



November 2015- January 2016

Corporate and Commercial

In 2015, a number of changes were made to the Companies' Act. We have attempted to summarize some of these changes which came into effect from February 09, 2015 by virtue of the **Corporate (Miscellaneous Provisions) Act, 2015-1** (the Act).

- Exempt insurance companies
- International business companies
- International societies with restricted liability
- International financial service entities

1. Annual Returns

- According to Section 15A of the Companies Act and Companies Regulations 36(1) (r), every company that has share capital (except an external company) must file an annual return **by January 31st in every year** and pay the **prescribed fee of \$100**.
- Failure to do this will result in a penalty of **\$10 for every day during which the default continues**. Every director and officer of the company that **knowingly** and **wilfully** authorizes or permits the default is also liable to that same penalty.
- However, the **Act** amended section 15A by adding a subsection (5) which stipulates that in the annual returns, a director or officer of the company
- Must now certify that the information related to shareholders and beneficial ownership is maintained at the registered office of the company. This requirement does not apply to entities in the offshore sector, i.e. the following:
 - According to the **Administrative Directive Issued Pursuant to Section 15A of the Companies Act- December 4th 2015**, Domestic companies are now required to file an annual return using the newly issued Form 35. According to the Registrar of Companies, in the interest of ensuring the efficient administration of section 15A as amended, **the period for the filing of an annual return has been extended from 31st January 2016 to 31st March 2016**. However, thereafter, there will be strict adherence to the statutory deadline for the filing of an annual return.
 - The Directive also provides guidance in completing Form 35.
 - Paragraph 3: The return is in respect of the previous calendar year.
 - Paragraph 10: The name, address and occupation of each Director should be stated in the document.
 - Paragraphs 12 & 13: Where an Authorised Officer or Corporate Entity has been appointed, notice of the

appointment should be communicated to the Corporate Registry in writing.

2. Notice of Change of Directors

- The **Act** also amends section 74(1) of the Companies Act by extending the time for filing a Notice of Change of Directors. Now, where a change is made among the directors of a company, a notice must be filed *within 30 days*. Previously, this had to be filed within 15 days.
- Section 36(1) of the Companies Regulations has also been amended by the addition of subsection (s) to impose a *penalty of \$100 for the late filing* of this notice of Change of Directors.

3. Company Registers and Records

- Pursuant to sections 170 and 172 of the Companies Act, a company must prepare and maintain certain records and registers at its registered office. The **Act** has amended section 170(2) by adding subsection (d) which now mandates that *the shareholder register* maintained by the company also show *a record of the beneficial ownership of companies incorporated or registered in Barbados*.
- Additionally a new section, section 175A, was added to the Companies Act imposing a *penalty* where a company fails to keep the records and registers required in sections 170 (1) (2) & (3) and 172 (1) (2) & (3). A person who fails to comply with these sections is guilty of an offence and *liable on summary conviction to a fine of \$10, 000*.

4. Comparative Financial Statements

- The **Act** amends section 434, which enumerates company offences, by adding subsections (3) and (4). Subsection (3) provides that where the company contravenes section 152(1) the company is guilty of an offence and is liable on summary conviction to *a fine of \$750 for every year that the documents required under section 152(1) are not submitted to the Registrar*.
- Subsection (4) provides that where a company is guilty of this offence in subsection (3), any director or officer of the company who knowingly authorised, acquiesced in or permitted the contravention is also guilty of an offence and liable on summary conviction to *a fine of \$750 or to imprisonment for a term of 6 months or to both*.

5. Dissolution

- The **Act** amended section 363 by stipulating that such companies also have no liabilities. Thus, the new requirement is that *a company that has issued no shares and has no liabilities may be dissolved at any time by resolution of all the directors*.
- The **Act** amends section 365 by adding subsection (4) which states that the *Articles of dissolution must now be accompanied by a certificate of clearance* indicating that the company has paid all taxes or statutory obligations, e.g. NIS, VAT, etc.
- The **Act** replaced subsection (1) of section 367 with a new section which prescribes a *28 day waiting period after the official publication of the Notice of Intent to Dissolve before the filing of Articles of Dissolution and the issuance*

of a certificate of dissolution by the Registrar

- Section 370 has also been amended with new subsections (1) and (2). Subsection (1) provides that where the certificate of intent to dissolve has not been revoked and the company has complied with section 367(4), the company shall prepare articles of dissolution and there shall be a waiting period of 28 days prior to the filing of articles of dissolution.
- The new subsection (2) of section 370 prescribes that certificates of clearance indicating that the company has paid all

the taxes and contributions required by any enactment must also be submitted along with the articles of dissolution.

6. Offences and Penalties

- In section 432(1) the **Act** increases the fine for making or assisting in making a report, return, notice or other document that contains an untrue statement of material fact or omitting to state a material fact required or necessary to make a statement from \$5000 to ***\$10,000***

Corporate and Trust Services

The ***Corporate and Trust Service Providers Act, 2015*** came into effect in November of 2015. This Act seeks to regulate those persons or entities that provide certain corporate and trust services. The Act states that its purpose is to promote and maintain high standards of conduct, ethics and competence in the provision of corporate and trust services, to ensure that service providers adhere to international standards and international best practices, including procedures and policies to enable them to know and be able to identify and verify the identity of their clients and exercise due diligence in the provision of corporate and trust services and to enable the protection of interests of specified entities and of service providers through the licensing and supervision of service providers.

In order to achieve the aims of the Act, the Director of International Business is authorized to monitor and examine the businesses of service providers to determine whether service providers are in compliance with the Act and to receive and investigate any complaints made against service providers and take appropriate action in respect of the complaints.

Under the Act, all persons providing corporate and trust services must do so in accordance with a licence issued to him. A person may either apply for a corporate service provider licence, a trust service provider licence or a corporate and trust service provider licence. In order to be granted a licence, an applicant must be a fit and proper person, have the financial standing necessary, have a representative in Barbados and not be a specified entity as defined by the Act. Where the applicant is a firm or society, the Director of International Business must be satisfied that each controlling partner, manager, member, director or officer is a fit and proper person. Where a person provides the relevant services without a licence, ***they are guilty of an offence and liable on summary conviction to a fine of \$50,000 or to imprisonment for 2 years or to both.*** Where the offence is a continuing one, they are liable to ***a further fine of \$8,000 for every day or part of a day during which the offence continues after a conviction is first obtained.***

Some of a service providers duties include the duty to:

- Display their licence at their principal place of business or registered office
- Ensure that any advertisement published is not damaging to the good reputation of Barbados and contains a fair and accurate indication of the service they provide
- Have a written, duly executed agreement with each client for the provision of services. The agreement must provide for the calculation, charging, revision and recovery of fees; the payment to the client of interest received on the money of the client and the conditions of termination of services and any consequential refund of fees.
- Clearly designate and be able to identify money or assets held on behalf of the client as that client's money or assets and to separate clients' money and assets from those of the service provider
- Take reasonable steps to avoid conflicts of interests with and among clients and where a conflict arises give the clients involved written notice and unless each client concerned agrees that the service provider may continue to provide services to the other client involved, cease to provide services to all clients concerned.
- Acknowledge, record and investigate any complaint that the service provider receives

The requirements of the new rules are in line with international standards. In many cases, service providers may have already practiced many of the requirements and it can only be in the best interests of the financial sector for the rules to now apply across the board.

Employment & Industrial Relations

The ***Shops Act 2015-30*** came into effect from December 07, 2015 and as a result a number of changes have been made to the opening hours of shops in Barbados. According to section 4(1) of the new Act, ***a shop may be opened for business from 7 a.m. on Mondays continuously through 10 p.m. on Sundays except on closed days***. The new Act has removed the umbrella term 'public holiday' and listed the specific days to be closed days under the Act. These closed days are Good Friday, Easter Sunday, Independence Day and Christmas Day. If an occupier wishes to open his shop on a closed day he may apply to the Chief Labour Officer for permission to do so. In spite of the extended opening hours now available to occupiers, the Act maintains the provision that ***no shop assistant may be required to work more than 40 hours in any one week***. In

addition, ***no shop assistant shall be required, without his consent to work overtime or to work on the day he observes as the day of religious worship***.

Under the new legislation, it seems that all public holidays other than the listed closed days can now be deemed working days and an employer can roster the employee to work on those days but must pay them at twice their ordinary rate.

Under the old legislation, when a cruise ship visited Barbados on a closed day, a licence had to be obtained from the Chief Labour Officer authorizing an occupier to be open on that day and the shop could only be open for 4 ½ hours.

Despite the fact that businesses are legally entitled to be opened on more days, this is not a

guarantee that they will actually open. In the Nation Newspaper of January 02, 2016 it was noted that 5 cruise ships were docked in Barbados on New Year's day (which is no longer a closed day) but every store in

Bridgetown was closed. Some business commented that the determining factor as to whether they opened or not was whether it made sense financially.

Alternative Dispute Resolution

At the launch of 2015 ADR week, the Chief Justice of Barbados, Sir Marston Gibson noted that an average of 2,500 cases were filed in one year at the High Court and these were to be dealt with by only 10 judges. The large number of new cases and the attendant interim and interlocutory proceedings have created a backlog of cases to be heard in the courts resulting in justice in many cases being increasingly delayed. In efforts to reduce this backlog of cases, the Court Annexed Mediation Pilot Project 2015 was officially launched on November 25, 2015 which will allow certain categories of cases to be sent to mediation.

However, there is no need for private enterprises to wait until a matter reaches the courts to think about alternative dispute resolution. Mediation and arbitration are two forms of alternative dispute resolution that can be used to resolve conflicts in areas such as but not limited to: contractual disputes, landlord and tenant, service agreements, partnership agreements and labour agreements. In the early stages of a dispute, where the parties agree, the matter can be brought before a private mediator or arbitrator to be resolved. These methods save both cost and time. The private sector is encouraged to ensure that mediation and/or arbitration clauses are included in all agreements

Corporate Investigations

The Association of Corporate Counsel defines an internal investigation as an inquiry into relevant facts, usually triggered by allegations of misconduct or malfeasance, undertaken for the purpose of determining the facts. A properly conducted and documented internal investigation can provide companies with the necessary information to determine best next steps within a legal or governance framework, especially in he

said/she said disputes. This allows an organization to correct problems before they become worse and lead to great expenditure of time and resources.

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