amend, submit to the Registrar an extract of the resolution of members or the resolution of directors amending the Memorandum or Articles, as the case may be, certified as a true copy of the resolution amending the Memorandum or Articles by -

- (a) the attorney engaged in advising the company; or
- (b) the registered agent named in the Memorandum;

and the Registrar shall retain and register the certified copy of the extract of the resolution”.

10. The Act is amended by inserting in Part II under the heading “CAPITAL AND DIVIDENDS” the following new section as section 17A -

Insertion of section 17A of the Act.

“Power to allot shares. 17A. Subject to any limitations or provisions to the contrary in its Memorandum or Articles, the unissued shares and treasury shares of a company incorporated under this Act shall be at the disposal of the directors who may, without limiting or affecting any rights previously conferred on the holders of any existing shares or class or series of shares, offer, allot, grant options over or otherwise dispose of shares to such persons, at such times and upon such terms as the company may, by resolution of directors, determine.”.

11. Section 18 of the Act is amended by inserting the following immediately after the word “nonassessable” -

Amendment of section 18 of the Act.

“except that a share issued for a promissory note or other written obligation for payment of a debt may be issued subject to forfeiture in the manner prescribed in section 19A”.

12. The Act is amended by inserting immediately after section 19 the following new section as section 19A -

Insertion of section 19A of the Act.

“Forfeiture of shares.

19A. (1) The Memorandum or Articles, or an agreement for the subscription of shares of a company incorporated under this Act, may contain provisions for the forfeiture of shares for which payment is not made pursuant to a promissory note or other written binding obligation for payment of a debt.

(2) Any provision in the Memorandum or Articles, or in an agreement for the subscription of shares of a company incorporated under this Act providing for the forfeiture of shares, shall contain a requirement that written notice specifying a date for payment to be made be served on the member who defaults in making payment pursuant to a promissory note or other written binding obligation to pay a debt.

(3) The written notice referred to in subsection (2) shall name a further date not earlier than the expiration of fourteen days from the date of service of the notice on or before which the payment required by the notice is to be made and shall contain a statement that in the event of non-payment at or before the time named in the notice the shares, or any of them, in respect of which payment is not made will be liable to be forfeited.

(4) Where a notice has been issued under this section and the requirements of the notice have not been complied with, the directors may, at any time before tender of payment, by resolution of directors forfeit and cancel the shares to which the notice relates.

(5) The company is under no obligation to refund any money to the member whose shares have been cancelled pursuant to subsection (4) and that member shall be discharged from any further obligation to the company.”.

Insertion of section  
21A of the Act.

**13.** The Act is amended by inserting immediately after section 21 the following new section as section 21A -



“Authorised  
capital in  
several  
currencies.

**21A.** (1) The authorised capital, if any, of a company incorporated under this Act may be stated in more than one currency in which case the par value of the shares, if any, shall be expressed in the same currencies.

(2) The Registrar may issue guidelines with respect to the calculation of fees payable pursuant to section 104 for companies with an authorised capital stated in a currency other than United States Dollars.”

**14.** Section 27 of the Act is amended by inserting the following as subsection (4) -

Amendment of  
section 27 of the  
Act.

“(4) Upon the issue or transfer of shares issued to bearer the registered agent shall lodge the share certificate and a duly notarized letter containing the name and address of the person who holds the shares, with an approved fiduciary.”

**15.** Section 28 of the Act is amended -

Amendment of  
section 28 of the  
Act.

(a) in subsection (1) paragraph (a), by deleting the word “registered”; and

(b) by inserting the following new subsections -

“(7) An approved fiduciary with whom a share certificate has been lodged pursuant to section 27 (4) shall keep a register containing,

(a) the name and address of the person who holds the shares;

(b) the identifying number of the share certificate;

(c) the total number of shares;  
and

(d) the date of issue or transfer of shares

and shall ensure that the register is kept updated at all times.

- (8) An approved fiduciary who fails to keep a register as required under subsection (7) is liable to a penalty of one thousand United States dollars.

**16.** Section 31 of the Act is repealed and replaced as follows-

Repeal and replacement of section 31 of the Act.

**31.** (1) A share issued to bearer is transferable, subject to the provisions of this section, by delivery of the certificate relating to the share.

(2) To effect a transfer of a share issued to bearer, the registered agent shall, two days prior to the transfer, by notice in writing containing -

(a) the signatures of the transferor, the transferee and a Notary Public;

(b) the name and address of the transferee; and

(c) the name and address of the new approved fiduciary, if applicable,

notify the approved fiduciary with whom the certificate has been lodged, of the intended transfer.

(3) Upon receipt of a notice under subsection (2), the approved fiduciary shall submit the certificate to the registered agent and shall enter the name and address of the transferee and new approved fiduciary, if applicable, in his register.

17. Section 33 of the Act is amended by -

Amendment of  
section 33 of the  
Act.

(a) inserting immediately after subsection (1) the following new subsection as subsection (1a):

“(1a) Subject to subsection (1), a company incorporated under this Act may not purchase, redeem or otherwise acquire its own shares without the consent of the member(s) whose shares are to be purchased, redeemed or otherwise acquired, unless the company is permitted to purchase, redeem or otherwise acquire the shares without that consent by virtue of -

(a) the provisions of the Memorandum or Articles of the company;

(b) the designations, powers, preferences, rights, qualifications, limitations and restrictions with which the shares were issued; or

(c) the subscription agreement for the issue of the shares.”; and

(b) inserting immediately after subsection (4) the following new subsection as subsection (5)-

“(5) A company incorporated under this Act may purchase, redeem or otherwise acquire the shares of the company at a price lower than fair value if permitted by, and then only in accordance with, the terms of -

(a) its Memorandum or Articles;  
or

*(b)* a written agreement for the subscription for the shares to be purchased, redeemed or otherwise acquired”.

Amendment of section 35 of the Act.

**18.** Section 35 of the Act is amended in subsection (1) by -

*(a)* inserting immediately after the word “may”, the words “by a resolution of members or”; and

*(b)* deleting paragraph *(b)* and replacing it with the following:

*“(b)* reduced by transferring an amount out of capital of the company to surplus.”.

Insertion of section 37A of the Act.

**19.** The Act is amended by inserting immediately after section 37 the following new section as section 37A -

“Mortgages and charges of shares.

**37A.** (1) A mortgage or charge of shares of a company incorporated under this Act must be in writing signed by, or with the authority of, the registered holder to the registered share to which the mortgage or charge relates.

(2) A mortgage or charge of shares of a company incorporated under this Act need not be in any specific form but must clearly indicate -

*(a)* the intention to create a mortgage or charge; and

*(b)* the amount secured by the mortgage or charge or how that amount is to be calculated.

(3) A mortgage or charge of shares of a company incorporated under this Act may be governed by the law of a jurisdiction other

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than Dominica but if a law other than the law of Dominica is specified as the governing law -

- (a) the mortgage or charge must be in compliance with the requirements of its governing law in order for the mortgage or charge to be valid and binding on the company; and
- (b) the remedies available to a mortgagee or chargee shall be governed by the governing law and the instrument creating the mortgage or charge, save that the rights between the mortgagor or mortgagee as a member of the company and the company shall continue to be governed by the Memorandum and the Articles of the company and this Act.

(4) If no law is specified to govern a mortgage or charge of shares of a company incorporated under this Act, the instrument creating the mortgage or charge shall be governed by the laws of Dominica and, in the case of a default by the mortgagor or chargor on the terms of the mortgage, the mortgagee or chargee is entitled to the following remedies -

- (a) subject to any limitations or provisions to the contrary in the instrument creating the mortgage or charge, the right to sell the shares; and

*(b)* the right to appoint a receiver who, subject to any limitations or provisions to the contrary in the instrument creating the mortgage or charge, may -

- (i)* vote the shares;
- (ii)* receive dividends and other payments in respect of shares, and
- (iii)* exercise other rights and powers of the mortgagor or chargor in respect of the shares,

until such time as the mortgage or charge is discharged

(5) Subsection (4) also applies to a mortgage or charge of shares of a company incorporated under this Act where the law of Dominica is specified as the governing law.

(6) Subject to any provisions to the contrary in the instrument of mortgage or charge of shares of a company incorporated under this Act, all amounts that accrue from the enforcement of the mortgage or charge shall be applied in the following manner-

- (a)* firstly, in meeting the costs incurred in enforcing the mortgage or charge;
- (b)* secondly, in discharging the sums secured by the mortgage or charge; and

(c) thirdly, in paying any balance due to the mortgagor or chargor.

(7) The remedies referred to in subsection (4) are not exercisable until -

(a) a default has occurred and has continued for a period of not less than thirty days, or such shorter period as may be specified in the instrument creating the mortgage or charge; and

(b) the default has not been rectified within fourteen days from service of the notice specifying the default and requiring rectification thereof.

(8) In the case of the mortgage or charge of registered shares there shall be entered in the share register of the company -

(a) a statement that the shares are mortgaged or charged;

(b) the name of the mortgagee or chargee; and

(c) the date on which the statement and name are entered in the share register.”.

**20.** Section 39 of the Act is amended by-

(a) deleting subsection (2) and replacing it with the following:

“(2) Only a barrister, solicitor or chartered accountant practicing in Dominica, or a company licenced under the Companies Act, 1994

Amendment of  
section 39 of the  
Act.

with an authorised and paid up capital of not less than US \$250,000, an Offshore Bank licensed under the Offshore Banking Act, 1996 or a Management Company registered under the Exempt Insurance Act, 1997 may act as registered agent ”; and

(b) inserting immediately after subsection (4) the following new subsections:

“(4a) After the registered agent has been licensed by the Registrar he may obtain a licence certificate from the Minister.

(4b) A person who, prior to the commencement of this Act, was a licensed registered agent but who does not qualify under subsection (2) to act as a registered agent, shall, within six months of the commencement of this Act or such further period as the Minister may in writing allow, comply with subsection (2) ”.

Insertion of section  
43A of the Act.

**21.** The Act is amended by inserting immediately after section 43 the following new section as section 43A -

“Register  
of Directors      **43A** (1) A company incorporated under this Act shall keep a register to be known as a register of directors containing -

(a) the names and addresses of the persons who are directors of the company;



(b) the date on which each person whose name is entered in the register was appointed as a director of the company; and

(c) the date on which each person named as a director ceased to be a director of the company.

(2) The register of directors may be in such form as the directors approve, but if it is in magnetic, electronic or other data storage form, the company must be able to produce legible evidence of its contents.

(3) A copy of the register of directors, commencing from the date of the registration of the company, shall be kept at the registered office of the company referred to in section 38.

(4) The register of directors is prima facie evidence of any matters directed or authorised by this Act to be contained therein”.

22. Section 56 of the Act is amended as follows -

Amendment of  
section 56 of the  
Act.

- (a) in subsection (1) by deleting the words “if the requirements of subsection (2) or (3) are satisfied.”;
- (b) in subsection (2) by deleting the word “An” and replacing it with the words “Subject to any limitations or provisions to the contrary in the Memorandum or Articles an”;
- (c) in subsection (3) by deleting the word “An” and replacing it with the words “Subject to any limitations or provisions to the contrary in the Memorandum or Articles an”; and

(d) by inserting immediately after subsection (3) the following new subsection as subsection (3a):

“(3a) Subject to any provision to the contrary in the Memorandum or Articles, an agreement or transaction referred to in subsection (1) is valid unless it is shown that at the time the agreement or transaction was authorised, approved or ratified by resolution of directors or by resolution of members the agreement or transaction was unfairly prejudicial to one or more members of the company or to the creditors of the company, except that no person who voted in favour of the resolution authorising, approving or ratifying the agreement or transaction shall be capable subsequently of impugning or objecting to the agreement or transaction”.

Insertion of section  
62A of the Act.

**23.** The Act is amended by inserting immediately after section 62 the following new section as section 62A -

“Voting  
trusts

**62A.** (1) One or more members of a company incorporated under this Act may, by agreement in writing, transfer registered shares to any person authorised to act as trustee for the purpose of vesting in that person, who may be designated voting trustee, the right to vote thereon and the following provisions shall apply:

(a) The period of time for which the trustee may vote shall not exceed ten years;

(b) Subject to paragraph (a), the agreement may contain any other provisions not inconsist-

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ent with the purpose of the agreement;

(c) a copy of the agreement shall be filed at the registered office of the company and shall be open to the inspection of members of the company -

(i) in the case of any beneficiary of the trust under the agreement, daily during business hours, and

(ii) in the case of members of the company, in accordance with the provisions of section 67;

(d) where certificates for registered shares have been issued for shares that are to be transferred to a trustee pursuant to this section, new certificates shall be issued to the voting trustee to represent the shares so transferred and the certificates formerly representing the shares that have been transferred shall be surrendered and cancelled;

(e) where a certificate is issued to a voting trustee, an endorsement shall be made on the certificate that the shares represented thereby are held by the person named therein pursuant to an agreement;

- (f) there shall be noted in the share register of the company against the record of the shares held by the trustee the fact that such an agreement exists;
- (g) the voting trustee may vote the shares so issued or transferred during the period specified in the agreement;
- (h) shares registered in the name of the voting trustee may be voted either in person or by proxy and, in voting the shares, the voting trustee shall not incur any liability as member or trustee, except in so far as he may be liable for his own conduct or acts;
- (i) where two or more persons are designated as voting trustees and the right and method of voting shares registered in their names at a meeting of members or on a resolution of members are not fixed by the agreement appointing the trustees, the right to vote shall be determined by a majority of the trustees, or if they are equally divided as to the right and manner of voting the shares in any particular case, the votes of the shares in such case shall be divided equally among the trustees;

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(j) at any time within two years prior to the time of expiration of a voting trust agreement as originally fixed or as last extended as provided in this subsection, one or more beneficiaries of the trust under the voting trust agreement may, by written agreement and with the written consent of the voting trustee, extend the duration of the voting trust agreement for an additional period not exceeding ten years from the expiration date of the trust as originally fixed or as last extended; and

(k) the voting trustee shall, prior to the time of expiration of a voting trust agreement, as originally fixed or as previously extended, as the case may be, file at the registered office of the company a copy of the extension agreement and of his consent thereto, and thereupon the duration of the voting trust agreement shall be extended for the period fixed in the extension agreement, but no extension agreement shall affect the rights or obligations of persons not parties thereto.

(2) Two or more members of a company incorporated under this Act may, by

agreement in writing provide that in exercising any voting rights the shares held by them shall be voted-

- (a) as provided by the agreement;
- (b) as the parties may agree; or
- (c) as determined in accordance with such procedure as they may agree upon.

(3) No agreement made pursuant to subsection (2) shall be effective for a period of more than ten years from the date it is made, but at any time within the two years immediately preceding the date of expiration of the agreement the parties may extend its duration for an additional period, not exceeding ten years at any one time, as they may desire.

(4) The validity of a voting trust or other voting agreement is not affected during a period of ten years from the date when it was created or last extended by reason only of the fact that under its terms it will or may last beyond a period of ten years.

(5) This section shall be deemed not to invalidate any voting or other agreement among members or any irrevocable proxy that is not otherwise illegal ”.

Amendment of  
section 66 of the  
Act.

**24.** Section 66 subsection (3) of the Act is repealed and replaced as follows -

“ (3) The accounts, records and minutes required by this section shall be kept in English, at the registered office of the company ”.

25. Section 67 of the Act is amended by inserting immediately after subsection (5) the following new subsections -

Amendment of section 67 of the Act.

“(6) The Minister, through an officer appointed by him, shall make periodic inspections of -

(a) the share register, the accounts, records, minutes and consents kept by a company incorporated under this Act; and

(b) the register kept by an approved fiduciary to ensure compliance by the company, through its registered agent, of the provisions of this Act and any other Law.

(7) Except for the purpose of the performance of his duties or the exercise of his functions under this Act or when lawfully required or permitted to do so by any court of competent jurisdiction within Dominica, the Minister or person appointed under subsection (6) shall not disclose any information relating to the affairs of a company incorporated under this Act which he has acquired in the performance of his duties under this Act.

(8) A person who contravenes subsection (7) commits an offence and is liable on summary conviction to a fine of four thousand United States dollars and to imprisonment for one year.”.

26. The Act is amended by inserting immediately after section 70 the following new section as section 70A -

Insertion of section 70A of the Act.

“Register of mortgages and charges.

**70A.** (1) A company incorporated under this Act may create a mortgage, charge

or other encumbrance over any of its assets situated in any part of the world in accordance with the law of any jurisdiction of the company's choice, and the mortgage, charge or other encumbrance shall be binding on the company to the extent, and in accordance with the requirements, of the chosen law.

(2) A company incorporated under this Act shall maintain at its registered office a register of mortgages, charges and other encumbrances in which there shall be entered particulars regarding each mortgage, charge and other encumbrances as follows -

- (a) the sum secured;
- (b) the assets secured;
- (c) the name and address of the mortgagee, chargee or the other encumbrancer;
- (d) the date of creation of the mortgage, charge or other encumbrance; and
- (e) the date on which the particulars specified in paragraphs (a) to (d) in respect of the mortgage, charge or other encumbrance are entered in the register.

(3) In the event that an application is made to a court in Dominica to enforce a mortgage, charge or other encumbrance created by a company incorporated under this Act and there are assets of the company which are subject to two or more mortgages, charges or other encumbrances, then notwith-



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standing the provisions of any other law, priorities shall be determined in accordance with the dates of entry in the register of mortgages and charges; and, unregistered mortgages, charges and other encumbrances created prior to January 1, 2001 will have priority over mortgages, charges and other encumbrances registered pursuant to this provision and shall be ranked in order of their creation.”.

27. Section 80 of the Act is amended by -

Amendment of section 80 of the Act.

(a) deleting the word “Any” appearing in the first line and replacing it with the words “Subject to any limitations or provisions to the contrary in its Memorandum or Articles, any”; and

(b) inserting immediately after the word “disposition” appearing in the first line the words “, other than a mortgage, charge or other encumbrance or the enforcement thereof,”.

28. Section 83 of the Act is amended by inserting the following new subsection as subsection (12) -

Amendment of section 83 of the Act.

“(12) Only subsection (1) and subsections (8) to (11) shall apply in the case of a redemption of shares by a company pursuant to the provisions of section 81, and in such case the written offer to be made to the dissenting member pursuant to subsection (8) shall be made within seven days immediately following the direction given to a company pursuant to section 81 to redeem its shares ”.

29. Section 88 of the Act is amended -

Amendment of section 88 of the Act.

- (a) in subsection (1) by inserting immediately after the word “Act” the words “and to which the Registrar would issue a certificate of good standing pursuant to subsection (1) of section 114”;
- (b) by inserting immediately after subsection (2) the following new subsections -

“(2a) The registered agent of a company incorporated under this Act that continues as a company incorporated under the laws of a jurisdiction outside Dominica shall within thirty days of the continuation of the company under the laws of the foreign jurisdiction submit to the Registrar an affidavit to the effect that the company has continued its incorporation under the laws of the named foreign jurisdiction and the Registrar shall retain and register the affidavit.

(2b) Upon registration of the affidavit referred to in subsection (2a) the Registrar shall -

- (a) strike the name of the company off the Register;
- (b) issue a certificate of discontinuance; and
- (c) publish the striking off in the *Gazette*.”; and

(c) in subsection (3) by -

- (i) deleting the word “and” appearing at the end of paragraph (b);

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- (ii) substituting a semicolon for the full stop appearing at the end of paragraph (c) and inserting immediately after the semicolon the following: “and;” and;
- (iii) inserting the following as paragraph (d) -

“(d) service of process may continue to be effected on the registered agent of the company in Dominica in respect of any claim, debt, liability or obligation of the company during its existence as a company incorporated under this Act.”.

**30.** Section 89 of the Act is amended by inserting immediately after the word “existence” the words “or upon the happening of an event which has been specified in the Memorandum or Articles as an event that shall terminate the existence of the company.”.

Amendment of section 89 of the Act.

**31.** Section 90 of the Act is amended in subsection (2) by inserting immediately after the word “members” the words “or by a resolution of directors”.

Amendment of section 90 of the Act.

**32.** Section 94 of the Act is amended in subsection (8) by deleting the words “and in a publication of general circulation in Dominica and in a publication of general circulation in the country or place where the company has its principal office,”.

Amendment of section 94 of the Act.

**33.** Section 95 subsection (1) of the Act is amended by deleting the words and numbers “section 94(4)” on the third line and replacing them with the words and numbers “section 94(6)”.

Amendment of section 95 of the Act.

Amendment of  
section 97 of the  
Act.

34. Section 97 of the Act is amended by-

- (a) renumbering the existing section as subsection (1)  
; and
- (b) inserting the following as subsection (2) -

“(2)” A person who, pursuant to the provisions of subsection (1), files, or causes to be filed, a petition for the winding up of a company incorporated under this Act, shall forthwith serve on the Registrar a notice that the petition has been filed, and the Registrar shall retain and register the notice.”.

Amendment of  
section 99 of the  
Act.

35. Section 99 of the Act is amended by repealing subsections (5), (6) and (7) and substituting the following -

“(5) If a company fails to pay the increased licence fee due under subsection (2) of section 105 on or before the expiration period or a period of two months from the time specified in subsection (1) or (2), as the case may be, of section 105, the Registrar shall, within two months from the expiration of the period of two months, send to the registered agent of the company a written notice that the name of the company will be struck off the Register if the licence fee specified in subsection (3) of section 105 is not paid on or before the next licence fee final payment date.

(6) If a company fails to pay the increased fee stated in the notice referred to in subsection (5) at or before the next licence fee final payment date, the Registrar shall strike the name of the company off the Register on the date immediately following the next licence fee final payment date.

(7) Within one month following each licence fee final payment date, the Registrar shall send to the registered agent of each company the name of which has been struck off the Register, notice of the striking off.

(8) Within two months following each licence fee final payment date the Registrar shall publish in the *Gazette* the names of all companies struck off the Register on the date immediately following the licence fee final payment date.

(9) A company, the name of which has been struck off the Register under this section, remains liable for all claims, debts, liabilities and obligations of the company and the striking off does not affect the liability of any of its members, directors, officers or agents.

(10) The striking off of a company shall not be affected by any failure on the part of the Registrar to serve a notice on the registered agent or to publish a notice in the *Gazette*.

(11) Subsections (5) to (8) do not apply to a company in the process of being wound up and dissolved”.

**36. Section 100 of the Act is amended by-**

(a) repealing subsection (3) and replacing it with the following -

“(3) If the name of a company has been struck off the Register under subsection (6) of section 99, the company, or a creditor, member or liquidator thereof, may, within three years immediately following the date of the striking off, apply to the Registrar to

Amendment of  
section 100 of the  
Act.

have the name of the company restored to the Register, and upon payment of -

- (a) all fees due under section 104;
- (b) the increased licence fee due under subsection (2) of section 105; and
- (c) the increased licence fee due under subsection (3) of section 105 for each year during which the name of the company remains struck off the Register,

the Registrar shall restore the name of the company to the Register and upon restoration of the name of the company to the Register, the name of the company is deemed never to have been struck off the Register.”; and

(b) inserting the following new subsections -

“(3a) If the name of a company has been struck off the Register under Section (6) of Section 94, the company, or a creditor, member or liquidator thereof, may apply to the Registrar to have the name of the company restored to the Register.

(3b) If upon an application under subsection (3a) the Registrar is satisfied that -

- (a) a licensed person has agreed to act as a registered agent of the company; and
- (b) it would be fair and reasonable for the name of the company to be restored to the Register,

the Registrar may restore the name of the company to the Register upon satisfaction of the conditions set out in subsection (3c) and upon restoration of the name of the company to the Register, the name of the company shall be deemed never to have been struck off the Register.

(3c) The conditions referred to in subsection (3b) are as follows:

- (a) the submission to the Registrar by the applicant for the restoration of a copy of the resolution amending the Memorandum of the company to change the registered agent; and
- (b) payment to the Registrar by the applicant for the restoration of -
  - (i) all fees due under section 104, and
  - (ii) all licence fees due under section 105 without increase for late payment.”.

37. Section 103 of the Act is amended in subsection (1) by inserting after the word “Court” the words, “on or before the expiration of the period of three years,”.

Amendment of section 103 of the Act.

38. Section 104 of the Act is amended by -

Amendment of section 104 of the Act.

(a) deleting paragraph (h) and replacing it as follows:

“(h) twenty-five United States dollars upon the issue by the Registrar of a duplicate, or certified copy of a certificate of incorporation,

merger, consolidation, arrangement, continuation, dissolution, discontinuance or good standing;”;

- (b) deleting the word “and” appearing at the end of paragraph (p);
- (c) substituting a semicolon for the full stop appearing at the end of paragraph (q) ; and
- (d) inserting immediately after paragraph (q) the following new paragraphs -

“(r) twenty-five United States dollars upon initial registration by the Registrar of a copy of a share register, a register of directors or a register of mortgages;

(s) twenty-five United States dollars upon registration by the Registrar of a copy of a share register, a register of directors or a register of mortgages and charges showing changes from the copy of the particular register a copy of which was last registered by the Registrar;

(t) twenty-five United States dollars upon registration by the Registrar of a notice that a company has elected to cease to register a copy of a share register, a register of directors or a register of mortgages and charges showing changes from the copy of the particular register a copy of which was last registered with the Registrar;

(u) seventy-five United States dollars upon registration by the Registrar of an affidavit attesting to a company incorporated under this Act continuing its incorporation under the laws of another jurisdiction;



- (v) twenty-five United States dollars upon registration by the Registrar of any document referred to in section 109B; and
- (w) fifteen United States dollars upon issue by the Registrar of an Apostille.”.

39. The Act is amended by inserting immediately after section 109 the following new sections as sections 109A and 109B -

Insertion of sections 109A and 109B of the Act.

“Optional registration of registers.

**109A.** (1) A company incorporated under this Act may elect to submit for registration by the Registrar any of the following registers:

- (a) its share register;
- (b) its register of directors; or
- (c) its register of mortgages and charges.

(2) A company that has elected to submit for registration a copy of a register shall, until it otherwise notifies the Registrar pursuant to subsection (3), submit for registration any changes in a register by substituting for registration a copy of the register containing the changes.

(3) A company that submits for registration a copy of a register with the Registrar may elect to cease registration of changes in the register by so informing the Registrar in writing.

(4) If a company that submits for registration any register pursuant to subsection (1) then, until such time as the company informs the Registrar pursuant to subsection (3) that it elects to cease to register changes in any register, the company is bound by the contents of each copy register submitted to the Registrar.

Optional  
registration  
of mortgages  
and charges.

**109B.** A company incorporated under this Act may submit to the Registrar for registration-

- (a) any document or copy of a document creating a mortgage, charge or other encumbrance over some or all its assets;
- (b) any document or copy of a document amending any document referred to in section 70A (2); and
- (c) any document releasing or discharging a mortgage, charge or other encumbrance over any or all its assets,

and the Registrar must retain and register the document or as the case may be, the copy thereof.”

Amendment of  
section 113 of the  
Act.

**40.** Section 113 of the Act is amended by -

- (a) renumbering the existing section as section 113 (1); and
- (b) inserting the following new subsections -

“(2) Notwithstanding anything in this Act or in any other written law, where request is made to the Attorney General for any information or assistance pursuant to any Agreement or Treaty entered into with any other country concerning Mutual Assistance in Criminal Matters, the Attorney General may, upon obtaining a Court order, require a licensee to furnish such information as required within such period as may be specified.

(3) Any person who has such information or has access to such information and willfully fails to furnish or withholds such information commits an offence and is liable on summary conviction to a fine of seven thousand United States dollars and to imprisonment for five years.”

41. Section 115 of the Act is amended by inserting the following as subsection (4) -

Amendment of section 115 of the Act.

“(4) Until the Minister transfers the functions to which this Act applies to the International Business Companies Office Limited, those functions and the powers referred to in subsection (3) shall be performed and exercised by the International Business Unit.”

42. The Act is amended by deleting the words “subject to any limitations in its Memorandum or Articles,” wherever they occur therein, except in subsection (1) of section 57, and replacing them with the words ‘subject to any limitations or provisions to the contrary in its Memorandum or Articles’.

Amendment of the Act.

Passed in the House of Assembly this 27<sup>th</sup> day of December, 2000.

ALEX F. PHILLIP (MRS.)  
*Clerk of the House of Assembly*

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