



EXTRAORDINARY
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No. 14 of 2004

**AN ACT TO AMEND
THE INTERNATIONAL BUSINESS COMPANIES ACT**

[Date of Assent — 11th August, 2004]

Enacted by the Parliament of The Bahamas.

- Short title.** 1. This Act, which amends the International Business Companies Act,
Ch. 309. may be cited as the International Business Companies (Amendment) Act,
2004.
- Amends** 2. Section 2 of the principal Act is amended as follows -
section 2 (a) in the definition of the term "member" insert immediately
of the after the word "person" the words "or institution";
principal Act. (b) by the insertion in the appropriate alphabetical
position of the following -
" "Minister" means the Minister responsible for
companies.".
- Amends** 3. Section 4 of the principal Act is amended as follows -
section 4 (a) by renumbering section 4 as subsection (1); and
of the (b) by the insertion of the following section as subsection (2) -

principal Act.

"

(2) Nothing in this Act shall prohibit

an International Business Company from carrying on the business of external insurance provided such company is registered as an external insurer under the External Insurance Act."

Ch. 348.

Amends section 12 of the principal Act.

4. Subsection (1) of section 12 of the principal Act is amended by the insertion in the appropriate positions the words "Limited Liability Company" and the words "or its respective abbreviation LLC".

Amends section 15 of principal Act.

5. Section 15 of the principal Act is amended as follows -
(a) by the deletion of subsections (4), (5) and (6); and
(b) by renumbering subsection (7) as subsection (4).

Amends section 18 of the principal Act.

6. Subsection (2) of section 18 of the principal Act is amended by the deletion of the word "fourteen" and the substitution therefor of the word "twenty-eight".

Amends section 36 of the principal Act.

7. The principal Act is amended by the insertion immediately after section 36 of the following new section -
"Mortgages 36A.(1) A mortgage of shares or a charge and of shares of a company incorporated under this Act charges must be in writing signed by, or with the authority of,

of shares. the registered holder of the share to which the mortgage or charge relates.

(2) A mortgage of shares or a charge of shares of a company incorporated under this Act need not be in any specific form but it must clearly indicate -

- (a) the intention to create a mortgage or charge; and
- (b) the amount secured by the mortgage or charge or how that amount is to be calculated.

(3) A mortgage of shares or a charge of shares of a company incorporated under this Act may be governed by the law of a jurisdiction other than The Bahamas, but if a law other than the law of The Bahamas is specified as the governing law -

- (a) the mortgage or charge must be in compliance with the requirements of its governing law in order for the mortgage or charge

to be valid and binding on
the company; and

- (b) the remedies available to a mortgagee or chargee shall be governed by the governing law and the instrument creating the mortgage or charge save that the rights between the mortgagor or mortgagee as a member of the company and the company shall continue to be governed by the memorandum and the articles of the company and this Act.

(4) If no law is specified to govern a mortgage of shares or a charge of shares of a company incorporated under this Act, the instrument creating the mortgage or charge shall be governed by the laws of The Bahamas and, in the case of a default by the mortgagor or chargor on the terms of the

mortgage, the mortgagee or chargee is entitled to the following remedies -

- (a) subject to any limitations or provisions to the contrary in the instrument creating the mortgage or charge, the right to sell the shares; and
- (b) the right to appoint a receiver who, subject to any limitations or provisions to the contrary in the instrument creating the mortgage or charge, may -
 - (i) vote the shares;
 - (ii) receive dividends and other payments in respect of the shares, and
 - (iii) exercise other rights and powers of the

mortgagor or
chargor in respect
of the shares,
until such time as the
mortgage or charge is
discharged.

(5) Subsection (4) also applies to a mortgage of shares or a charge of shares of a company incorporated under this Act where the law of The Bahamas is specified as the governing law.

(6) Subject to any provisions to the contrary in the instrument of mortgage of shares or a charge of shares of a company incorporated under this Act, all amounts that accrue from the enforcement of the mortgage or charge shall be applied in the following manner -

- (a) firstly, in meeting the costs incurred in enforcing the mortgage or charge;
- (b) secondly, in discharging the sums secured by the mortgage or charge; and

- (c) thirdly, in paying any balance due to the mortgagor or chargor.

(7) The remedies referred to in subsection (4) are not exercisable until -

- (a) a default has occurred and has continued for a period of not less than 30 days, or such shorter period as may be specified in the instrument creating the mortgage or charge; and
- (b) the default has not been rectified within fourteen days from service of the notice specifying the default and requiring rectification thereof.

(8) In the case of a mortgage of shares or a charge of shares there may be entered in the share register of the company -

- (a) a statement that the shares are mortgaged or charged;
- (b) the name of the mortgagee or chargee; and
- (c) the date on which the statement and name are entered in the share register.

Optional 36B (1). A company incorporated under registration this Act may elect to submit for registration by the of registers. Registrar its register of mortgages and charges.

(2) A company that has elected to submit for registration a copy of its register of mortgages and charges shall, until it otherwise notifies the Registrar pursuant to subsection (3), submit for registration any changes in the register of mortgages and charges by substituting for registration a copy of the register containing the changes.

(3) A company that submits for registration a copy of its register with the Registrar may elect to cease registration of changes in the register by so informing the Registrar in writing.

(4) If a company elects to submit for registration its register pursuant to subsection (1), then, until such time as the company informs the Registrar pursuant to subsection (3) that it elects to cease to register changes in its register, the company is bound by the contents of the copy of its register submitted to the Registrar.

Optional registration of mortgages and charges.	36C.	A company incorporated under this Act may submit to the Registrar for registration -
		<ul style="list-style-type: none">(a) any document or copy of a document creating a mortgage, charge or other encumbrance over some or all its assets;(b) any document or copy of a document amending any document referred to in paragraph (a); and(c) any document releasing or discharging a mortgage, charge or other encumbrance over any or

all its assets,
and the Registrar must retain and register the
document or, as the case may be, the copy thereof.".

**Amends
section 37
of the
principal Act.**

8. Subsection (3) of section 37 of the principal Act is amended by the
the deletion of the word "seven" and the substitution therefor of the word
"fourteen".

**Amends
section 39
of the
principal
Act.**

9. The principal Act is amended by the insertion immediately after
section 39 of the following new sections -

"Registered 39A.(1) Where the registered agent of a
agent company desires to cease to act as registered agent
desiring and the registered agent is unable to reach an agree-
to cease ment with the company for which he is registered
to act. agent concerning his replacement, the following
provisions shall apply -

- (a) the registered agent shall
give not less than 90 days
written notice to any
director or officer of the
company of which he is
the registered agent at the
director's or officer's last

known address, or if the registered agent is not aware of the identity of any director or officer then the person from whom the registered agent last received instructions concerning the company, specifying the wish of the registered agent to resign as registered agent;

- (b) the registered agent shall, in writing, inform the Registrar that he has served the notice referred to in paragraph (a);
- (c) if, at the time of the expiry of the notice, the company has not notified the Registrar or the registered agent of any change in the name or address of its

registered agent, the registered agent shall inform the Registrar in writing that the company has not changed its registered agent whereupon the Registrar shall publish a notice in the Gazette that the name of the company will be struck off the Register, unless the company, within thirty days from the date of the publication of the notice in the Gazette, notifies the Registrar of the change in the name or address of its registered agent; and

- (d) if a company fails within thirty days from the date of the publication of the

notice referred to in paragraph (c) to notify the Registrar of the change in the name or address of its registered agent, the Registrar shall strike the name of the company off the Register and shall publish in the Gazette a notice that the name of the company has been struck off the Register.

(2) A company that has been struck off the Register under this section or section 39B remains liable for all claims, debts, liabilities and obligations of the company, and the striking-off shall not affect the liability of any of its members, directors, officers or agents.

Registered	39.B(1)	If the Registrar has reasonable
agent		cause to suspect that a registered agent has died or
ceasing		has otherwise ceased to act or to qualify to act as a
to act.		registered agent pursuant to section 39A and the

company has not notified the Registrar of any change in the name or address of its registered agent the Registrar shall serve on the company at its registered office, a notice directing the company to replace the registered agent.

(2) If the company fails within thirty days from the date of the notice to notify the Registrar of any change in the name or address of its registered agent, the Registrar shall strike the name of the company off the Register and shall publish in the Gazette a notice that the name of the company has been struck off the Register." .

**Amends
section 40
of the
principal
Act.**

10. Section 40 of the principal Act is repealed and replaced by the following -

"Management
by director.

40. Subject to any limitations in its Memorandum or Articles or in any unanimous shareholder agreement, the business and affairs of a company incorporated under this Act shall be managed by at least one director who may be an individual or a company." .

**Amends
section 44 of**

11. Section 44 of the principal Act is amended by the insertion immediately after subsection 5 of the following -

the principal Act.

" (6) The register of a company shall be filed with the Registrar within twelve months after the appointment of the directors and officers of that company.

(7) Where the register has not been filed within the time specified in subsection (6) the company may be struck off the Register.

(8) A notice of a change in the directors and officers of an International Business Company shall be filed with the Registrar within twelve months after such change occurs.".

Amends section 88 of the principal Act.

12. The principal Act is amended by the insertion immediately after section 88 of the following new section -

"Continuation 88A.(1) A company incorporated under the Companies Act under this Act or continued under this Act may, if it will satisfy the requirements for a company incorporated under the Companies Act continue as a company under that Act.

(2) The provisions of sections 84 and 87 of this Act shall apply mutatis mutandis to a company continued under the Companies Act as referred to under subsection (1).

(3) Where a company

incorporated under this Act has been issued a certificate of continuation to continue as a company incorporated under the Companies Act, section 187 of this Act shall not apply.".

**Amends
section 165
of the
principal Act.**

13. Section 165 of the principal Act is repealed and replaced by the following -

"Striking-
off.

165.(1) Where the Registrar has reasonable cause to believe that a company incorporated under this Act no longer satisfies the requirements prescribed for an International Business Company under section 14(1), 38(1) and 44 the Registrar shall serve on the company an order for compliance as prescribed in Part A of the Schedule.

(2) If the Registrar does not receive a reply within ninety days immediately following the date of the service of the order referred to in subsection (1), the Registrar shall strike the name of the company off the Register, unless the company or any other person satisfies the Registrar that the name of the company should not be struck off and the Registrar shall publish notice of the striking-off in the Gazette.

(3) Where a company has otherwise complied with the requirements of the Act the Registrar shall upon request by the company issue a declaration of compliance as prescribed in Part B of the Schedule.

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

**Amends
section 166
of the
principal Act.**

14. Section 166 of the principal Act is amended by the deletion of sub sections (1) and (3) and the substitution thereof of the following -

" (1) If the name of a company has been struck off the Register under section 165, the company or a creditor, member or liquidator thereof, may within five years immediately following the date of the striking off, apply to the Registrar to have the name of the company restored to the Register and upon payment to the Registrar of the prescribed fee and all fees due under this Act, the Registrar

shall restore the name of the company to the Register and upon restoration of the name of the company to the Register, the name of the company shall be deemed never to have been struck off the Register.

(3) If a company has been dissolved or the period of five years has expired under subsection (1) the company or a creditor, member or liquidator thereof, may apply to the court to have the name of the company restored to the Register. "

**Amends
section 176
of the
principal Act.**

15. Section 176 of the principal Act is amended -

- (a) by the deletion of subsection 3;
- (b) by renumbering subsections (4) and (5) as sections (5) and (6);
- (c) by the deletion of subsection (2) and the substitution therefor of the following new subsections -

" (2) If a company fails to pay the fee specified in the third item of the Schedule by the 1st day of April in each year the fee increases by ten per cent of that amount.

(3) If a company fails to pay the amount due as an increased fee under subsection (2) by 31st October, then, the

fee increases by fifty per cent of the fee specified in the Schedule.

(4) If a company fails to pay the increased licence fee referred to in this section by the 31st December, the Registrar shall strike the name of the Company off the Register from the 1st January next ensuing. "

Amends

section 187

of the

principal Act.

16. Section 187 of the principal Act is repealed and replaced by the

following -

"Exemptions

187.(1)

Notwithstanding any law to

from

the contrary a company incorporated or

certain

continued under this Act or a member or

taxes etc.

shareholder thereof shall not be subject to -

- (a) any business licence fee, income tax, corporation tax, capital gains tax or any other tax on income or distributions accruing to or derived from such company or in connection with any transaction to which that company or shareholder,

as the case may be, is a party;

- (b) any estate, inheritance, succession or gift tax, rate, duty, levy or other charge payable in The Bahamas with respect to any shares, debt obligations or other securities of that company or shareholder.

(2) Subsection (1) shall not apply to a person who is a resident of The Bahamas within the meaning of the Exchange Control Regulations Act or to a company incorporated or continued under this Act if a resident of The Bahamas within the meaning of the Exchange Control Regulations Act and the regulations made thereunder is the beneficial or legal owner of any of the common or preferred shares issued or to be issued by such company or acquires a legal or beneficial interest in any

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debt or other securities issued or to be issued by such company or is otherwise directly or indirectly entitled to receive any dividends or distributions from such a company.

(3) Notwithstanding any provision of the Stamp Act -

(a) all transactions in respect of the shares, debt obligations or the securities of a company incorporated under this Act; and

(b) all other transactions relating to the business of a company incorporated under this Act,

are exempt from the payment of stamp duty.

(4) Subsection (3) shall not apply to a resident of The Bahamas, within the meaning of the Exchange Control Regulations Act.

(5) Stamp duty shall be

payable by a company incorporated or continued under this Act in relation to real property situated in The Bahamas which it owns, or which is owned by any company in which it holds shares or for which it holds a lease.

(6) Where a company incorporated under this Act or continued under this Act desires to carry on business with persons resident in The Bahamas within the meaning of the Exchange Control Regulations Act that company must first obtain permission from the Central Bank with respect to its planned operations.

(7) Any resident of The Bahamas, within the meaning of the Exchange Control Regulations Act and the regulations made thereunder, shall, prior to acquiring ownership in any common or preferred shares or any other debt or other securities issued or to be issued by a company or continued under this Act including options or other contracts which

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are intended to confer rights to ownership or income derived from such a company, and any of whose members or shareholders are non-resident within the meaning of the Exchange Control Regulations Act, obtain permission from the Central Bank with respect to such acquisition.

(8) The exemptions granted by this section shall remain in force for a period of twenty years from the date of incorporation of a company under this Act or from the date of continuation under this Act as the case may be.

(9) The Exchange Control Regulations Act and the regulations made thereunder shall not in any manner apply to a company incorporated under this Act, the operations of which are or are intended to be exclusively overseas."

Ch. 360.

**Amends
section 196
of the**

17. Subsections (1) and (2) of section 196 of the principal Act is repeal and replaced by the following:

" (1) Notwithstanding the provisions of any other law all

**principal
Act.**

companies incorporated under any enactment repealed by this Act shall continue in existence until struck off the Register pursuant to section 165:

Provided that it shall not be necessary for a company to amend its Memorandum and Articles in order to satisfy the requirements of this Act."

**Insertion of
new Schedule
into the
principal Act.**

18. The principal Act is amended by the insertion immediately after the First Schedule of the following -

" **SECOND SCHEDULE** (section 165)

PART A

**THE INTERNATIONAL BUSINESS COMPANIES ACT
(Ch. 309)**

**THE INTERNATIONAL BUSINESS COMPANIES REGULATIONS, 2004
ORDER FOR COMPLIANCE**

To:.....
(Name of Company)

ADDRESS OF REGISTERED OFFICE:.....
.....

ADDRESS OF REGISTERED AGENT:.....
.....
.....

POSTAL ADDRESS,
ETC.....

The above-mentioned company has not satisfied the requirements of the following provisions of the International Business Companies Act.

(Include relevant sections)

A company that does not satisfy the requirements of the above-mentioned sections shall be struck off the Register. You have 90 days within which to comply with the requirements of the above-mentioned sections.

PART B

THE INTERNATIONAL BUSINESS COMPANIES ACT

(Ch. 309)

THE INTERNATIONAL BUSINESS COMPANIES REGULATIONS, 2004

DECLARATION OF COMPLIANCE

TO:.....
(Name of Company)

ADDRESS OF REGISTERED

OFFICE:.....
.....

ADDRESS OF REGISTERED

AGENT:.....
.....

POSTAL ADDRESS,.....

ETC:.....

The above-mentioned company has satisfied the requirements of the International Business Companies Act".