

Ref: IPC 15/1

Wednesday 21<sup>st</sup> August, 2024

Mrs. Cherissa Roberts-Thomas  
President  
Antigua Barbuda Bar Association

Dear Madam,

### DECLARATION OF SOLVENCY

#### **NOTICE:**

1. Please note that in accordance with section 155 of the Companies Act, 1995 and subject to the exception contained in subsection 6 of section 155 of the said Act, a declaration of solvency must be made by all companies that are not:
  - a. public companies;
  - b. companies the gross revenue of which exceeds \$4,000,000.00; or
  - c. companies the assets of which exceed \$2,000,000.00.
  
2. Note further that in accordance with subsection 6 of section 155 of the Companies Act, 1995 a subsidiary company of either:
  - a. a public company;
  - b. a company the gross revenue of which exceeds \$4,000,000; or
  - c. a company the assets of which exceed \$2,000,000is not required to declare solvency if:
  - a. the financial statements of its holding company are in consolidated or combined form and include the accounts of the subsidiary, and
  - b. the consolidated or combined financial statements of the holding company are included in the documents sent to the Registrar by the holding company in compliance with section 154 of the Companies Act, 1995.
  
3. A copy of a form that may be used to declare solvency is enclosed herewith in Annex 3 on page 8.



4. The relevant provisions of the Companies Act, 1995, namely and primarily, section 155 and secondarily sections 154, 149, 150, 130, 74 and 170 are copied in the enclosed Annex 1 on page 3.

5. A note on auditors is also enclosed herewith as Annex 2 on page 7.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Kentish', is written over a faint, larger version of the same signature.

Mr. Kyle J. Kentish  
Deputy Registrar

Encl. 3:

Annex 1 - Companies Act, 1995 Provisions on Declaration of Solvency and related matters

Annex 2 – Note on Auditors

Annex 3 - Certificate of Solvency Form



## ANNEX 1

### Companies Act, 1995 Provisions on Declaration of Solvency and related matters

- s. 155 (1) Subject to this section, a company that is not pursuant to subsection (1) of section 154 required to send to the Registrar a copy of the documents referred to in section 149, shall within the period specified in the said subsection send to the Registrar
- (a) a certificate of solvency signed by at least one director on behalf of the board and by the auditor, if any, containing the statements and opinions required by subsection (2) made with reference to the company's assets and liabilities at the date on which the financial statements of the company laid before the annual general meeting or, as the case may be, of the signing of a resolution under paragraph (b) of subsection (1) of section 130 in lieu of the annual meeting, and
  - (b) a certificate signed by at least one director on behalf of the board and by the auditor, if any, that the certificate referred to in paragraph (a) agrees with the balance sheet and profit and loss account which form part of the financial statements.
- (2) A certificate of solvency shall state
- (a) the amounts shown in the company's balance sheet as the total values respectively of the company's fixed assets, current assets investments and other assets;
  - (b) the amount shown in the company's balance sheet as the total amount of the company's debt and liabilities, accrued due at, or accruing due within one year after, the date as at which the balance sheet is made out and the amount so shown as the total amount of the company's other debts and liabilities; and
  - (c) whether, in the opinion of the auditor, or if there is no auditor, of each director, the company was at the date at which the balance sheet was made out able or unable to pay its debts and liabilities as they fell due.
- (3) If the auditor of a company refuses to give or sign either of the certificates mentioned in subsection (2), a note of his refusal shall be endorsed on the certificate.
- (4) A director or auditor of a company who signs or sends to the Registrar or concurs in the sending to the Registrar of a certificate required by this section which contains a statement that is false, misleading or deceptive or an opinion that he has no reasonable ground to believe to be accurate, is guilty of an offence.
- (5) It is a sufficient defence if the person charged with an offence under this section proves that up to the time of the sending to the Registrar of the certificate he believed on reasonable grounds that this section had been complied with.



- (6) A company that is not required to comply with section 154 by virtue of subsection (5) of that section, is not required to comply with this section.

s. 154. (1) A company

- (a) that is a public company, or
- (b) the gross revenue of which, as shown in the most recent financial statements referred to in section 149, exceed \$4 000 000 or the assets of which as shown in those financial statements exceed \$2,000,000, or such greater amounts as may be prescribed

shall send a copy of the documents referred to in section 149 to the Registrar, not less than 21 days before each annual meeting of the shareholders or forthwith after the signing of a resolution under paragraph (b) of subsection (1) of section 130 in lieu of the annual meeting, and in any event not later than 15 months after the last date when the last preceding annual meeting should have been held or a resolution in lieu of the meeting should have been signed.

- (2) For the purposes of paragraph (b) of subsection (1), the gross revenues and assets of a company include the gross revenues and assets of its affiliates.
- (3) Upon the application of a company, the Registrar may exempt the company from the application of subsection (1) in the prescribed circumstances.
- (4) If a company referred to in subsection (1)
  - (a) sends interim financial statements or related documents to its shareholders, or
  - (b) is required to file interim financial statements or related documents with, or to send them to, a public authority or a recognised stock exchange,

the company shall forthwith send copies thereof to the Registrar.

- (5) A subsidiary company is not required to comply with this section if
  - (a) the financial statements of its holding company are in consolidated or combined form and include the accounts of the subsidiary, and
  - (b) the consolidated or combined financial statements of the holding company are included in the documents sent to the Registrar by the holding company in compliance with this section.

- s. 149. (1) Subject to this section and to section 150, the directors of a company shall place before the shareholders at every annual meeting of the shareholders of the company:
- (a) comparative financial statements, as prescribed, relating separately to

- (i) the period that began on the date the company came into existence and ended not more than 12 months after that date, or, if the company has completed a financial year, the period that began immediately after the end of the last period for which financial statements were prepared and ended not more than 12 months after the beginning of that period, and
    - (ii) the immediately preceding financial year:
  - (b) the report of the auditor, if any; and
  - (c) any further information respecting the financial position of the company and the results of its operations required by the articles of the company, its by-laws, or any unanimous shareholder agreement.
- (2) The financial statements required by sub-paragraph (ii) of paragraph (a) of subsection (1) may be omitted if the reason for the omission is set out in the financial statements, or in a note thereto, to be placed before the shareholders at an annual meeting.
- (3) The Registrar may in any particular case adjust the period relating to which comparable financial statements are to be placed before the shareholders at any annual meeting.
- s. 150. Upon the application of a company for authorization to omit from its financial statements any prescribed item, or to dispense with the publication of any particular prescribed financial statement, the Registrar may, if he reasonably believes that disclosure of the information therein contained would be detrimental to the company, permit its omission on such reasonable conditions as he thinks fit.
- s. 130. (1) Except where a written statement is submitted by a director under section 74 or an auditor under section 170,
- (a) a resolution in writing signed by all the shareholders entitled to vote on that resolution at a meeting of shareholders is as valid as if it had been passed at a meeting of the shareholders, and
  - (b) a resolution in writing dealing with all matters required by this Act to be dealt with at a meeting of shareholders, and signed by all the shareholders entitled to vote at that meeting, satisfies all the requirements of this Act relating to meetings of shareholders.
- (2) A copy of every resolution referred to in subsection (1) shall be kept with the minutes of the meetings of shareholders but failure so to keep such copy does not render void any action taken by the company.
- s. 74. (1) A director of a company is entitled to receive notice of, and to attend and be heard at, every meeting of shareholders.



- (2) A director
  - (a) who resigns,
  - (b) who receives a notice or otherwise learns of a meeting of shareholders called for the purpose of removing him from office, or
  - (c) who receives a notice or otherwise learns of a meeting of directors or shareholders at which another person is to be appointed or elected to fill the office of director, whether because of his resignation or removal, or because his term of office has expired or is about to expire,may submit to the company a written statement giving the reasons for his resignation or the reasons why he opposes any proposed action or resolution.
- (3) The company shall forthwith send a copy of the statement referred to in subsection (2) to the Registrar and to every shareholder entitled to receive notice of any meeting referred to in subsection (1).
- (4) No company or person acting on its behalf incurs any liability by reason only of circulating a director's statement in compliance with subsection (3).

s. 170. (1) An auditor who

- (a) resigns,
  - (b) receives a notice or otherwise learns of a meeting of shareholders called for the purpose of removing him from office,
  - (c) receives a notice or otherwise learns of a meeting of directors or shareholders at which another person is to be appointed to fill the office of auditor, whether because of the resignation or removal of the incumbent auditor or because his term of office has expired or is about to expire, or
  - (d) receives a notice or otherwise learns of a meeting of shareholders at which a resolution referred to in section 163 is to be proposed,
- may submit to the company a written statement giving the reasons for his resignation or the reasons why he opposes any proposed action or resolution.
- (2) When it receives a statement referred to in subsection (1), the company shall forthwith send a copy of the statement to every shareholder entitled to receive notice of any meeting referred to in section 168 and to the Registrar, unless the statement is included in, or attached to, a management proxy circular required by section 142.

## ANNEX 2

### Note on Auditors

Please continue to bear in mind that in accordance with section 162 (1) of the Companies Act, 1995 and subject to section 163, the shareholders of a company must, by ordinary resolution, at the first annual meeting of shareholders and at each succeeding annual meeting, appoint an auditor to hold office until the close of the next annual meeting.

By virtue of section 163 (1) the shareholders of a company other than a company mentioned in subsection (1) of section 154 may resolve not to appoint an auditor.

By section 158 (1) a person is eligible for appointment as auditor of a company only if he:

- (a) is a practicing member of a recognised supervisory body, and
- (b) is eligible for the appointment under the rules of that body.

By section 158 (2) An individual or a firm may be appointed as auditor of a company.

By section 158 (3) "recognised supervisory body", in section 158 of the Companies Act, 1995 means the Institute of Chartered Accountants of Antigua and Barbuda and any other body recognised as such by order of the Minister responsible for legal Affairs published in the Gazette.

By section 160 (1) a person is ineligible for appointment as auditor of a company if he is:

- (a) an officer or employee of the company, or
- (b) a partner or employee of such a person, or a partnership of which such a person is a partner

or if he is ineligible by virtue of paragraph (a) or (b) for appointment as auditor of any associated undertaking of the company.

By section 160 (2) A person is also ineligible for appointment as auditor if there exists between him and any associate of his and the company or any associated undertaking a connection of any such description as may be specified by regulations made under section 527 of the Companies Act, 1995.

Finally, by virtue of section 543 " auditor" includes a partnership of auditors.



ANNEX 3



**COMPANIES ACT OF ANTIGUA AND BARBUDA 1995**  
**No. 18 of 1995**  
**(Section 155)**

**CERTIFICATE OF SOLVENCY**

- 
1. Name of Company:.....
  2. Company No.:.....
  3. Name of Company's Auditor, if any:.....
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N.B.: A subsidiary company of either a public company or of a company the gross revenue of which, as shown in the most recent financial statements referred to in section 149 of the Companies Act, 1995, exceeds \$4,000,000 or the assets of which as shown in those financial statements exceed \$2,000,000, or such greater amounts as may be prescribed, is not required to send this certificate of solvency to the Registrar, if:

- (a) the financial statements of its holding company are in consolidated or combined form and include the accounts of the subsidiary, and
  - (b) the consolidated or combined financial statements of the holding company are included in the documents sent to the Registrar by the holding company in compliance with section 154 of the Companies Act, 1995.
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Please indicate whether the following statements and opinions at items 4-6 below are made with reference to:

- (a) the company's assets and liabilities at the date on which the financial statements of the company were laid before the annual general meeting; YES [ ] NO [ ] or
- (b) the signing of a resolution, under paragraph (b) of subsection (1) of section 130 of the Companies Act, 1995, in lieu of the annual meeting. YES [ ] NO [ ]

4. Assets

The amounts shown in the company's balance sheet as:

- i. Total value of Fixed Assets.....\$
- ii. Total value of Current Assets.....\$
- iii. Total value of Investment.....\$
- iv. Total value of Other Assets .....\$

5. Debt and Liabilities

The amounts shown in the company's balance sheet as:

- i. Total amount of the company's debt and liabilities, accrued due at, or accruing due within one year after, the date as at which the balance sheet is made out.....\$
- ii. Total amount of the company's other debts and liabilities.....\$

6. Please indicate whether the following is:

- (a) the auditor's opinion YES [ ] NO [ ]; or, if there is no auditor,
- (b) each director's opinion YES [ ] NO [ ],

the company was, at the date at which the balance sheet was made out, able to pay its debt and liabilities as they fell due YES [ ] NO [ ].



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7. Please indicate whether the company's auditor, if any, has refused to give or sign:
- (a) this certificate of solvency YES [ ] NO [ ]; and
  - (b) the below certification that the information in this certificate of solvency agrees with the balance sheet and profit and loss account which form part of the company's financial statements YES [ ] NO [ ].

Dated:.....

Name(s) of Director(s) signing on behalf of the board:.....

Signed:.....

\*N.B. The company's auditor, if any, must also sign this certificate.

Name of Company Auditor:.....

Signed:.....

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**CERTIFICATE UNDER SECTION 155 (1) (b) OF THE COMPANIES ACT, 1995**

The information in this certificate of solvency agrees with the balance sheet and profit and loss account which form part of the company's financial statements.

Name(s) of Director(s) signing on behalf of the board:.....

Signed:.....

\*N.B. The company's auditor, if any, must also sign this certificate.

Name of Company Auditor:.....

Signed:.....

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