

ANTIGUA AND BARBUDA



LAW (MISCELLANEOUS AMENDMENTS) (NO. 2) ACT, 2017

No. 14 of 2017

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ANTIGUA AND BARBUDA

LAW (MISCELLANEOUS AMENDMENTS) (NO. 2) ACT, 2017

ARRANGEMENT OF SECTIONS

SECTIONS

1. Short title
2. Amendment of the Companies Act, 1995
3. Amendment of the International Business Corporations Act, Cap. 222
4. Amendment of the Insurance Act, 2007
5. Amendment of the Cooperative Societies Act, 2010
6. Amendment of the Money Services Business Act, 2011
7. Amendment of the International Trust Act, 2007
8. Amendment of the International Foundations Act, 2007
9. Amendment of the International Limited Liability Companies Act, 2007
10. Amendment of the Corporate Management and Trust Service Providers Act, 2008
11. Amendment of the Financial Services Regulatory Commission Act, 2013
12. Amendment of the Automatic Exchange of Financial Account Information Act, 2016

[L.S.]



I Assent,

Rodney Williams,
Governor-General.

15th June, 2017.

ANTIGUA AND BARBUDA

LAW (MISCELLANEOUS AMENDMENTS) (NO. 2) ACT, 2017

No. 14 of 2017

AN ACT to amend the provisions of certain Acts of Parliament to strengthen the effectiveness of laws relating to anti-money laundering, countering of terrorism financing, the financial services sector, tax transparency and other incidental and related matters.

ENACTED by the Parliament of Antigua and Barbuda as follows—

1. Short title

This Act may be cited as the Law (Miscellaneous Amendments) (No. 2) Act, 2017.

2. Amendment of the Companies Act, 1995

The Companies Act, 1995 is amended by inserting after section 194 a new section 194A to read as follows —

“194A. Annual attestation on beneficial ownership and control

(1) A company shall submit annually an attestation report to the Commission on the beneficial ownership and control of the company, which shall include the following:

- (a) the name and address of any person who owns five percent or more of the total voting rights of the company;
- (b) where there is a nominee, the name and address of the ultimate beneficial owner for whom a person holds the shares or their ownership interest;
- (c) the name and address of any person who controls the company acting directly or indirectly, and acting individually or jointly;
- (d) the name of all of the directors and officers; and
- (e) any other information as the Commission may determine.

(2) Any company that wilfully fails to file an attestation report on beneficial ownership is liable to an administrative penalty of \$5,000 and for a further penalty of \$5,000 for each day of default.

(3) The administrative penalty levied pursuant to this section shall be recovered as a civil debt by the Company Registry.”

3. Amendment of the International Business Corporations Act Cap. 222

The International Business Corporations Act, Cap. 222 is amended by inserting after section 6 a new section 6A to read as follows —

“6A. Annual attestation on beneficial ownership and control

(1) A corporation shall submit annually an attestation report to the Commission on beneficial ownership and control of the corporation which shall include the following:

- (a) the name and address of any person who owns five percent or more of the total voting rights of the corporation;
- (b) where there is a nominee, the name and address of the ultimate beneficial owner for whom a person holds the shares or their ownership interest;
- (c) the name and address of any person who controls the corporation acting directly or indirectly, and acting individually or jointly;
- (d) the name of all of the directors and officers; and
- (e) any other information as the Commission may determine.

(2) Any corporation that wilfully fails to file an attestation report on beneficial ownership is liable to an administrative penalty of Five Thousand Eastern Caribbean Dollars and for a further penalty of Five Thousand Eastern Caribbean Dollars for each day of default.

(3) The administrative penalty levied pursuant to this section shall be recovered as a civil debt by the Commission.”

4. Amendment of the Insurance Act, 2007

The Insurance Act 2007 is amended by inserting after section 14 a new section 14A to read as follows —

“14A. Annual attestation on beneficial ownership and control

(1) An insurance company shall submit annually an attestation report to the Commission on beneficial ownership and control of the insurance company which shall include the following:

- (a) the name and address of any person who owns five percent or more of the company;
- (b) the name and address of any person who controls the company acting directly or indirectly, and acting individually or jointly;
- (c) the name of all of the directors and officers; and
- (d) any other information as the Commission may determine.

(2) Any insurance company that wilfully fails to file an attestation report on beneficial ownership is liable to an administrative penalty of Five Thousand Eastern Caribbean Dollars and for a further penalty of Five Thousand Eastern Caribbean Dollars for each day of default.

(3) The administrative penalty levied pursuant to this section shall be recovered as a civil debt by the Commission.”

5. Amendment of the Co-operative Societies Act, 2010

The Co-operative Societies Act 2010 is amended by inserting after section 21 a new section 21A to read as follows –

“21A. Annual attestation on beneficial ownership and control

(1) A co-operative society shall submit annually an attestation report to the Commission on beneficial ownership and control of the co-operative society, which shall include the following:

- (a) the name and address of any person who owns five percent or more of the shares of the co-operative society;
- (b) the name and address of any person who controls the corporative society acting directly or indirectly, and acting individually or jointly;
- (c) the name of all of the directors and officers; and
- (d) any other information as the Commission may determine.

(2) Any co-operative society that wilfully fails to file an attestation report on beneficial ownership is liable to an administrative penalty of Five Thousand Eastern Caribbean Dollars and for a further penalty of Five Thousand Eastern Caribbean Dollars for each day of default.

(3) The administrative penalty levied pursuant to this section shall be recovered as a civil debt by the Commission.”

6. Amendment of the Money Services Business Act, 2011

The Money Services Business Act 2011 is amended as follows —

(1) By repealing the words, “Money Services Business Act 2007” and “No. 9 of 2007” wherever these words appear in the Act and replacing these words in each case with the words “Money Services Business Act 2010, No. 7 of 2010”

(2) By inserting after section 15 the following new section 15A to read as follows—

“15A. Annual attestation on beneficial ownership and control

(1) A licensee shall submit annually an attestation report to the Commission on beneficial ownership and control of the licensee, which shall include the following:

- (a) the name and address of any person who owns five percent or more of the licensee;
- (b) the name and address of any person who controls the licensee acting directly or indirectly, and acting individually or jointly;
- (c) the name of all of the directors and officers; and
- (d) any other information as the Commission may determine.

(2) Any licensee that wilfully fails to file an attestation report on beneficial ownership is liable to an administrative penalty of Five Thousand Eastern Caribbean Dollars and for a further penalty of Five Thousand Eastern Caribbean Dollars for each day of default.

(3) The administrative penalty levied pursuant to this section shall be recovered as a civil debt by the Commission.”

7. Amendment of the International Trust Act, 2007

The International Trust Act 2007 is amended by inserting after section 18 the following new section 18A as follows—

“18A. Annual attestation on beneficial ownership and control

(1) A trust corporation shall submit annually an attestation report to the Commission on beneficial ownership and control of the trust corporation, which shall include the following:

- (a) the name and address of any person who owns five percent or more of the trust corporation;
- (b) the name and address of any person who controls the trust corporation acting directly or indirectly, and acting individually or jointly;
- (c) the name of all of the directors and officers; and
- (d) any other information as the Commission may determine.

(2) Any trust corporation that wilfully fails to file an attestation report on beneficial ownership is liable to an administrative penalty of Five Thousand Eastern Caribbean Dollars and for a further penalty of Five Thousand Eastern Caribbean Dollars for each day of default.

(3) The administrative penalty levied pursuant to this section shall be recovered as a civil debt by the Commission.”

8. Amendment of the International Foundations Act, 2007

The International Foundations Act 2007 is amended by inserting after section 18 the following new section as follows—

“18A. Annual attestation on beneficial ownership and control

(1) A foundation shall submit annually an attestation report to the Commission on beneficial ownership and control of the foundation, which shall include the following:

- (a) the name and address of any person who owns five percent or more of the foundation;

- (b) the name and address of any person who controls the foundation acting directly or indirectly, and acting individually or jointly;
- (c) the name of all of the directors and officers; and
- (d) any other information as the Commission may determine.

(2) Any foundation that wilfully fails to file an attestation report on beneficial ownership is liable to an administrative penalty of Five Thousand Eastern Caribbean Dollars and for a further penalty of Five Thousand Eastern Caribbean Dollars for each day of default.

(3) The administrative penalty levied pursuant to this section shall be recovered as a civil debt by the Commission.”

9. Amendment of the International Limited Liability Companies Act, 2007

The International Limited Liability Companies Act 2007 is amended by inserting after section 18 the following new section to read as follows –

“18A. Annual attestation on beneficial ownership and control

(1) A limited liability company shall submit annually an attestation report to the Commission on beneficial ownership and control of the limited liability company, which shall include the following:

- (a) the name and address of any person who owns five percent or more of the limited liability company;
- (b) the name and address of any person who controls the limited liability company acting directly or indirectly, and acting individually or jointly;
- (c) the name of all of the directors and officers; and
- (d) any other information as the Commission may determine.

(2) Any limited liability company that wilfully fails to file an attestation report on beneficial ownership is liable to an administrative penalty of Five Thousand Eastern Caribbean Dollars and for a further penalty of Five Thousand Eastern Caribbean Dollars for each day of default.

(3) The administrative penalty levied pursuant to this section shall be recovered as a civil debt by the Commission.”

10. Amendment of the Corporate Management and Trust Service Providers Act, 2008

The Corporate Management and Trust Services Providers Act 2008 by inserting after section 18 the following new section to read as follows:

“18A. Annual attestation on beneficial ownership and control

(1) A corporate management and trust service provider shall submit annually an attestation report to the Commission on the beneficial ownership and control of their clients, which shall include the following:

- (a) the name and address of any person who owns five percent or more of the their clients;
- (b) the name and address of any person who controls the clients acting directly or indirectly, and acting individually or jointly;
- (c) the name of all of the directors and officers; and
- (d) any other information as the Commission may determine.

(2) Any limited liability company that wilfully fails to file an attestation report on beneficial ownership is liable to an administrative penalty of Five Thousand Eastern Caribbean Dollars and for a further penalty of Five Thousand Eastern Caribbean Dollars for each day of default.

(3) The administrative penalty levied pursuant to this section shall be recovered as a civil debt by the Commission.”

11. Amendment of the Financial Services Regulatory Commission Act, 2013

The Financial Services Regulatory Commission Act 2013 is amended as follows —

(1) At section 2 by inserting the following definition in the appropriate alphabetical position to read as follows:

“document” includes a reference to certificates of incorporation, licences, notices, articles and any related document of the same class

(2) At section 4 by —

- (a) repealing subsection (4) and substituting the following:

“(4) As a general rule—

- (a) all deeds and instruments requiring the seal of the Commission shall be sealed with the common seal of the Commission by the authority of the

Board and signed by the Chairman or Chief Executive Officer and a Director; and

(b) any other document, except as specified at paragraph (a), which requires the common seal of the Commission and forms part of the registry functions of the Commission is to be signed, by the authority of the Board, by the Chief Executive Officer or any other officer appointed by a resolution of the Board in accordance with subsection (7).”

(b) repealing subsection (6) and substituting the following:

“(6) The Commission may, by resolution of the Board, appoint an officer of the Commission either generally or in a particular case to execute or sign on behalf of the Commission any agreement or other instrument not under seal in relation to any matter coming within the powers of the Commission; however an appointment of an officer pursuant to subsection (4) will include the power to sign in accordance with that subsection.”

(c) inserting after subsection (6) the following new subsection (7) to read as follows:

“(7) The Commission may, by resolution of the Board, specifically, appoint any officer of the Commission to act for the Chief Executive Officer whenever the Chief Executive Officer is absent or otherwise unable to perform his duties, and such officer shall have the power to sign in accordance with subsection 4.”

(3) At section 5 by inserting in subsection (1) after paragraph (c), the following new paragraph

(d) to read as follows—

“(d) registry functions, namely

(i) to be responsible to maintain a “Register of International Corporations” for which it has issued certificates of incorporation, licences and any other document pursuant to the International Business Corporation Act, the International Banking Act, the International Trust Act, the International Foundations Act and the International Limited Liabilities Companies Act, the register to include but is not limited to the name, address and other relevant information;

(ii) to be responsible to maintain a “Register of Domestic Corporations” for which it has issued certificates of incorporation, licences and any other document pursuant to the Insurance Act, the Co-operatives

Societies Act, the Money Services Business Act and the Corporate management and trust Services Providers Act;”

(4) At section 8 by inserting after subsection (3) a new subsection (4) to read as follows –

“(4) There shall be a Secretary of the Board who shall be appointed by the Minister with the approval of Cabinet. The Secretary shall attend all meetings of the Board, record all minutes of each meeting and perform any function which is necessary for the implementation of the work of the Board.”

12. Amendment of the Automatic Exchange of Financial Account Information Act, 2016

The Automatic Exchange of Financial Account Information Act 2016 is amended at section 9 by inserting after subsection (3) a new subsection (4) to read as follows –

“(4) A person who directly or indirectly discloses to any person any information in contravention of this Act or the Agreement, commits an offence punishable on conviction to a fine not exceeding One Hundred Thousand Dollars (\$100,000.) or to a term of imprisonment not exceeding five years, or to both such fine and imprisonment.”

Passed the House of Representatives on the
29th May, 2017.

Passed the Senate on the 21st
June, 2017.

Gerald Watt, Q.C.,
Speaker.

Alicia Williams-Grant,
President.

Ramona Small,
Clerk to the House of Representatives.

Ramona Small,
Clerk to the Senate.