

## CHAPTER 318B

### SOCIETIES WITH RESTRICTED LIABILITY

1995-7

This Act came into operation on 2nd January, 1996 by Proclamation (S.I. 1996 No. 1).

#### **Amended by:**

2001-29

2005-17

2007-26

2004-7

2007-7

#### **Law Revision Orders**

*The following Law Revision Order or Orders authorized the insertion and removal of pages as the case may be under the Law Revision Act Cap.2 now repealed:*

1997

2002

2007

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#### **Guide to symbols in historical notes:**

- indicates an amendment made by an Act

/ indicates an amendment made by statutory instrument



## CHAPTER 318B

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**BARBADOS**

**SOCIETIES WITH RESTRICTED LIABILITY**

1995-7

*An Act to provide for the organisation of societies with restricted liability with full corporate personality and for related matters.*

[Commencement: 2nd January, 1996]

**PRELIMINARY**

**CITATION**

**Short title**

1. This Act may be cited as the *Societies With Restricted Liability Act*.

**INTERPRETATION**

**Definitions**

2. In this Act,
  - (a) “articles” means
    - (i) the original or restated articles of organisation, articles of amendment and articles of dissolution;

- (ii) any statute, letters patent, memorandum of association, certificate of organisation, or other corporate instrument evidencing the existence of a society;
- (b) “international society” means a society described in Part VII;  
*[2001-29]*
- (c) “member” means, subject to section 14(5), an owner of quotas in a society;
- (d) “society” means a society with restricted liability organised under section 5, and includes an international society with restricted liability organised under Part VII;  
*[2001-29]*
- (e) “Registrar” means the Registrar of Corporate Affairs and Intellectual Property.

### **Purposes**

- 3.(1) The purposes of this Act are to provide for the organisation of societies with restricted liability with full corporate personality, and for related matters.
- (2) This Act shall be given such fair, large and liberal interpretation and construction as would best ensure the attainment of its purposes.

### **Application**

- 4. This Act applies to societies organised or registered under this Act.

## **PART I**

### **FORMATION AND OPERATION OF SOCIETIES**

### **Organisation**

- 5.(1) Subject to subsection (2), one person or more may organise a society by signing articles of organisation and sending them to the Registrar together with the prescribed fee.

- (2) No individual who
- (a) is less than 18 years of age;
  - (b) is of unsound mind and has been so found by a tribunal in Barbados or elsewhere; or
  - (c) has the status of a bankrupt,
- shall form or join in the formation of a society under this Act.

### **Formalities**

**6.(1)** Articles of organisation must follow the prescribed form and set out, in respect of the proposed society,

- (a) the proposed name of the society;
  - (b) the purpose for which the society is formed;
  - (c) the duration of the society;  
*[2004-7]*
  - (d) the registered office of the society in Barbados and, in the case of an international society, the name and address of its agent in Barbados;  
*[2001-29]*
  - (e) the name and address of each person who signed the articles of organisation;
  - (f) if the right to transfer quotas of the society is to be restricted, a statement that the right to transfer quotas is restricted and the nature of those restrictions;
  - (g) any restrictions on the business that the society may carry on; and
  - (h) the classes and any maximum number of quotas the society is authorised to issue.
- (2) The articles may set out any provision permitted by this Act or by law permitted to be set out in the by-laws of the society.

**Amendment of articles**

7. Where during the existence of a society any change is made to, or occurs in, any of the following particulars, namely:

- (a) the name of the society;
- (b) any statement in the articles;
- (c) the time stated in the articles as the duration of the society; or
- (d) any other matter affecting the articles,

the articles shall be amended and executed in the same manner as the original articles and a copy sent to the Registrar together with the prescribed fee.

*Certification of Organisation***Certificate of organisation**

8. Upon receipt of articles of organisation, the Registrar must issue a certificate of organisation in accordance with section 61; and the certificate is conclusive proof of the organisation of the society named in the certificate.

**Effective date**

9. A society comes into existence on the date shown in its certificate of organisation.

*Name***Name of Society**

10. The words “Society with Restricted Liability” or the abbreviation “SRL” shall be the last words of the name of every society but a society may be legally designated by either the full or the abbreviated form.

**Reserved name**

- 11.** A society must not be organised with or have a name
- (a) that is prohibited or refused under section 12 or under any other enactment;
  - (b) that is reserved for another society or intended society under this section or any other enactment.

**Prohibited name**

- 12.** No society shall have a name that is the same as, or similar to, the name of another society, corporation, association or partnership or that is, in the opinion of the Registrar, likely to confuse or mislead the public.

## PART II

## CAPACITY AND POWERS

**Capacity and powers**

- 13.(1)** A society has the capacity, and, subject to this Act, the rights, powers and privileges of an individual.
- (2) A society has the power to carry on its business, conduct its affairs and exercise its powers in any jurisdiction outside Barbados to the extent that the laws of Barbados and of that jurisdiction permit.
- (3) It is not necessary for a by-law to be passed to confer any particular power on a society or its managers or members.  
*[2001-29]*
- (4) This section does not authorise any society to carry on any business or activity in breach of
- (a) any enactment prohibiting or restricting the carrying on of the activity;
- or

- (b) any provision requiring any permission or licence for the carrying on of the business or activity.

### PART III

### CAPITAL

#### **Quotas**

**14.(1)** Quotas in a society are personal property, and a quota is transferable in the manner provided in the by-laws.

(2) By-laws may prohibit the transfer of quotas.

(3) A member of a society may acquire quotas in the society by making contributions to the capital of the society

(a) in money; or

(b) in property that is the fair equivalent of the money that the society would have received if the contribution had been made for money.

(4) For the purposes of this Act

(a) services to a society shall not be accepted *in lieu* of money or property as a contribution to the capital of a society; and

(b) property does not include a promissory note or a promise to pay.

(5) A member may transfer his quotas in the manner provided in the by-laws, but the transferee shall not become a member of, or participate in the management of the business and affairs, of the society unless all of the other members of the society unanimously consent in writing to the transfer.

(6) A transferee referred to in subsection (5) who does not become a member of the society is only entitled to receive dividends or other compensation by way of income and the return of contributions to which the transferor would, but for the transfer, have been entitled.

**Acquisition by society of own quotas**

**14A.(1)** Subject to this Act and to its articles, a society may purchase or redeem or otherwise acquire quotas issued by it in like manner as is provided in respect of shares under sections 39 to 41 of the *Companies Act*, Cap. 308 with such modifications and adaptations as the circumstances require.

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[2001-29]

**Liability for contribution**

- 15.** Every member of a society shall
- (a) contribute to the capital of the society the amount specified in the by-laws and at the times and on the conditions set out therein; and
  - (b) return to the society the amount of any distribution made in contravention of this Act.

**Failure to make contribution or to return distribution**

- 16.** Every member of a society is liable
- (a) to make the contributions referred to in section 15(a); and
  - (b) to return a distribution referred to in section 15(b),

and the by-laws of a society may provide that the quotas of any member who fails to make a contribution that he is required to make or to return a distribution received in contravention of this Act shall be available to the society to satisfy the member's liability.

**One or more class of quotas**

- 17.(1)** When a society has only one class of quotas, the rights of the members are equal in all respects, and include
- (a) the right to vote at any meeting of members;

- (b) the right to receive any distribution by the society;
  - (c) the right to receive the remaining property of the society on dissolution.
- (2) The articles of a society may provide for more than one class of quotas; and, if they so provide,
- (a) the rights, privileges, restrictions and conditions attaching to the quotas of each class must be set out in the articles; and
  - (b) the rights set out in subsection (1) must be attached to at least one class of quotas, but all of those rights need not be attached to the same class of quotas.

#### PART IV

#### MANAGEMENT OF SOCIETIES

##### *The Managers and Members*

#### **Managers**

- 18.(1)** Where the by-laws of a society so provide, the members thereof may appoint one or more managers in whom the management of the society shall vest.
- (2) Every member shall be elected annually by the members in the manner provided in the by-laws of the society, and shall hold the offices and have the responsibilities accorded thereto by the members and set out in the by-laws.
- (3) Within 15 days after a change is made among its managers, a society must send to the Registrar a notice in the prescribed form setting out the change; and the Registrar must file the notice.
- (4) Any interested person, or the Registrar, may apply to the court for an order to require a society to comply with subsection (3); and the court may so order and make any further order it thinks fit.

**19.** *[Repealed by 2004-7.]*

*Borrowing Powers of Societies***Borrowing powers**

20.(1) Unless the by-laws of the society otherwise provide, one manager or more of the society, without authorisation of the members, or, where there are no managers, any 2 members with authorisation of the other members, may

- (a) borrow money upon the credit of the society;
- (b) issue, re-issue, sell or pledge debentures of the society;
- (c) give a guarantee on behalf of the society to secure performance of an obligation of any person; and
- (d) mortgage, charge, pledge, all or any property of the society that is owned or subsequently acquired by the society or otherwise create a security interest in any such property.

(2) For the purposes of this Act, “security interest” means any interest in or charge upon any property of a society, by way of mortgage, bond, lien, pledge or other means, that is created or taken to secure the payment of an obligation of the society.

**Distribution**

21.(1) Subject to subsection (2), a society may distribute its property to members of the society in accordance with the provisions of the by-laws.

(2) A society shall not distribute its property to its members if there are reasonable grounds for believing that

- (a) the society is unable, or would, after that distribution, be unable to pay its liabilities as they become due; or
- (b) the realisable value of the society’s assets would after that payment be less than the aggregate of its liabilities.

(3) Subject to the by-laws, a distribution shall be made in money only.

## PART V

## CORPORATE RECORDS

*Registered Office of Society***Registered office**

- 22.(1)** A society must at all times have a registered office in Barbados.
- (2) The managers of the society may change the address of the registered office.

**Notice of address**

- 23.(1)** At the time of sending articles of organisation, the members must send to the Registrar, in the prescribed form, notice of the address of the registered office of the society; and the Registrar must file the notice.
- (2) A society shall, within 15 days of any change of the address of its registered office, send to the Registrar a notice in the prescribed form of the change, which the Registrar must file.

*Registers and Records***Records**

- 24.(1)** A society shall prepare and maintain at its registered office records containing
- (a) the articles and the by-laws, and all amendments thereto; and
  - (b) minutes of meetings and resolutions of members.
- (a) the name and the latest known address of each person who is a member;
- (b) a statement of each member's contribution to the capital of the society;
- and

- (c) the date on which each person was entered on the register as a member, and the date on which any person ceased to be a member.

*Annual Audit*

**Annual audit**

**25.(1)** The annual financial statements of a society whose gross revenue or whose assets exceed \$1 000 000 shall be audited at least once in every financial year by an auditor appointed by the society.

(2) The auditor appointed pursuant to subsection (1) must be a member of the Institute of Chartered Accountants of Barbados and must hold a practising certificate of the Institute.

(3) It is the duty of the auditor appointed pursuant to subsection (1) to submit a report to the members of the society.

(4) A copy of the financial statements referred to in this section shall be sent to the Registrar together with the prescribed fee, within 21 days before each annual meeting of the members and the Registrar shall file the copy.

*Accounts, Minutes and other Records*

**Other Records**

**26.(1)** In addition to the records described in section 24, a society shall prepare and maintain adequate accounting records and records containing minutes of meetings and resolutions of the managers, or as the case may be, the members.

(2) When any accounting records of a society are kept at a place outside Barbados, accounting records that are adequate to enable the managers to ascertain the financial position of the society with reasonable accuracy on a quarterly basis must be kept by the society at the registered office of the society

or at some other place in Barbados designated by the managers, or as the case may be, the members.

*Form of Records*

**Records form**

- 27.** All records required by this Act to be prepared and maintained
- (a) may be in a bound or loose-leaf form or in a photographic film form; or
  - (b) may be entered or recorded
    - (i) by any system of mechanical or electronic data processing, or
    - (ii) by any other information storage device
- that is capable of reproducing any required information in intelligible written form within a reasonable time.

*Care of Records*

**Duty of care for records**

- 28.** A society and its agents shall take reasonable precautions
- (a) to prevent loss or destruction of;
  - (b) to prevent falsification of entries in; and
  - (c) to facilitate detection and correction of inaccuracies in,
- the records required by this Act to be prepared and maintained in respect of the society.

*Access to Records***Access to records**

29.(1) The managers and members of a society, and their agents and legal representatives, may, during the usual business hours of the society, examine the records of the society referred to in section 24 and may take extracts therefrom free of charge.

(2) A member of a society is, upon request and without charge, entitled to one copy of the articles and by-laws of the society and to one copy of any amendments to any of those documents.

(3) The creditors of a society and their agents and legal representatives may, during the usual business hours of the society, with the consent, in writing, of the managers, or as the case may be, any 2 members, and upon payment of a reasonable fee, examine the records referred to in paragraph (a) of subsection (1) of section 24 and subsection (2) of that section.

(4) Notwithstanding subsection (3), no person shall have access to

- (a) any information that the society reasonably believes to be a trade secret;
- (b) any information the society believes the disclosure of which is likely to be injurious to the society, its business or its members; and
- (c) any information the society is required by law or by an agreement with a third party not to disclose.

(5) Creditors of a society may make copies of records referred to in subsection (3) and may take extracts therefrom.

(6) A member of a society is, upon request and on payment of the charge fixed by the society, entitled to obtain from the society for any purpose reasonably related to the member's interest as a member, the following

- (a) information regarding the status of the business and financial condition of the society;

- (b) a list of all members entitled to receive notice of a meeting and the latest business, residence or mailing address of each member and the date on which each member became a member of the society;
- (c) a copy of the articles and by-laws of the society and all amendments to the articles and by-laws;
- (d) information regarding the amount of cash and a description and statement of the agreed value of any other property contributed by each member and which each member has agreed to contribute but has not yet contributed; and
- (e) any other information regarding the affairs of the society as may be just and reasonable.

## PART VI

### DISSOLUTION OF SOCIETY

#### **Dissolution**

**30.** A society is dissolved and its affairs shall be wound up upon the first of the following to occur

- (a) at the end of the period fixed for the duration of the society;
- (b) by unanimous resolution of all the members;
- (c) upon
  - (i) the death, retirement, resignation, expulsion, bankruptcy or insolvency of a member,
  - (ii) the dissolution of a member, or
  - (iii) the occurrence of any other event which terminates the membership of a member,

unless the articles or by-laws otherwise provide, or, in the absence of any such provision, the remaining members by unanimous resolution otherwise resolve;

- (d) upon the occurrence of any event that makes it unlawful to carry on the business of the society;
- (e) upon the order of a court under section 34.

### **Intent to dissolve**

**31.(1)** At least one year before the period referred to in section 30(a) the society shall file a statement of intent to dissolve with the Registrar in the prescribed form.

(2) Upon receipt of a statement of intent to dissolve the Registrar shall issue a certificate of intent to dissolve.

(3) When a certificate of intent to dissolve is issued by the Registrar, the society shall cease to carry on business except to the extent necessary for its dissolution; but its existence continues until the Registrar issues a certificate of dissolution of the society.

(4) After the issue of a certificate of intent to dissolve it, the society shall

- (a) immediately cause notice of its intent to dissolve to be sent to each known creditor of the society;
- (b) forthwith publish in the *Gazette* and in a newspaper published or circulated in Barbados, its intent to dissolve, and take reasonable steps to give notice of its intent in every jurisdiction in which the society is registered or has a place of business at the time it sent the statement of intent to dissolve to the Registrar;
- (c) proceed to collect its property, dispose of properties that are not to be distributed in kind to its members, to discharge all obligations, and to do all other acts required to liquidate its business; and

- (d) after giving the notice required under paragraphs (a) and (b) and adequately providing for the payment or discharge of all its obligations, distribute its remaining property, either in money or in kind, among its members according to their respective rights.

### **Articles of dissolution**

**32.(1)** When all obligations of the society have been discharged, or adequate provision has been made therefor, and all of the remaining property and assets of the society have been distributed to the members, articles of dissolution shall be filed with the Registrar.

- (2) Articles of dissolution shall set out the following
  - (a) the name of the society with restricted liability;
  - (b) the fact that a statement of intent to dissolve the society has been filed with the Registrar and the date on which such statement was filed;
  - (c) the fact that all obligations have been discharged, or that adequate provision has been made therefor;
  - (d) the fact that all the remaining property and assets have been distributed among its members in accordance with their respective quotas;
  - (e) the fact that there are no suits pending against the society in any court or that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending suit.

### **Continuation of action**

**33.(1)** In this section, “member” includes the legal representatives of a member.

- (2) Notwithstanding the dissolution of a society under this Act
- (a) a civil, criminal or administrative action or proceeding commenced by or against the society before its dissolution may be continued as if the society had not been dissolved;
  - (b) a civil, criminal or administrative action or proceeding may be brought against the society within 2 years after its dissolution as if the society had not been dissolved; and
  - (c) any property that would have been available to satisfy any judgment or order if the society has not been dissolved remains available to satisfy the judgment or order.

### **Court dissolution**

**34.** The Registrar, a member or any interested party may apply to the court for an order dissolving a society, if the society

- (a) has procured its articles of organisation through fraud;
- (b) has exceeded the authority conferred upon it by law;
- (c) has procured any certificate under this Act by misrepresentation;
- (d) has conducted its business in an oppressive, fraudulent or prejudicial manner;
- (e) has committed any other act contrary to the public policy of Barbados.

### **Registrar's dissolution**

**35.(1)** Subject to subsection (2), the Registrar may dissolve a society where the society

- (a) fails to file its annual financial statements or pay the prescribed fee for filing the annual financial statements within the time specified by this Act;

- (b) fails, in the case of an international society, for 60 days to appoint a registered agent in Barbados; or  
*[2001-29]*
- (c) fails, for 60 days after change of its registered office or, in the case of an international society, the registered agent of the international society, to file with the Registrar a statement of such change.  
*[2001-29]*

(2) No society shall be dissolved under subsection (1) unless the Registrar has given the society not less than a 90 days' notice of the proposed dissolution, stating the reasons therefor and addressed to its registered office or to its principal place of business, and the society has failed prior to such dissolution to correct the omission.

(3) Where the Registrar dissolves a society under subsection (2), he shall issue a certificate to that effect and mail the certificate to the society at its registered office or its principal place of business.

### **Revival**

**36.(1)** When a society has been dissolved, any interested person may apply to the Registrar to have the society revived.

(2) Where the Registrar approves the application for the revival of the society, articles of revival in the prescribed form may be sent to the Registrar, who must thereupon issue a certificate of revival in the prescribed form.

(3) A society is revived on the date shown in its certificate of revival; and thereafter the society, subject to such reasonable terms as may be imposed by the Registrar, and to any rights acquired by any person after the dissolution of the society, has all the rights and privileges and is liable for the obligations, that it would have had and for which it would have been liable had it not been dissolved.

(4) A society that has been dissolved pursuant to section 30(a) may not be revived.

**Waiver of notice**

**37.** Where a notice or document is required to be sent pursuant to this Act, the sending of the notice or document may be waived, or the time for the sending of the notice or document may be waived or abridged, at any time with the consent in writing of the person entitled to the notice or document.

**Service on society**

- 38.** A notice or document may be served on a society
- (a) by leaving it at, or sending it by telex, facsimile message or prepaid post or cable addressed to, the registered office of the society; or
  - (b) by personally serving any manager, member, officer, receiver, receiver manager or liquidator of the society.

**PART VII****INTERNATIONAL SOCIETIES**

[2001-29]

**Application of Part VII**

**39.** This Part applies to international societies only, unless otherwise specifically stated in this Part.

[2001-29]

**International society**

**40.(1)** A society or a person who intends to organise a society may apply to the Minister in the prescribed form for a licence for the society to operate as an international society.

(1A) The Minister may by instrument in writing delegate the power conferred on him by this section to the Director or, in the absence of the Director, to the

Deputy Director of International Business; but the delegation shall not preclude the Minister from exercising at any time the power so delegated.

[2001-29]

(2) Where an application is approved by the Minister, he may issue a licence subject to such conditions as he may specify in the licence, and upon payment of the prescribed fee.

(3) No international society granted a licence under this Act shall engage in any business that is prohibited by this Act.

[2001-29]

(4) Unless cancelled under subsection (5), a licence remains in force until the 31st December of the year in which it was issued, and may be renewed before the 1st day of January in each year on payment of the prescribed fee.

(4A) A society that fails to renew a licence within the time required by this section may apply to the Minister no later than 1st February of the relevant year for the renewal of the licence.

[2004-7]

(4B) The Minister may renew a licence pursuant to subsection (4A) upon payment of

(a) the prescribed fee for late renewal; and

(b) a penalty equal in amount to the prescribed fee for late renewal.

[2007-26]

(4C) Where a society fails to pay the penalty imposed by subsection (4B) within 30 days of the date on which the penalty becomes payable, the penalty may be recovered as a debt due to the Crown in civil proceedings before a magistrate for District "A".

[2004-7]

(4D) Where a society fails to renew a licence within the time specified in subsection (4A), the society may apply to the Minister to be reinstated as a licensee.

[2005-17]

(4E) An application by a society for reinstatement shall be made within 5 years of the date of expiration of its licence.

[2005-17]

(4F) A person may reinstate a society as a licensee upon payment of the prescribed fee for reinstatement.

[2007-26]

(4G) A person may, upon payment of the prescribed fee, require and obtain from the Minister a certified copy of

- (a) a licence issued; or
- (b) a renewal or reinstatement certificate issued in respect of a licence renewed or a society reinstated as a licensee,

pursuant to this section.

[2007-26]

(5) Subject to subsection (6), the Minister may by notice in writing cancel or refuse to renew a licence or reinstate a society as a licensee

- (a) where the society
  - (i) contravenes subsection (3);
  - (ii) fails to comply with a condition of its licence;
  - (iii) otherwise fails to comply with any requirement of this Act; or
  - (iv) in relation to an application in respect of a licence under this Part, knowingly
    - (A) makes an untrue statement of a material fact;
    - (B) omits to state a material fact;
    - (C) makes a statement containing information that is misleading in light of the circumstances in which it is made; or

[2007-26]

- (b) on the grounds of public policy.

[2007-26]

- (6) Where the Minister intends
- (a) to cancel the licence of a society;
  - (b) not to renew the licence; or
  - (c) not to reinstate a society as a licensee,

the Minister shall give the society written notice of his intention and the reasons for it.

[2007-26]

- (7) A notice given under subsection (6) shall state that the international society may within 21 days of service of the notice make representation in writing to the Minister as to why the Minister should not take the action intended.

[2001-29]

- (8) A society aggrieved by a decision of the Minister pursuant to subsection (5) may, within 30 days after it is notified of the decision, apply to the High Court for an order requiring the Minister to

- (a) revoke the cancellation of the licence;
- (b) renew the licence; or
- (c) reinstate the society as a licensee,

as the case may be; and the Court may make such order as it thinks fit in the circumstances.

[2007-26]

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[2007-26]

### **Requirements for international society**

- 41.(1)** Subject to subsection (2), an international society may not
- (a) acquire or hold land in Barbados other than land required for its business held by way of lease or a tenancy agreement for a term not

exceeding the period fixed in the articles for the duration of the society or such shorter period as circumstances require;

[2004-7]

- (b) transact business with any person resident in Barbados;  
[2001-29]
- (c) take deposits from any person in contravention of the *Financial Institutions Act*, Cap. 324A.

(2) An international society may

- (a) acquire such goods and services in Barbados as it requires for the conduct of its business; and
- (b) transact in Barbados such business as may be prescribed with
  - (i) another international society;  
[2001-29]
  - (ii) an international business company licensed under the *International Business Companies Act*, Cap. 77;
  - (iii) [Repealed by 2002-5;]
  - (iv) an exempt insurance company licensed under the *Exempt Insurance Act*, Cap. 308A.

[2001-29]

(3) Nothing in this Act shall be construed as prohibiting an international society from effecting or concluding contracts or arrangements with persons in Barbados for the supply of goods and services to the society that are necessary for the purpose of enabling the society to carry on its business with persons outside Barbados.

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[2001-29]

**42.** [Repealed by 2004-7.]

**Special tax provisions**

**43.(1)** Subject to this section and section 44, *in lieu* of tax at the rate specified under the *Income Tax Act*, Cap. 73, there shall be levied and paid to the Commissioner of Inland Revenue in respect of every income year of a society a tax on the profits and gains of the society at the following rates

- (a) 2.5 per cent on all profits and gains up to \$10 000 000;
- (b) 2 per cent on all profits and gains exceeding \$10 000 000 but not exceeding \$20 000 000;
- (c) 1.5 per cent on all profits and gains exceeding \$20 000 000 but not exceeding \$30 000 000;
- (d) 1 per cent on all profits and gains in excess of \$30 000 000.

(2) A society may elect to take a credit in respect of taxes paid to a country other than Barbados provided that such an election does not reduce the tax payable in Barbados to a rate less than one per cent of the profits and gains of the society in any income year.

(3) Where the Minister responsible for Finance is satisfied that a society requires the services of specially qualified persons in order to carry out its business effectively from within Barbados and that

- (a) it is unable to acquire those services in Barbados; and
- (b) it is unable to retain or hire those services from outside the Caricom Region without special tax benefits being made available,

the Minister may grant a tax concession in respect of the income tax payable for those specially qualified persons who are resident outside the Caricom region.

[2001-29; 2007-7]

(4) The tax concession referred to in subsection (3) is one that allows a prescribed percentage of an employee's or contractor's salary, fees or any other emoluments

- (a) to be exempt from income tax in Barbados;
- (b) to be paid in a foreign currency in a trust account without being liable to income tax in Barbados as to the amount paid or any interest earned thereon; or
- (c) to be paid in some other prescribed manner in another currency or otherwise without being liable to income tax in Barbados,

notwithstanding any provision of the *Income Tax Act*, Cap. 73 or the *Exchange Control Act*, Cap. 71.

[2007-7]

#### **Exemption under Income Tax Act**

**44.** A society shall not be liable to pay any tax under the *Income Tax Act*, Cap. 73, except as is provided by section 43 in respect of an income year, nor shall it be liable under this or any other enactment to pay any other direct tax on its profits and gains in respect of that income year.

#### **Withholding tax**

**45.** Notwithstanding the *Income Tax Act*, Cap. 73, an international society need not withhold any portion of the distribution, interest or returns or other income paid or deemed to be paid by an international society to a person who is not resident in Barbados or who, if so resident, carries on the business of an international society or is a body referred to in paragraph (b)(ii), (iii) or (iv) of subsection (2) of section 41.

[2001-29]

**Machinery, equipment exempt from certain taxes and duties**

**46.(1)** An international society may import or purchase out of bond free of customs duty, consumption tax, *ad valorem* stamp duty and other like duties, taxes and imposts, such plant, machinery, equipment (excluding motor vehicles), fixtures, appliances, apparatus, tools and spare parts, and such raw materials, goods, components and articles, as are necessary for the society to carry on its business.

(2) The goods referred to in subsection (1) may only be imported or purchased out of bond free of the duties, taxes and imposts referred to in that subsection where the manager of the international society certifies to the Comptroller of Customs, in this Act referred to as the “Comptroller”, that the goods are imported or purchased for use exclusively by the society.

[2001-29]

(3) When an international society imports or purchases out of bond under this section any materials, goods or articles free of any duty, tax or impost, those materials, goods or articles shall not be sold or disposed of in Barbados, otherwise than in the ordinary course of the business, until after the expiration of 5 years from the date of importation, unless

(a) the sale or disposition is to another international society or to an international business company, an off-shore bank or an exempt insurance company; or

[2001-29]

(b) the amount of duty, tax or other impost that would have been payable had subsection (1) or (2) not applied is first paid to the Comptroller of Customs and a certificate of such payment is issued by the Comptroller.

[2001-29]

(4) Nothing imported or purchased free of any duty, tax or impost under this section by an international society shall, without the prior written approval of the Minister, be used for any purpose other than the purpose stated for customs when

it was so imported or purchased unless it is subsequently acquired by another person pursuant to subsection (3).

[2001-29]

(5) A person who contravenes any provision of this section commits an offence and is liable on summary conviction to a fine not exceeding \$10 000 or imprisonment for 2 years, or both.

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[2001-29]

### **Non-application of certain enactments**

47.(1) Subsection (4) of section 25 and paragraph (a) of section 35(1) do not apply to international societies.

(2) The *Exchange Control Act*, Cap. 71 does not apply to international societies.

[2001-29]

(3) An international society is exempt from *ad valorem* stamp duty except in respect of real estate situate in Barbados and shall pay a fixed duty as specified in the Schedule to the *Stamp Duty Act*, Cap. 91.

[2001-29]

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[2001-29]

### **Guarantee of benefits**

48.(1) The Minister may by agreement with an international society give assurances or guarantees to the society that all or any of the benefits and exemptions contained in this Act will apply to that society for a period of 30 years.

(2) An agreement referred to in subsection (1) is subject to negative resolution.

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[2001-29]

**Confidentiality**

**49.(1)** No person shall disclose any information relating to any application of a prospective international society or to the affairs of an international society, other than so far as such information forms part of the public record in the possession of the Registrar, except when authorised by the prospective international society or the international society to do so or when lawfully required to do so by a court of competent jurisdiction.

(2) A person who contravenes this section commits an offence and is liable on summary conviction to a fine of \$10 000 or imprisonment for a term of 2 years, or both.

(3) This section does not apply to any person carrying out any duty imposed on him by the *Income Tax Act*, Cap. 73 or otherwise acting in pursuance of any international agreement to which Barbados is a party.

(4) Subsections (3) and (5) of section 29 do not apply to this Part.

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[2001-29]

**Registered agent**

**50.(1)** An international society shall at all times maintain in Barbados a registered agent for the purpose of receiving service of process in all suits and proceedings by or against the society in Barbados, and of receiving all lawful notices.

(2) A society must have a registered office identical with the business office of the society's agent.

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[2001-29]

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PART VIII  
MOBILITY OF SOCIETY

**Societies moving to Barbados**

- 51.(1)** An entity
- (a) that is organised in a jurisdiction other than Barbados; and
  - (b) that has legal characteristics that would, if it were in Barbados, enable it to be organised as a society under this Act,

in this Act called an “overseas society” may, if not prohibited under the laws of that other jurisdiction, apply to the Registrar for a certificate of continuance under this Act.

- (2) An application under subsection (1) must be made by articles of continuance in the prescribed form.
- (3) Articles of continuance may without, so stating in the articles, effect any amendment to the organisational instruments of the overseas society that applies for continuance under this section if the amendment
  - (a) is authorised in accordance with the law applicable to the overseas society before continuance under this Act; and
  - (b) is an amendment that a society under this Act is entitled to make.

**Articles of continuance**

- 52.(1)** Articles of continuance shall be written in the English language, but if they are written in a language other than English, articles of continuance shall be accompanied by a certified translation in the English language.
- (2) Articles of continuance shall
    - (a) be signed by all of the members and managers of the society;

- (b) state the name of the overseas society and the name under which it is being continued;
- (c) state the jurisdiction under which it is organised;
- (d) state the date on which it was organised; and
- (e) state such other provisions as are required for articles of organisation under this Act.

### **Certificate of continuance**

**53.(1)** Upon receipt of articles of continuance, the Registrar may issue a certificate of continuance in accordance with section 61.

- (2) On the date shown in the certificate of continuance
  - (a) the overseas society becomes a society to which this Act applies as if the society had been organised under this Act;
  - (b) the articles of continuance become the articles of incorporation of the continued society; and
  - (c) the certificate of continuance is the certificate of organisation of the continued society.

### **Preservation of society**

- 54.(1)** When an overseas society is continued as a society under this Act
- (a) the property of the overseas society becomes the property of the society;
  - (b) the society continues to be liable for the obligations of the overseas society;
  - (c) an existing cause of action, claim or liability to prosecute is unaffected;
  - (d) a civil, criminal or administrative action or proceeding pending by or against the external society may be continued by or against the society; and

- (e) a conviction against, or ruling, order or judgment against or in favour of, the external society may be enforced against the society.
- (2) Any contribution to the capital of an overseas society made before the overseas society was continued under this Act is presumed to have been made in compliance with this Act and with the provisions of the articles of continuance; and continuance under this Act does not deprive a member of any right or privilege that he claims pursuant to his contribution to the society, nor does it relieve him of any liability to the society.

### **Society leaving Barbados**

**55.** Subject to section 57 a society may

- (a) if it is authorised by unanimous resolution of its members; and
- (b) if it is established to the satisfaction of the Registrar that the society's proposed continuance in another jurisdiction will not adversely affect the society's creditors or members,

apply to the appropriate official or public body of the other jurisdiction to be continued as a body corporate in the other jurisdiction as if it had been organised under the laws of the other jurisdiction.

### **Conditions applicable to society leaving Barbados**

**56.** A society may not apply for continuance in another jurisdiction, nor may it be continued under the laws of another jurisdiction, as a body incorporated in that other jurisdiction pursuant to section 55 unless the laws of that other jurisdiction provide that

- (a) the property of the society continues to be the property of the body corporate;
- (b) the body corporate continues to be liable for the obligations of the society;

- (c) any existing cause of action, claim or liability to prosecution is unaffected;
- (d) a civil, criminal or administrative action or proceeding pending by or against the society can be continued to be prosecuted by or against the body corporate; and
- (e) a conviction against or ruling, order or judgment in favour of or against, the society can be enforced by or against the body corporate.

### **Discontinuance and effect**

**57.(1)** Upon receipt of a notice satisfactory to him that a society that has made an application under section 55 has been continued as a corporation under the laws of another jurisdiction, the Registrar must file the notice and issue a certificate of discontinuance in accordance with this Act.

(2) After a certificate of discontinuance is issued under subsection (1) in respect of a society that is continued as a corporation under the laws of another jurisdiction, the society's name shall be removed from the register of societies; but such removal does not affect section 56.

(3) For the purposes of this Part, "body corporate" includes a body organised in another jurisdiction under legislation similar to this Act; and "incorporate" and "corporation" shall be construed accordingly.

## PART IX

### ADMINISTRATION

#### *Registrar*

### **Responsibility**

**58.(1)** The Registrar is, under the general supervision of the Minister, responsible for the administration of this Act.

(2) A seal may be prescribed by the Minister for use by the Registrar in the performance of his duties.

### **Service upon Registrar**

**59.** A document may be served upon the Registrar by leaving it at the office of the Registrar or by sending it by telex, facsimile or by prepaid post or cable address to the Registrar at his office.

### *Register of Societies*

### **Register of societies**

**60.** The Registrar shall maintain a register of societies in which shall be kept the name of every society

- (a) that is organised under this Act;
- (b) that is continued as a society under this Act;
- (c) that is restored to the register pursuant to this Act;
- (d) that has been revived under this Act; and
- (e) that has not subsequently been struck off the register.

### **Filed articles**

**61.(1)** In this section, “statement” means a statement of intent to dissolve a society.

(2) Where this Act requires that articles or a statement relating to a society be sent to the Registrar, unless otherwise specifically provided

- (a) two copies, in this section called “duplicate originals”, of the articles or the statement must be signed by the managers, or, as the case may be, by any 2 members with authorisation of the other members; and

- (b) upon receiving duplicate originals of any articles or statement that conform to law, and any other required documents and the prescribed fees, the Registrar must
- (i) endorse on each of the duplicate originals the word “registered” and the date of the registration;
  - (ii) issue in duplicate the appropriate certificate and attach to each certificate one of the duplicate originals of the articles or statement;
  - (iii) file a copy of the certificate and attached articles or statement;
  - (iv) send to the society or its representative the original certificate and attached articles or statement; and
  - (v) publish in the *Gazette* notice of the issue of the certificate.
- (3) A certificate referred to in subsection (2) and issued by the Registrar may be dated as of the day he receives the articles, statement or court order pursuant to which the certificate is issued, or as of any later day specified by the court or person who signed the articles or statement.
- (4) A signature required on a certificate referred to in subsection (2) may be printed or otherwise mechanically reproduced on the certificate.

*Removal from Register*

**Striking off register**

- 62.(1)** The Registrar may strike off the register a society if
- (a) the society fails to send any return, notice, document or prescribed fee to the Registrar as required pursuant to this Act;
  - (b) the society is dissolved;
  - (c) the society is amalgamated with one or more societies or bodies corporate; or

- (d) the society does not carry out an undertaking to change its name.
- (2) Where the Registrar is of the opinion that a society is in default under paragraph (a) or (d) of subsection (1), he must send it a notice advising it of the default and stating that, unless the default is remedied within 30 days after the date of the notice, the society will be struck off the register.
- (3) After the expiration of the time mentioned in the notice, the Registrar may strike the society off the register and publish a notice thereof in the *Gazette*.
- (4) Where a society is struck off the register, the Registrar may, upon receipt of an application in the prescribed form and upon payment of the prescribed fee, restore it to the register and issue a certificate in a form adapted to the circumstances.

### Penalties

**62A.(1)** A person who makes or assists in making a report, return, notice or any other document

- (a) that is required by this Act or the regulations to be sent to the Registrar or to any other person; and
- (b) that
- (i) contains an untrue statement of a material fact; or
  - (ii) omits to state a material fact required in the report, return, notice or other document, or makes a statement containing information therein that is misleading in light of the circumstances in which it was made,

commits an offence and is liable on summary conviction to a fine of \$25 000 or to imprisonment for a term of 12 months or both.

(2) A person is not guilty of an offence under subsection (1) if the making of the untrue statement or the omission of the material fact was unknown to him and with the exercise of reasonable diligence could not have been known to him.

(3) Where an offence under subsection (1) is committed by the society or a manager of the society knowingly authorised, permitted or acquiesced in the commission of the offence, that society or manager is liable on summary conviction to a fine of \$25 000 or to imprisonment for a term of 12 months or to both.

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[2004-7]

PART X  
MISCELLANEOUS

**Investigation**

**63.**(1) The Minister may at any time appoint any person whom he thinks fit as an inspector, in this Act referred to as the “inspector”, to investigate the affairs of a society and to report on them in such manner as the Minister may direct.

(2) The expenses incurred in carrying out such investigations shall be borne by the society.

(3) Every member or manager of the society shall produce to the inspector such books or documents as the inspector may require for the purposes of his investigation; and without prejudice to subsection (4) a Judge in Chambers may on the application of the inspector by order compel the production of any such book or document.

(4) Any member or manager of the society who, in the course of an investigation of the affairs of the society

(a) refuses to produce any book or document required by the inspector to be produced; or

(b) refuses to answer any question relating to the affairs of the society,

is liable on summary conviction to a fine of \$5 000.

- (5) The inspector may take evidence upon oath in investigating the affairs of the society, and for that purpose may administer an oath.
- (6) Upon the completion of any investigation in accordance with this section, the inspector shall submit a report to the Minister and shall immediately thereafter deliver a copy of such report to the registered office of the society.
- (7) Where the Minister considers, after examining the report referred to in subsection (6), that the society or any of its members or managers have knowingly and wilfully done anything in contravention of this Act, he may direct the Registrar to petition the Court for the dissolution of the society.
- (8) A copy of the petition referred to in subsection (7) shall be served at the registered office of the society at least 7 clear days before the day set by the Court for the hearing thereof.
- (9) Where the Court, on hearing a petition, is satisfied that the society, or any of its members or managers, have done anything in contravention of this Act, the Court may
- (a) make an order for the dissolution for the society; or
  - (b) impose a fine of \$5 000 on any member or manager who has knowingly and wilfully authorised or permitted any such contravention.
- (10) Any proceedings in connection with the holding of an investigation by the inspector in pursuance of this section shall, for the purposes of the *Perjury Act*, Cap. 142, be deemed to be judicial proceedings.

### **Regulations**

- 64.(1)** The Minister may make regulations
- (a) for giving effect to this Act; and
  - (b) prescribing anything that is required or authorised by this Act to be prescribed.

(2) Notwithstanding subsection (1), regulations made under the *Companies Act*, Cap. 308, to the extent that they are not inconsistent with the express provisions of this Act or the regulations made hereunder, apply to this Act with the necessary adaptations and modifications as circumstance requires, and shall be used for giving effect to this Act.

**65.** The *Companies Act*, Cap. 308, to the extent that it is not inconsistent with the express provisions of this Act, applies to this Act with the necessary adaptations and modifications as circumstance requires.