

International Business Companies (Amendment) Act

SAINT LUCIA

No. 14 of 2002

AN ACT to amend the International Business Companies Act 1999.

[19th September, 2002]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly and the Senate of Saint Lucia, and by the authority of the same, as follows:

Short title

1. This Act may be cited as the International Business Companies (Amendment) Act 2002.

Interpretation

2. In this Act -

“principal Act” means the International Business Companies Act 1999, No. 40.

Amendment of section 2

3. Section 2 of the principal Act is amended by -
 - (a) deleting the definition of the phrase “authorised capital” and substituting the following definition -

““authorised capital” of a company means the sum of the aggregate par value of all shares with par value which the company is authorised by its memorandum to issue, plus the amount if any, stated in its memorandum as authorised capital to be represented by shares without par value which the company is authorised by its memorandum to issue;”;
 - (b) deleting the definition of the phrase “Financial Centre Corporation”;
 - (c) inserting the following definition in its proper alphabetical order -

“international financial services representation” means international financial services representation as defined in the Registered Agent and Trustee Licensing Act 1999;”;

(d) removing the definition of the word “resident” after the definition of the word “property” and inserting it after the definition of the word “Registrar” and before the definition of the word “securities”;

(e) repealing subsection (9) and substituting the following subsection -

“(9) A reference in this Act to international banking business is a reference to international banking business as defined in the International Banks Act, 1999.”;

(f) inserting the following subsection immediately after subsection (9) -

“(10) A company incorporated under this Act, or a director, shareholder, debenture holder, or any mortgagee or pledgee of the shares or assets thereof shall be exempt from the provisions of the Aliens (Licensing) Act No. 9 of 1999.”.

Amendment of section 7

4. Section 7(1)(e) of the principal Act is amended by inserting after the word “company” the following words -

“setting forth the aggregate of the par value of all shares with par value that the international business company is authorised to issue and the amount, if any, to be represented by shares without par value that the international business company is authorised to issue.”.

Amendment of section 12

5. (1) Section 12 (2) (e) is amended by deleting the words “for use as an office” and by replacing it with the words “for its operations”.

(2) Section 12(2)(f) of the principal Act is amended by deleting the words “an enactment” and substituting the words “the law in force in Saint Lucia”.

Amendment of section 14

6. Paragraph (j) of section 14(1) of the principal Act is deleted and substituted by the following -

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

Amendment of section 28

7. Section 28(3) of the principal Act is deleted and substituted by the following -

“(3) The share register shall be kept at the registered office of the international business company from the date of registration of the international business company.”.

Substitution of section 34

8. Section 34 of the principal Act is amended by repealing the section and substituting the following section -

“ Treasury shares disabled

34. Where shares in an international business company are held by –

(a) the international business company as treasury shares; or

(b) another international business company of which the first international business company holds, directly or indirectly, shares having more than fifty percent of the votes in the election of directors of the other international business company; the shares of the first international business company are not entitled to vote or to have dividends paid thereon and shall not be treated as outstanding for any purpose under this Act except for purposes of determining the capital of the first international business company.”.

Amendment of section 35

9. Section 35 (1)(b)(iii) of the principal Act is amended by deleting the words occurring after the word “surplus”.

Amendment of section 39

10. Section 39 of the principal Act is amended by repealing the words “shall be the registered office” and substituting the following words -

“the registered office shall be at the office of the registered agent”.

Amendment of section 41

11. Section 41 of the principal Act is amended by inserting the following sub-sections immediately after subsection (2) -

“(3) Where the registered agent of an international business company desires to cease to act as registered agent and the registered agent is unable to reach an agreement with the international business company for which he or she is the registered agent, concerning his or her replacement, the following provisions apply:

(a) the registered agent shall give not less than thirty days written notice to any director or officer of the international business company of which he or she is the registered agent at the director’s or officer’s last known address, or if the registered agent is not aware of the identity of any director or officer then the person from whom the registered agent last received instructions concerning the international business company, specifying the wish of the registered agent to resign as registered agent and shall together with the notice provide a list of all registered agents in Saint Lucia with their names and addresses;

(b) the registered agent shall submit to the Registrar a copy of the notice and list of registered agents referred in paragraph (a);

(c) if, at the time of expiry of the notice, the international business company has not adopted a resolution to amend its Memorandum to change its registered agent, the registered agent shall inform the Registrar in writing that the international business company has not changed its registered agent whereupon the Registrar shall publish a notice in the *Gazette* that the name of the international business company will be struck off the Register, unless the company, within thirty days from the date of the publication of the notice in the *Gazette*, registers with the Registrar a copy of a resolution amending its Memorandum to change its registered agent; and

(d) if an international business company fails within thirty days from the date of the publication of the notice referred to in paragraph (c) to file with the Registrar an application amending its Memorandum to change its registered agent, the Registrar shall strike the name of the company off the Register and shall publish in the *Gazette* a notice that the name of the international business company has been struck off the Register.

(4) Where the licence of a registered agent has been revoked under the Registered Agent and Trustee Licensing Act 1999, if a registered agent dies or fails to renew his or her licence the Registrar shall, for the purpose of changing the registered agent of the international business company, communicate with each international business company for which the person whose licence has been revoked or who has died or has failed to renew his or her licence is the registered agent and the provisions of subsection (3) have effect *mutatis mutandis* for the purpose of providing the procedures for changing the registered agent.

(5) An international business company that has been struck off the Register under this section remains liable for all claims, debts, liabilities and obligations of the international business company, and the striking-off does not affect the liability of any of its members, directors, officers or agents.”.

Amendment of section 83

12. Section 83 of the principal Act is amended by inserting the following sub-section immediately after subsection (11) -

“(12) Only subsections (1) and (8)(9)(10)and (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 an international business company pursuant to section 81 to redeem its shares.”.

Amendment of section 84

13. Paragraph (c) of section 84(1) of the principal Act is amended by deleting the words “and in the case of a foreign company” appearing after the words “certified translation”.

Amendment of section 85

14. Paragraph (a) of section 85 (1) of the principal Act is amended by :

(a) deleting the full stop after paragraph (b) and replacing it with a semi colon; and

(b) inserting the following paragraph (c) after paragraph (b) -

“(c) evidence satisfactory to the Registrar that the company is in good standing.”.

Amendment of section 88

15. Section 88 of the principal Act is amended -

(a) by inserting the following subsections immediately after subsection (2) -

“(2A) The registered agent of a company incorporated under this Act that continues as a company incorporated under the laws of a jurisdiction outside Saint Lucia shall within thirty days of the continuation of the company under the laws of the foreign jurisdiction file with the Registrar an affidavit to the effect that the company has continued its incorporation under the laws of the named foreign jurisdiction together with a certified copy of the certificate of continuation or registration from the foreign jurisdiction.

(2B) Upon registration of the affidavit and certificate referred to in subsection (2A) the Registrar shall :

(a) remove the name of the company from the register;

(b) issue a certificate of discontinuance; and

(c) publish the removal in the *Gazette*.”;

(b) by inserting the following paragraph immediately after paragraph (c) of subsection (3) -

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

Amendment of section 97

16. Section 97 of the principal Act is amended by inserting the following subsection immediately after subsection (3) -

“(4) Any person who, pursuant to the provisions of subsection (1), makes an application to the Court for an order shall forthwith serve on the Registrar a notice that the application has been made, and the Registrar must retain and register the notice.”.

Amendment of section 99

17. Section 99 of the principal Act is amended by deleting subsection (5) and by replacing it with the following:

(5) If an international business company has failed to pay the increased license fee due under subsection (2) of section 104, the Registrar shall, within ninety days of 31st December next ensuing publish in the *Gazette* and serve on the international business company, a notice stating the amount of the license fee due, under subsection (3) of section 104 and stating that the name of the international business company will be struck-off the Register.

(6) If an international business company fails to pay the increased licence fee stated in the notice referred to in subsection (5) by the 31st December referred to in that subsection, the Registrar shall strike the name of the international business company off the Register from 1st January next ensuing.

Amendment of section 103

18. Section 103 of the principal Act is amended by repealing the reference to subsection (7) and substituting the reference to subsection (6).

Amendment of section 109

19. Section 109 of the principal Act is amended by -

(a) repealing subsection (1) and substituting the following subsection -

“(1) An international business company may elect -

- (a) to be exempted from income tax; or
- (b) to be liable to income tax on the chargeable income the international business company at the rate of 1% in accordance with the Income Tax Act 1989.”;

(b) inserting the following paragraphs immediately after subsection (5) -

“(6) Where an international business company does not elect to be exempted or to be liable to tax in accordance with sub-section (1), it will be deemed to have elected to be exempted from income tax.

(7) An international business company, which has not made an election and has been deemed to be exempted from income tax, may by notice filed with the Registrar, by the registered agent acting on the authority of the directors, elect to be liable to income tax at the rate of 1% from the date of the election.

(8) An international business company that has made an election to be liable to tax at the time of incorporation, or a company that subsequently elected to pay tax in accordance with sub-section (7) will be bound by such election for the life of the company.”.

Substitution of section 120

20. Section 120 of the principal Act is repealed and substituted by the following -

“ Charging of assets and registration of the charge and mortgage

120 (1) An international business company may create a mortgage, charge or other encumbrance over any of its assets situate in any part of the world in accordance with the law of any jurisdiction of the international business 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) An international business 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 specified in Regulations made under this Act.

(3) In the event that an application is made to a Court in Saint Lucia to enforce any mortgage, charge or other encumbrance created by an international business company and there are assets of the international business company which are subject to two or more mortgages, charges or other encumbrances, then, notwithstanding the provisions of any other law, priorities shall be determined in accordance with the dates of entry in the register of mortgages and charges.

(4) An international business company may submit to the Registrar for registration -

(a) any document or copy of a document creating a mortgage, charge or other encumbrances over some or all of its assets;

(b) any document or copy of a document amending any document referred to in subsection (2) of 119; 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.”.

Passed in the House of Assembly this 11th day of June , 2002.

MATTHEW ROBERTS,
Speaker of the House of Assembly

Passed in the Senate this 6th day of August, 2002.

HILFORD DETERVILLE,
President of the Senate.