

**ANTIGUA AND BARBUDA
INTERNATIONAL BUSINESS CORPORATIONS ACT, CAP. 222,
AS AMENDED 1999 - 2002
ARRANGEMENT OF SECTIONS**

Section

1. Short title.
2. Interpretation.
3. Prescribed enterprises
4. International trade or business.

Part I - Constitution of Corporations

Division A: Incorporation

5. Incorporation.
6. Formalities.
7. Required votes.
8. Documentation.
9. Certificate of incorporation.
10. Effective date.
11. Corporate name.
12. Reserved name.
13. Name change.
14. Continued name.
15. Name revocation.
16. Assigned name.
17. Pre-incorporation contracts.

Division B: Corporate Capabilities

18. Capacity and powers.
19. Powers reduced.
20. Validity of acts.
21. Notice not presumed.

22. No disclaimer allowed.
23. Contracts of corporation.
24. Bills, notes.
25. Power of attorney.
26. Corporate seal.

Division C: Share Capital

27. Nature of shares.
28. If only one class.
29. Share classes.
30. Share issue.
31. Consideration.
32. Stated capital accounts.
33. Series shares.
34. Pre-emptive rights.
35. Conversion privileges.
36. Reserve shares.
37. Own shares.
38. Exceptions.
39. Acquisition of own shares.
40. Other acquisition.
41. Redeemable shares.
42. Donated shares.
43. Voting thereon.
44. Stated capital reduction.
45. Stated capital adjustment.
46. Cancellation of shares.
47. Presumption re own shares.
48. Changing share class.

- 49. Debt obligations.
- 50. Share purchase contract.
- 51. Prohibited dividend.
- 52. payment of dividend.
- 53. Illicit loans by corporation.
- 54. permitted gifts.
- 55. Prejudicial circumstances.
- 56. Permitted loans.
- 57. Enforcement of illicit loans.
- 58. Immunity of shareholders.
- 59. Lien on shares.

Division D: Management of Corporations

- 60. Duty to manage corporation.
- 61. Number of directors and residence.
- 62. Restricted powers.
- 63. By-law powers.
- 64. Organisational meeting.
- 65. Disqualified directors.
- 66. No qualification required.
- 67. Election of directors.
- 68. Termination of office.
- 69. Resignation of director.
- 70. Removal of director.
- 71. Right to notice.
- 72. Filling vacancy.
- 73. Numbers changed.
- 74. Notice of change.
- 75. Directors' meetings.

76. Notice and waiver.
77. Adjourned meeting.
78. One director board.
79. Telephone participation.
80. Delegation of powers.
81. Validity of acts.
82. Meeting by resolution.
83. Liability for share issue.
84. Liability for other acts.
85. Contribution for judgment.
86. Recovery by action.
87. Defence to liability.
88. Time limit on liability.
89. Interests in contracts.
90. Interest declaration.
91. Avoidance of nullity.
92. Setting aside contract.
93. Designation of offices. etc.
94. Borrowing powers.
95. Duty of care.
96. Dissenting to resolutions.
97. Indemnifying directors. etc.
98. For derivative actions.
99. Right to indemnity.
100. Insurance of directors, etc.
101. Court approval of indemnity.

Division E: The Shareholders

102. Place of meetings.

103. Attendance at meetings.
104. Calling meetings.
105. Record date of shareholders.
106. Statutory date.
107. Notice of record date.
108. Notice of meeting.
109. Special business.
110. Waiver of notice.
111. List of shareholders.
112. Examination of list.
113. Quorum at meetings.
114. Right to vote share.
115. Representative of other body.
116. Joint shareholders.
117. Voting method at meetings.
118. Ballot.
119. Resolution in writing.
120. Requisitioned shareholders meeting.
121. Court-called meeting.
122. Court review of controversy.
123. Pooling agreement.
124. Unanimous shareholder agreement.
125. Extra-ordinary transaction.
126. Registrant's duty.
127. Governing prohibition.

Division F: Corporate Records

128. Registered office.
129. Notice of address.

- 130. Records of corporation.
- 131. Trust Notices.
- 132. Other records.
- 133. Records form.
- 134. Duty of care for records.
- 135. Access to records.

Division G: Transfer of Securities

- 136. Transferring securities.
- 137. Restrictions on transfers.
- 138. Duty to certify.
- 139. Security certificate.
- 140. Registration.
- 141. Effect of certificate.

Division H: Financial Reports By Corporations

- 142. Annual financial returns.
- 143. Exemption for information.
- 144. Consolidated financial returns.
- 145. Approval of directors.
- 146. Copies to shareholders.
- 147. Auditor's qualifications.
- 148. Disqualifying auditor.
- 149. Appointment of auditor.
- 150. Dispensing with auditor.
- 151. Cessation of office.
- 152. Removal of auditor.
- 153. Filling auditor vacancy.
- 154. Court appointed auditor.
- 155. Auditor rights to notices.

- 156. Required attendance.
- 157. Right to comment.
- 158. Examination by auditor.
- 159. Detected error.
- 160. Privilege of auditor.

Division I: Fundamental Changes

- 161. Fundamental amendment to articles.
- 162. Proposal to amend articles.
- 163. Class vote on proposal.
- 164. Delivery of articles.
- 165. Certificate of amendment.
- 166. Re-stated articles.
- 167. Amalgamation.
- 168. Agreement for amalgamation.
- 169. Approval by shareholders.
- 170. Vertical short-form amalgamation.
- 171. Horizontal short-form amalgamation.
- 172. Articles of amalgamation.
- 173. Certificate of amalgamation.
- 174. Re organisation.
- 175. Arrangements.
- 176. Continuation as corporation.
- 177. Extended period.
- 178. Amending instrument.
- 179. Articles of continuance.
- 180. Certificate of continuance.
- 181. Non-continuance effect.
- 182. Continuing imported corporations.
- 183. Certificate of continuance.

- 184. Application for continuance.
- 185. Conditions precedent.
- 186. Import option.
- 187. Export option.
- 188. Preservation of rights.
- 189. Various shares.
- 190. Effect of discontinuance.
- 191. Dissent by shareholder.
- 192. Demand for payment.
- 193. Suspension of rights.
- 194. Offer to pay for share.
- 195. Application to court.
- 196. Joined parties.
- 197. Court powers.
- 198. Interest.
- 199. Recourse of dissenting shareholder.

Division J: Civil Remedies

- 200. Definitions.
- 201. Derivative actions.
- 202. Preliminary requirements.
- 203. Court powers.
- 204. Oppression restrained.
- 205. Staying action.
- 206. Interim costs.
- 207. Rectification of records.
- 208. Directions for Director.
- 209. Refusal by Director.

- 210. Appeal from Director.
- 211. Restraining order, etc.
- 212. Summary application.

Part II - Creditor Protection

- 213. Disqualified receivers.
- 214. Functions of receivers.
- 215. Functions of receiver-managers.
- 216. Directors' powers stopped.
- 217. Duty under court direction.
- 218. Duty under instrument.
- 219. Duty of care.
- 220. Directors by court.
- 221. Duties of receivers, etc.
- 222. Liability of receivers.
- 223. Notice of receivership.
- 224. Statement of affairs.
- 225. Contents of statement.

Part III - Regulation of International Businesses

Division A: Licensing Requirements

- 226. Definitions.
- 227. Pre-licensing required.
- 228. Tentative proposal.
- 229. Incorporation upon licence.
- 230. Appeal.
- 231. Formalities.
- 232. Examination of applicant.
- 233. Duty to issue or refuse.

- 234. Refusal of licence.
- 235. Conditions of licence.
- 236. Revocation of licence.
- 237. Appeal from revocation.

Division B: International Banking Business

- 238. Stated capital requirements.
- 239. Nature of its business.
- 240. Banking activities.
- 241. Identifying accounts.
- 242. Reporting.
- 243. Additional information.
- 244. Confidential matters protected.
- 245. Published statements.

Division C: International Trust Business

- 246. Stated capital requirements.
- 247. Powers, etc.
- 248. Foreign trust law.
- 249. Perpetuities, accumulations.
- 250. Funds awaiting disposition.
- 251. Common trust funds.
- 252. Separation of trust assets.
- 253. Dealing with trust assets.
- 254. Information confidential.

Division D: Abandoned Property

- 255. Abandoned property.
- 256. Disposal of abandoned property.
- 257. Sale of abandoned property.
- 258. Claims against property.

**Division E: Examination Of Banks, Trust
And Insurance Corporation**

- 259. Examination of affairs by official.
- 260. Powers of examiners.
- 261. Remedial actions.

Division F: International Insurance Business

- 262. Stated capital requirements.
- 263. Nature of business.
- 264. Exemption from laws.
- 265. Domestic insurance business.
- 266. Annual account statement.
- 267. Investigating corporation.
- 268. Revocation of licence.
- 269. Superintendent's duty.

Division G: Special Taxation Provisions

- 270. Residents.
- 271. Exempt corporations.
- 272. Exemption from tax.
- 273. No assets transfer tax.
- 274. Withholding tax and report.
- 275. Exempt trusts.
- 276. Duration of tax exemption.
- 277. Service charges.
- 278. Customs relief
- 279. Specialist incentives.
- 280. Exchange controls.
- 281. Stamp duty exemption.

Division H: Fees

- 282. Fees.
- 283. Payment of fees.

Part IV - Winding Up Corporations

- 284. Conditions on winding up.
- 285. Starting the winding up.
- 286. Protection of depositors, etc.
- 287. Appointment of receiver-manager.
- 288. Duties after seizure.
- 289. Priorities of claims.
- 290. Left over assets.
- 291. Dissolution by resolution.
- 292. No property.
- 293. Effect of articles of dissolution.
- 294. Proposing liquidation.
- 295. Intent to dissolve.
- 296. Supervised liquidation.
- 297. Revocation of intent.
- 298. Right to dissolve.
- 299. Director's dissolution.
- 300. Court dissolution.
- 301. Further grounds.
- 302. Supervision of court.
- 303. Dissolution reasons.
- 304. Court powers.
- 305. Cessation of business.
- 306. Appointment of liquidator.
- 307. Duties of liquidator.

- 308. Powers of liquidator.
- 309. Final accounts.
- 310. Money distribution.
- 311. Record custody.
- 312. Continuation of actions.
- 313. Unknown claimants.
- 314. State vested with property.
- 315. Revival of corporation.

Part V - Administration and General

Division A: Duties And Powers of the Authority and the Administrator

- 316. Establishment of the Authority.
- 317. Approval of the Board.
- 318. Register of IBC's.
- 319. Inspection of register.
- 320. Notices and service, etc.
- 321. Presumption of receipt.
- 322. Undelivered documents.
- 323. Notice waiver.
- 324. Certificate by corporation.
- 325. Evidentiary value.
- 326. Copies.
- 327. Filed articles.
- 328. Alteration of documents.
- 329. Correction of documents.
- 330. Proof of documents.
- 331. Retention of documents.
- 332. Director's certificate.
- 333. Refusal power.

- 334. Form of filing.
- 335. Striking off register.
- 336. Liability continues.
- 337. Service on corporation.
- 338. Reservation of name.
- 339. Prohibited name.
- 340. Refusal of articles
- 341. Amalgamated corporation.
- 342. Revival name.

Division B: Investigations

- 343. Investigation order.
- 344. Court powers.
- 345. Inspector's powers.
- 346. In camera hearing.
- 347. Incriminating evidence.
- 348. Privilege absolute.
- 349. Client privilege.
- 350. Inquiries.

Division C: Regulations

- 351. Regulations.

Division D: Offences and Penalties

- 352. Name offence.
- 353. Reports.
- 354. Specific offences.
- 355. Corporate offences.
- 356. General offence.
- 357. Order to comply.
- 358. Limitation.

359. Civil remedies unaffected.

Division E: Appropriate Officials

360. Supervisor and Superintendent.

361. Advisory committees.

Division F: Construction And Interpretation

362. Affiliated corporations

363. "Control" of corporation.

364. "Holding" and "subsidiary".

365. "Distribution" to public.

366. "Offer" to public.

367. "Shall," use of.

368. "May," use of.

369. "Must," use of.

370. Definition of technical words.

371. Construing Act.

372. Application of other Acts.

373. Cooperation with regulatory authorities.

374. Transfer of funds and appointment of Administrator.

ANTIGUA AND BARBUDA

AN ACT to provide a regime of corporate law for international business corporations operating from within Antigua and Barbuda.

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ENACTED by the Parliament of Antigua and Barbuda as follows –

- Short title.** 1. This Act may be cited as the International Business Corporations Act, Cap. 222.
- Interpretation.** 2. (1) In this Act -
- (a) “articles” means, unless qualified -
 - (i) the original or restated articles of incorporation, of amendment, of amalgamation, of continuance, of reorganization, of dissolution, and of revival; and
 - (ii) any statute, letters patent, memorandum of association, certificate of incorporation or other corporate instrument evidencing the existence of a body corporate continued as a corporation under this Act;
 - (aa) “Commission” means the Financial Services Regulatory Commission;
 - (b) “continued corporation” refers to a corporation that has come under this Act pursuant to a certificate of continuance and that has not ceased to be a corporation under this Act;
 - (c) “corporation” means a body corporate that is incorporated or continued under this Act and that has not ceased to be a corporation under this Act;
 - (d) “court” means the High Court;
 - (e) “debt obligation” means a bond, debenture, note or other evidence of indebtedness or guarantee of a corporation whether secured or unsecured;
 - (f) “Director” means the Administrator or the Deputy Director of the Authority;
 - (g) “existing off-shore company” means a body corporate described in section 176;
 - (h) “existing Act” means the Companies Act;
 - (i) “international trade or business” refers to any activity described as an international trade or business in section 4;
- Amended by**
No. 17 of 1998
No. 2 of 2000.

- (j) "officer" in relation to a body corporate means
 - (i) the chairman, deputy chairman, president, or vice-president;
 - (ii) the managing director, the general manager, comptroller, the secretary or the treasurer; or
 - (iii) any other individual who performs for the body corporate functions similar to those normally performed by the holder of any office specified in subparagraph (i) or (ii);
 - (k) "prescribed" means prescribed by the regulations;
 - (l) "resident" refers to a resident of Antigua and Barbuda as defined in section 270;
 - (m) "security means a share of any class or series of shares of a corporation or a debt obligation of a corporation and includes a certificate evidencing any such share or debt obligation;
 - (n) "unanimous shareholder agreement" means an agreement described in section 124.
- (2) The Caricom region is the region comprised within the jurisdictional areas of the Member States of the Community of States established by the Treaty signed on the 4th day of July, 1973, at Chaguaramas.
 - (3) The expressions "Board", "Chairman", "appropriate official", "Superintendent", "Supervisor" and "licensee" are defined in Part III.
 - (4) Other words and phrases of a technical nature that are to be read or construed in this Act in a particular sense or in a particular manner are defined or construed for that purpose in Part V; and, in particular, the expressions "shall", "may" and "must" are used in this Act in the manner described in sections 367 to 369, in order to reduce the ambiguity inherent in those expressions.
 - (5) "Minister" means Minister responsible for the portfolio of finance

Amended by
Minister No.2
of 2000 &
5/2004

INTERNATIONAL BUSINESS ENTERPRISES

Prescribed
enterprises.

- 3. (1) No association, partnership, society, body or other group may be formed for the purpose of carrying on any international trade or business from within or outside Antigua and Barbuda unless it is a corporation under this Act.
- (2) No natural person may carry on any international banking, trust or insurance business from within Antigua and Barbuda; but this provision does not apply to the provision of services to an international banking, trust or insurance corporation as a director, officer, agent or employee, or as a barrister, solicitor, accountant, investment adviser or by the provision to a corporation of any other prescribed service or

activity carried on in Antigua and Barbuda.

- (3) A body corporate incorporated outside Antigua and Barbuda and registered under the existing Act on the commencement of this Act whose objects include the carrying on of an international banking, trust or insurance business shall, one year after the commencement of this Act, cease to carry on that business from within Antigua and Barbuda; and section 177 applies *mutatis mutandis* in respect of that period of one year.

**International trade or
business.**

4. (1) For the purposes of this Act, international trade or business comprises –

- (a) international banking;
- (b) international trust business;
- (c) international insurance;
- (d) international manufacturing; and
- (e) Other international trading or commercial activities.

- (2) International banking is the carrying on from within Antigua and Barbuda of banking in any currency that is foreign in every country of The Caricom Region; but the keeping of external accounts for residents in any foreign currency under exchange control licence or regulation is not carrying on international banking by virtue of that activity alone.

- (3) International trust business is -

- (a) the acting as trustee of funds in a currency that is foreign in every country within the Caricom region;
- (b) the managing or administering of real property situated outside Antigua and Barbuda or the managing or administering of personal property of persons who are not resident within Antigua and Barbuda; or
- (c) the managing or administering of any property of a corporation other than its real property situated in Antigua and Barbuda.

- (4) International insurance is the undertaking of contracts of insurance -

- (a) related to insurable risks or hazards in respect of any person, thing or matter outside the Caricom region or in respect of any event occurring outside the Caricom region, or to all of them; and
- (b) under which -
 - (i) premiums are payable in a currency that is foreign in every country of the Caricom region, or
 - (ii) the extent of liability is determinable in such a currency.

- (5) International manufacturing is the manufacturing, preparation, processing, assembling, or packaging of any products within Antigua and Barbuda for which the sole intended destination is one or more countries outside the Caricom region.
- (6) Other international trading or commercial activities are -
 - (a) service as a director of another corporation;
 - (b) the carrying on of the business of underwriter, broker, agent, dealer or seller in respect of international insurance;
 - (c) the provision of any services in or outside Antigua and Barbuda for a corporation, other than any service or activity required for the purpose of enabling the corporation to carry on business from within Antigua and Barbuda; and
 - (d) services or activities of a commercial, industrial, trading or business nature from within or outside Antigua and Barbuda -
 - (i) to persons outside the Caricom region or in respect of matters or things outside the Caricom region, or
 - (ii) to other corporations or in respect of an international trade or business of another corporation;

PART I

CONSTITUTION OF CORPORATIONS

DIVISION A: INCORPORATION

**Incorporation.
Amended by
No. 17 of 1998.**

- 5. (1) Any two citizens of Antigua and Barbuda resident in Antigua and Barbuda, one of whom must be entitled to practice as a Barrister-at-Law or Solicitor in Antigua and Barbuda or a body corporate authorized by a resolution of the cabinet of Antigua and Barbuda to perform any functions under this section may incorporate a corporation under this Act by signing and sending articles of incorporation and the prescribed fees to the Director.

**Amended by
No. 17 of 1998.**

- (2) Articles of incorporation must be substantially in the form set out in the Schedule I.
- (2a) In the case of a corporation proposing to do business in banking, trust, or insurance business, the articles of incorporation and the prescribed fees must be accompanied by an application for a licence in accordance with Part III.
- (3) Notwithstanding subsection (1), no person authorised to perform any function under this section or incorporate a corporation under this Act shall perform that function or incorporate a corporation unless such person has paid to the Director the annual fee prescribed by the Minister.

**Formalities.
Amended by
No. 17 of 1998.**

6. (1) Articles of incorporation must set out, in respect of the proposed Corporation -
- (a) the proposed name of the corporation;
 - (b) the classes and any maximum number of shares that the corporation is authorised to issue; and
 - (i) if there will be two or more classes of shares, the rights, privileges, restrictions and conditions attaching to each class of shares; and
 - (ii) if a class of shares can be issued in series, the authority given to the directors to fix the number of shares in, or to determine the designation of, and the rights, privileges, restrictions and conditions attaching to, the shares of each series;
 - (c) if the right to transfer shares of the corporation is to be restricted, a statement that the right to transfer shares is restricted and the nature of those restrictions;
 - (d) the number of directors or the minimum and maximum number of directors of the corporation;
 - (e) that no securities of the corporation will be distributed to the public, in contravention of section 365, in Antigua and Barbuda; and
 - (f) that the corporation is restricted to carrying on international trades or businesses and any restriction on the kinds of international trades or businesses that the corporation can carry on.
- (1a) In respect of a proposed corporation not intending to carry on international banking, trust or insurance business, the articles of incorporation must state that the corporation will not carry on international banking, trust or insurance business.
- (2) The articles may set out any provisions permitted by this Act, or by any other law, to be set out in the by-laws of the corporation.

Required votes.

7. (1) Subject to subsection (2), if the articles or any unanimous shareholder agreement requires a greater number of votes of directors or shareholders than that required by this Act to effect any action, the provisions of the articles or of the unanimous shareholder agreement prevail.
- (2) The articles may not require a greater number of votes of shareholders to remove a director than the number specified in section 70.

Documentation.

8. An incorporator must send to the Director with the articles of incorporation the documents required by subsection (7) of section 67, subsection (1) of section

129 and section 327.

CERTIFICATE OF INCORPORATION

**Certificate of
incorporation.
Amended by
No. 17 of 1998.**

9. (1) In the case of a corporation not proposing to do international, trust or insurance business on receipt of –
- (a) the articles of incorporation; and
 - (b) the prescribed fees,
- the Director must issue a certificate of incorporation in accordance with section 327.
- (2) In the case of a corporation proposing to do international banking, trust, or insurance business, on receipt of –
- (a) the articles of incorporation;
 - (b) the prescribed fees; and
 - (c) the approval of the licence under section 317 from the Board,
- the Director must issue a certificate of incorporation in accordance with section 327.
- (3) banking the certificate issued under subsection (1) and (2) is conclusive proof of the incorporation of the corporation named in the certificate.

Effective date.

10. A corporation comes into existence on the date shown in its certificate of incorporation, except that the date of commencement of corporate existence may be specified in the articles of incorporation to be –
- (a) the date of execution and acknowledgement of the articles of incorporation if the articles are filed with the Director within 10 days, exclusive of legal holidays, after such date.
 - (b) a date subsequent to, but not later than 90 days, from the date of execution and acknowledgement of the articles of incorporation.

CORPORATE NAME

Corporate name.

11. A following word or abbreviation must be part of the name of every corporation –
- (a) the word “limited”, “corporation” or “incorporated” or the abbreviation “ltd.”, “corp.” or “inc” or
 - (b) a word or abbreviation used in another country to indicate that the liability of the shareholders of a body corporate is limited: but a corporation may use and may be legally designated by either the full or the abbreviated form.

- Reserved name.** 12. A corporation shall not be incorporated with or have a name -
- (a) that is prohibited or refused under sections 339 to 342; or
 - (b) that is reserved for another corporation or intended corporation under section 338.
- Name change.** 13. Where, through inadvertence or otherwise, a corporation -
- (a) comes into existence with a name that contravenes section 12,
 - (b) is continued as a corporation under this Act with a name that contravenes section 12, or
 - (c) is, upon an application to change its name, granted a name that contravenes section 12,
- the Director may direct the corporation to change its name in accordance with section 161.
- Continued name.** 14. Notwithstanding sections 12 and 13, a continued corporation may retain the name it lawfully had before its continuance under this Act, if that name is not contrary to section 339 or, if the corporation had been an existing off-shore company, the name does not refer to banking, trust or insurance unless it is carrying on such an international business.
- Name revocation.** 15. Where a corporation has been directed under section 13 to change its name and has not, within sixty days from the service of the direction to that effect, changed its name to a name that complies with this Act, the Director may revoke the name of the corporation and assign to it a name; and, until changed in accordance with section 161, the name of the corporation is thereafter the name so assigned.
- Assigned name.** 16. (1) When a corporation has had its name revoked and a name assigned to it under section 15, the Director must issue a certificate of amendment showing the new name of the corporation and must forthwith give notice of the change in the Gazette.
- (2) Upon the issue of a certificate of amendment under subsection (1), the articles of the corporation to which the certificate refers are amended accordingly on the date shown in the certificate.

PRE-INCORPORATION AGREEMENTS

- Pre-incorporation contracts.** 17. (1) Except as provided in this section, a person who enters into a written contract in the name of or on behalf of a corporation before it comes into existence is personally bound by the contract and is entitled to the benefits of the contract.
- (2) Within a reasonable time after a corporation comes into existence, it may, by any action or conduct signifying its intention to be bound thereby, adopt a written contract made, in its name or on its behalf, before it came into existence.

- (3) When a corporation adopts a contract under subsection (2) -
 - (a) the corporation is bound by the contract and is entitled to the benefits thereof as if the corporation had been in existence at the date of the contract and had been a party to it; and
 - (b) a person who purported to act in the name of the corporation or on its behalf ceases, except as provided in subsection (4), to be bound by or entitled to the benefits of the contract.
- (4) Except as provided in subsection (5), whether or not a written contract made before the coming into existence of the corporation is adopted by the corporation, a party to the contract may apply to the court for an order fixing obligations under the contract as Joint or joint and several, or apportioning liability between or among the corporation and a person who purported to act in the name of the corporation or on its behalf; and the court may, upon the application, make any order it thinks fit.
- (5) If expressly so provided in the written contract, a person who purported to act for or on behalf of a corporation before it came into existence is not in any event bound by the contract or entitled to the benefits of the contract.

DIVISION B: CORPORATE CAPABILITIES

- Capacity and powers.** 18.
 - (1) A corporation has the capacity and, subject to this Act, the rights, powers and privileges of a natural person of full age and capacity.
 - (2) A corporation has the capacity to carry on its business, conduct its affairs and exercise its powers in any other country to the extent that the laws of Antigua and Barbuda and of that country permit.
 - (3) It is not necessary for a by-law to be passed to confer any particular power on a corporation or its directors.
- Powers reduced.** 19. A Corporation shall not carry on any international trade or business or exercise any power that it is restricted by its articles from carrying on or exercising, nor shall a corporation exercise any of its powers in a manner contrary to its articles.
- Validity of acts.** 20. For the avoidance of doubt and without limiting the effect of section 18, no act of a corporation, including any transfer of property to or by the corporation, is invalid by reason only that the act or transfer is contrary to its articles or this Act.
- Notice not presumed.** 21. No person is affected by or presumed to have notice or knowledge of the contents of a document concerning a corporation by reason only that the document has been filed with the Director or is available for inspection at any office of the corporation.
- No disclaimer allowed.** 22. A corporation or a guarantor of an obligation of the corporation may not assert against a person dealing with the corporation or with any person who has acquired rights from the corporation -
 - (a) that any of the articles, or by-laws of the corporation or any unanimous shareholder agreement has not been complied with;

- (b) that the persons named in the most recent notice to the Director under section 67 or 74 are not the directors of the corporation;
- (c) that the place named in the most recent notice sent to the Director under section 129 is not the registered office of the corporation;
- (d) that a person held out by a corporation as a director, an officer or an agent of the corporation has not been duly appointed or has no authority to exercise the powers and perform the duties that are customary in the business of the corporation or usual for such a director, officer or agent;
- (e) that a document issued by any director, officer or agent of the corporation with actual or usual authority to issue the document is not valid or not genuine; or
- (f) that the financial assistance referred to in section 53 or the sale, lease, or exchange of property referred to in section 125 was not authorised,

except where that person has, or ought to have, because of his position with or relationship to the corporation, knowledge to the contrary.

Contracts of corporation.

23. (1) A contract made according to this section on behalf of a corporation -
- (a) is effective in law in point of form and binds the corporation and the other party to the contract; and
 - (b) may be varied or discharged in the like manner that it is authorised by this section to be made.
- (2) A contract that, if made between natural persons, would, by law, be required to be in writing under seal must be made on behalf of a corporation in writing under seal.
- (3) A contract that, if made between natural persons, would, by law, be required to be in writing or to be evidenced in writing by the parties to be charged thereby may be made or evidenced in writing signed in the name or on behalf of the corporation.
- (4) A contract that, if made between natural persons, would, by law, be valid although made by parol only and not reduced to writing may be made by parol on behalf of the corporation.
- (5) An agreement or other instrument executed on behalf of a corporation by a director, officer or an agent of the corporation is not invalid merely because a corporate seal is not affixed to the agreement or instrument.

Bills, notes.

24. A bill of exchange or promissory note is presumed to have been made, accepted or endorsed, on behalf of the corporation, if made, accepted or endorsed in the name of the corporation or if expressed to be made, accepted or endorsed on behalf or on account of the corporation.

- (a) the rights, privileges, restrictions and conditions attaching to the shares of each class must be set out in the articles; and
 - (b) the rights set out in section 28 must be attached to the shares of the corporation but all of those rights need not be attached to the single class of shares.
- Share issue.** 30. Subject to the articles, the by-laws, any unanimous shareholder agreement and section 35, shares may be issued at such times and to such persons and for such consideration as the directors may determine.
- Consideration.** 31. (1) A share may not be issued until it is fully paid -
- (a) in money, or
 - (b) in property or past service that is the fair equivalent of the money that the corporation would have received if the share had been issued for money.
- (2) In determining whether property or past service is the fair equivalent of a money consideration, the directors may take into account reasonable charges and expenses of organisation and re-organisation and payments for property and past services reasonably expected to benefit the corporation.
- (3) For the purposes of this section with respect to registered shares property includes a promissory note in negotiable form.
- Stated capital accounts.** 32. (1) Subject to subsection (8), a corporation must maintain a separate stated capital account for each class and series of shares that it issues.
- (2) A corporation must add to the appropriate stated capital account the full amount of the consideration that it receives for any shares that it issues.
- (3) A corporation may not reduce its stated capital or any stated capital account except in the manner provided by this Act.
- (4) A corporation must not, in respect of a share that it issues, add to a stated capital account an amount greater than the amount of the consideration that it receives for the share.
- (5) When a corporation proposes to add an amount to a stated capital account that it maintains in respect of a class or series of shares, that addition to the stated capital account must be approved by special resolution if -
- (a) the amount to be added was not received by the corporation as consideration for the issue of shares, and
 - (b) the corporation has issued any outstanding shares of more than one class or series.
- (6) Notwithstanding section 31 and subsection (2) -

- (a) when, in exchange for property, a corporation issues shares -
 - (i) to a body corporate that was an affiliate of the corporation immediately before the exchange, or
 - (ii) to a person who controlled the corporation immediately before the exchange,

the corporation, subject to subsection (4), may, to the stated capital accounts that are maintained for the shares of the classes or series issued, add the amount agreed, by the corporation and the body corporate or person, to be the consideration for the shares so exchanged;

- (b) when a corporation issues shares in exchange for shares of a body corporate that was an affiliate of the corporation immediately before the exchange, the corporation may, subject to subsection (4), add to the stated capital accounts that are maintained for the shares of the classes or series issued an amount that is not less than the amount set out, in respect of the acquired shares of the body corporate, in the stated capital or equivalent accounts of the body corporate immediately before the exchange; or
- (c) when a corporation issues shares in exchange for shares of a body corporate that becomes, because of the exchange, an affiliate of the corporation, the corporation may, subject to subsection (4), add to the stated capital accounts that are maintained for the classes or series issued an amount that is not less than the amount set out, in respect of the acquired shares of the body corporate, in the stated capital or equivalent accounts of the body corporate immediately before the exchange.

(7) When an existing off-shore company is continued under this Act -

- (a) then, notwithstanding subsection (2), it is not required to add to a stated capital account any consideration received by it before it became a continued corporation, unless the share in respect of which the consideration is received is issued after the corporation was continued under this Act;
- (b) an amount unpaid in respect of a share issued by the existing off-shore company before it was so continued must be added to the stated capital account that is maintained for the shares of that class or series; and
- (c) its stated capital account for the purposes of -
 - (i) subsection (2) of section 39;
 - (ii) section 44;
 - (iii) paragraph (b) of subsection (2) of section 55; and

(iv) paragraph (a) of subsection (2) of section 172,

includes the amount that would have been included in stated capital if the corporation had been a corporation incorporated under this Act.

(8) Subsections (1) to (7) and other provisions of this Act relating to a stated capital account do not apply to an open-end mutual fund corporation; that is to say, a corporation that carries on only the business of investing in the securities of foreign companies or in the securities of other corporations, or both, the consideration it receives for the shares it issues and all or substantially all of those shares are redeemable upon the demand of shareholders.

Series shares.

33.

(1) The articles of a corporation may authorise the issue of any class of shares in one or more series and may authorise the directors to fix the number of shares in and to determine the designation, rights, privileges, restrictions and conditions attaching to the shares of each series, subject to the limitations set out in the articles.

(2) If any cumulative dividends or amounts payable on return of capital in respect of a series of shares are not paid in full, the shares of all series of the same class participate rateably in respect of accumulated dividends and return of capital.

(3) No rights, privileges, restrictions or conditions attached to a series of shares authorised under this section may confer upon the series a priority in respect of dividends or return of capital over any other series of shares of the same class that are then outstanding.

(4) Before the issue of shares of a series authorised under this section, the directors must send to the Director articles of amendment in the prescribed form to designate a series of shares.

(5) Upon receipt from a corporation of articles of amendment designating a series of shares, the Director must issue to the corporation a certificate of amendment in accordance with section 327.

(6) The articles of a corporation are amended accordingly on the date shown in the certificate of amendment issued under subsection (5).

Pre-emptive rights.

34.

(1) Unless the articles of a corporation otherwise provide, no shares of a class of shares may be issued unless the shares have first been offered to the shareholders of the corporation holding shares of that class; and those shareholders have a pre-emptive right to acquire the offered shares in proportion to their holdings of the shares of that class, at such price and on such terms as those shares are to be offered to others.

(2) Unless the articles of a corporation otherwise provide, the shareholders of the corporation have no pre-emptive right in respect of shares to be issued by the corporation -

(a) for a consideration other than money;

(b) as a share dividend; or

- (c) pursuant to the exercise of conversion privileges, options or rights previously granted by the corporation.
- Conversion privileges.** 35. (1) A corporation may grant conversion privileges, options or rights to acquire shares of the corporation but must set out the conditions of the conversion privileges in any instruments issued as evidence of the conversion privileges.
- (2) Conversion privileges, options and rights to acquire securities of a corporation may be made transferable or non-transferable; and options and rights to acquire securities may be made separable or inseparable from any securities to which they are attached.
- Reserve shares.** 36. Where a corporation -
- (a) has granted privileges to convert any securities issued by the corporation into shares or into shares of another class or series of shares, or
- (b) has issued or granted options or rights to acquire shares,
- if the articles of the corporation limit the number of authorised shares, the corporation must reserve and continue to reserve sufficient authorised shares to meet the exercise of those conversion privileges, options and rights.
- Own shares.** 37. (1) Subject to subsection (2), and except as provided in sections 38 to 41, a corporation shall not hold shares in itself or in its holding body corporate.
- (2) When a subsidiary body corporate holds shares in a corporation, the corporation must cause the subsidiary body corporate of the corporation to sell or otherwise dispose of those shares within five years from the date that the body corporate became a subsidiary of the corporation.
- (3) When a subsidiary body corporate of a continued corporation holds shares of the continued corporation, the corporation must cause the subsidiary body corporate to sell or otherwise dispose of those shares within five years from the date that the corporation became a continued corporation.
- Exceptions.** 38. (1) A corporation may in the capacity of a legal representative hold shares in itself or in its holding body corporate unless it or the holding body corporate or a subsidiary of either of them has a beneficial interest in the shares.
- (2) A corporation may hold shares in itself or in its holding body corporate by way of security for the purposes of a transaction entered into by it in the ordinary course of a business that includes the lending of money.
- (3) A corporation that carries on the business of international manufacturing or international shipping or any other trading or commercial activities may hold shares in itself or in its holding body corporate.

price thereof stated in its articles or calculated according to a formula stated in its articles, purchase or redeem any redeemable shares issued by it.

- (2) A corporation shall not make any payment to purchase or redeem any redeemable shares issued by it if there are reasonable grounds for believing that -
- (a) the corporation is unable or would, after that payment, be unable to pay its liabilities as they become due; or
 - (b) the realisable value of the corporation's assets would, after that payment, be less than the aggregate of -
 - (i) its liabilities; and
 - (ii) the amount that would be required to pay the holders of shares that have a right to be paid, on a redemption or in a liquidation, rateable with or before the holders of the shares to be purchased or redeemed.

Donated shares. 42. Subject to section 46, a corporation may accept from any shareholder a share of the corporation surrendered to it as a gift, but may not extinguish or reduce a liability in respect of any amount unpaid on any such share except in accordance with section 44.

Voting thereon. 43. A corporation holding shares in itself or in its holding body corporate shall not vote or permit those shares to be voted unless the corporation

- (a) holds the shares in the capacity of a legal representative, and
- (b) has complied with section 126.

Stated capital reduction. 44. (1) Subject to subsection (3), a corporation may by special resolution reduce its stated capital by -

- (a) extinguishing or reducing a liability in respect of an amount unpaid on any share;
- (b) returning any amount in respect of consideration that the corporation received for an issued share, whether or not the corporation purchases, redeems or otherwise acquires any shares or fraction thereof that it issued; and
- (c) declaring its stated capital to be reduced by an amount that is not represented by realisable assets.

(2) A special resolution under this section must specify the stated capital accounts from which the reduction of stated capital effected by the special resolution will be deducted.

(3) A corporation shall not reduce its stated capital under paragraph (a) or (b) of subsection (1) if there are reasonable grounds for believing that -

- (a) the corporation is unable or would, after that reduction, be unable to pay its liabilities as they become due; or
 - (b) the realisable value of the corporation's assets would thereby be less than the aggregate of its liabilities.
- (4) A corporation that reduces its stated capital under this section must, not later than thirty days after the date of the passing of the resolution, serve notice of the resolution on all persons who on the date of the passing of the resolution were creditors of the corporation.
- (5) A creditor may apply to the court for an order compelling a shareholder or other recipient -
- (a) to pay to the corporation an amount equal to any liability of the shareholder that was extinguished or reduced contrary to this section; or
 - (b) to pay or deliver to the corporation any money or property that was paid or distributed to the shareholder or other recipient as a consequence of a reduction of capital made contrary to this section.
- (6) An action to enforce a liability imposed by this section may not be commenced after two years from the date of the act complained of.
- (7) This section does not affect any liability that arises under section 83 or 84.

Stated capital adjustment.

45. (1) Upon a purchase, redemption or other acquisition by a corporation under sections 39, 40, 41, 59 or 191 or paragraph (f) of subsection (3) of section 204, of shares or fractions thereof issued by it, the corporation must deduct, from the stated capital account maintained for the class or series of shares purchased, redeemed or otherwise acquired, an amount equal to the result obtained by multiplying the stated capital of the shares of that class or series by the number of shares of that class or series or fractions thereof purchased, redeemed or otherwise acquired, divided by the number of issued shares of that class or series immediately before the purchase, redemption or other acquisition.
- (2) A corporation must deduct the amount of a payment made by the corporation to a shareholder under paragraph (g) of subsection (3) of section 204 from the stated capital account maintained for the class or series of shares in respect of which the payment was made.
- (3) A corporation must adjust its stated capital accounts in accordance with any special resolution referred to in subsection (2) of section 44.
- (4) Upon a conversion of issued shares of a class into shares of another class or upon a change under section 161, 174 or 204 of issued shares of a corporation into shares of another class or series, the corporation must -
- (a) deduct, from the stated capital account maintained for the

class or series of shares changed or converted, an amount equal to the result obtained by multiplying the stated capital of the shares of that class or series by the number of shares of that class or series changed or converted, divided by the number of issued shares of that class or series immediately before the change or conversion, and

(b) add the result obtained under paragraph (a), and any additional consideration received by the corporation pursuant to the change, to the stated capital account maintained or to be maintained for the class or series of shares into which the shares have been changed or converted.

(5) For the purposes of subsection (4), when a corporation issues two classes of shares and there is attached to each of the classes a right to convert a share of the one class into a share of the other class, then, if a share of one class is converted into a share of the other class, the amount of stated capital attributable to a share in either class is the aggregate of the stated capital of both classes divided by the number of issued shares of both classes immediately before the conversion.

Cancellation of shares. 46. Shares or fractions of shares issued by a corporation and purchased, redeemed or otherwise acquired by the corporation must be cancelled or, if the articles of the corporation limit the number of authorised shares, the shares or fractions may be restored to the status of authorised but unissued shares.

Presumption re own shares. 47. For the purpose of section 45 and 46, a corporation holding shares in itself as permitted by section 38 is deemed not to have purchased, redeemed or otherwise acquired those shares.

Changing share class. 48. (1) Shares issued by a corporation and converted or changed under section 161, 174 or 204 into shares of another class or series become issued shares of the class or series of shares into which the shares have been converted or changed.

(2) Where its articles limit the number of authorised shares of a class or series of shares of a corporation and issued shares of that class or series have become, pursuant to subsection (1), issued shares of another class or series, the number of unissued shares of the first-mentioned class or series must, unless the articles of amendment or reorganisation otherwise provide, be increased by the number of shares that, pursuant to subsection (1), became shares of another class or series.

Debt obligations. 49. (1) Debt obligations issued, pledged or deposited by a corporation are not redeemed by reason only that the indebtedness evidenced by the debt obligations or in respect of which the debt obligations are issued, pledged or deposited is repaid.

(2) Debt obligations issued by a corporation and purchased, redeemed or otherwise acquired by it may be cancelled or, subject to any applicable trust indenture or other agreement applicable to the obligations, may be re-issued, pledged or deposited to secure any obligation of the corporation then existing or thereafter incurred; and any such acquisition and re-issue, pledge or deposit is not a cancellation of the debt obligations.

- Share purchase contract.** 50. (1) A contract with a corporation providing for the purchase of shares of the corporation is specifically enforceable against the corporation except to the extent that the corporation cannot perform the contract without thereby being in breach of section 41 or 42.
- (2) In any action brought on a contract referred to in subsection (1), the corporation has the burden of proving that performance of the contract is prevented by section 41 or 42.
- (3) Until the corporation has fully performed a contract referred to in subsection (1), the other party retains the status of a claimant who is entitled -
- (a) to be paid as soon as the corporation is lawfully able to do so; or
- (b) to be ranked in a liquidation subordinate to the rights of creditors but in priority to the shareholders.
- (4) The directors of a corporation acting honestly and in good faith with a view to the best interests of the corporation may authorise the corporation to pay a commission to any person in consideration of his purchasing or agreeing to purchase shares of the corporation from the corporation.
- Prohibited dividend.** 51. A corporation shall not declare or pay a dividend if there are reasonable grounds for believing that -
- (a) the corporation is unable or would, after the payment, be unable to pay its liabilities as they become due; or
- (b) the realisable value of the corporation's assets, would thereby be less than the aggregate of its liabilities and stated capital of all classes.
- Payment of dividend.** 52. (1) A corporation may pay a dividend by issuing fully paid shares of the corporation and, subject to subsection (2) and section 51, a corporation may pay a dividend in money or property.
- (2) A corporation shall not pay a dividend out of unrealised profits.
- (3) If shares of a corporation are issued in payment of a dividend the value of the dividend stated as an amount in money must be added to the stated capital account maintained or to be maintained for the shares of the class or series issued in payment of the dividend.
- Illicit loans by corporation.** 53. When circumstances prejudicial to the corporation exist, the corporation or any corporation with which it is affiliated shall not, except as permitted by section 56, directly or indirectly, give financial assistance by means of a loan, guarantee or otherwise -
- (a) to a shareholder, director, officer or employee of the corporation or affiliated corporation; or

- (b) to any person for the purpose of or in connection with a purchase of a share issue or to be issued by the corporation or a corporation with which it is affiliated.
- Permitted gifts.** 54. If a corporation is authorised to do so by its articles, then, if no circumstances prejudicial to the corporation exist, the corporation may, otherwise than out of its stated capital, make gifts of money to any person, whether or not he is a shareholder of the corporation.
- Prejudicial circumstances.** 55. Circumstances prejudicial to the corporation exist in respect of financial assistance mentioned in section 53 or in respect of a gift of money mentioned in section 54 when there are reasonable grounds for believing that -
- (a) the corporation is unable or would, after giving the financial assistance or gift of money, be unable to pay its liabilities as they become due; or
 - (b) the realisable value of the corporation's assets excluding the amount of any financial assistance in the form of a loan and in the form of assets pledged or encumbered to secure a guarantee would, after giving the financial assistance or gift of money, be less than the aggregate of the corporation's liabilities and stated capital or all classes.
- Permitted loans.** 56. Notwithstanding section 53, a corporation may give financial assistance, by means of a loan, guarantee or otherwise -
- (a) to any person in the ordinary course of business, if the lending of money is part of the ordinary business of the corporation;
 - (b) to any person on account of expenditures incurred or to be incurred on behalf of the corporation;
 - (c) to a holding body corporate if the corporation is a wholly-owned subsidiary of the holding body corporate;
 - (d) to a subsidiary body corporate of the corporation; and
 - (e) to employees of the corporation or any of its affiliates -
 - (i) to enable or assist them to purchase or erect living accommodation for their own occupation;
 - (ii) in accordance with a plan for the purchase of shares of the corporation or any of its affiliates to be held by a trustee; or
 - (iii) to enable or assist them to improve their education or skills, or to meet reasonable medical expenses.
- Enforcement of illicit loans.** 57. A contract made by a corporation contrary to section 52 may be enforced by the corporation or by a lender for value in good faith without notice of the contravention.

- Immunity of shareholders.** 58. The shareholders of a corporation are not, as shareholders, liable for any liability, act or default of the corporation except under subsection (5) of section 44, subsection (2) of section 124 or subsection (5) of section 312.
- Lien on shares.** 59. (1) Subject to this Act, the articles of a corporation may provide that the corporation has a lien on a share registered in the name of a shareholder or his legal representative for a debt of that shareholder to the corporation including an amount unpaid in respect of a share issued by a corporation on the date it was continued under this Act.
- (2) A corporation may enforce a lien referred to in subsection (1) in accordance with its by-laws.

**DIVISION D: MANAGEMENT OF CORPORATIONS
DIRECTORS AND OFFICERS**

- Duty to manage corporation.** 60. Subject to any unanimous shareholder agreement, the directors of a corporation must -
- (a) exercise the powers of the corporation directly or indirectly through the employees and agents of the corporation; and
- (b) direct the management of the business and affairs of the corporation.
- Number of directors and residence. Amended by No. 17 of 1998.** 61. A corporation must have at least one director, and, in the case of banking, trust or insurance corporations, all directors must be natural persons, and at least one director must be a citizen and resident of Antigua and Barbuda.
- Restricted powers.** 62. If the powers of the directors of a corporation to manage the business and affairs of the corporation are in whole or in part restricted by the articles of the corporation, the directors have all the rights, powers and duties of the directors to the extent that the articles do not restrict those powers; but the directors are thereby relieved of their duties and liabilities to the extent that the articles restrict their powers.
- By-law powers.** 63. (1) Unless the articles, by-laws or an unanimous shareholder agreement otherwise provide, the directors of a corporation may by resolution make, amend, or repeal any by-laws for the regulation of the business or affairs of the corporation.
- (2) The directors of a corporation must submit a by-law, or any amendment or repeal of a by-law, made under subsection (1) to the shareholders of the corporation at the next meeting of shareholders after the making, amendment or repeal of the by-law; and the shareholders may, by ordinary resolution, confirm, amend or reject the by-law, amendment or repeal.
- (3) A by-law, or any amendment or repeal of a by-law, is effective from the date of the resolution of the directors making, amending or repealing the by-law until -
- (a) the by-law, amendment or repeal is confirmed, amended or

rejected by the shareholders pursuant to subsection (2); or

- (b) the bylaw, amendment or repeal ceases to be effective pursuant to subsection (4),

and, if the by-law, amendment or repeal is confirmed or amended by the shareholders, it continues in effect in the form in which it was confirmed or amended.

- (4) When a by-law, or an amendment or repeal of a by-law is not submitted to the shareholders as required by subsection (2) or is rejected by the shareholders, the by-law, amendment or repeal ceases to be effective; and no subsequent resolution of the directors to make, amend or repeal a by-law having substantially the same purpose or effect is effective until the resolution is confirmed, with or without amendment, by the shareholders.
- (5) A shareholder who is entitled to vote at an annual meeting of shareholders may make a proposal to make, amend or repeal a by-law.

Organisational meeting.

64.

- (1) At the time of sending articles of incorporation of a corporation to the Director, the incorporators must send him, in the prescribed form, a notice of the names of the directors of the corporation and the name and address of the corporation's resident agent for service of process who must be a resident of Antigua and Barbuda; and the Director must file the notice.
- (2) Each director named in the notice referred to in subsection (1) holds office as a director of the corporation from the issue of the certificate of incorporation of the corporation until the first meeting of the shareholders of the corporation.
- (3) After the issue of the certificate of incorporation of a corporation, a meeting of the directors of the corporation must be held at which the directors may -
 - (a) make by-laws;
 - (b) adopt forms of share certificates and corporate records;
 - (c) authorise the issue of shares;
 - (d) appoint officers;
 - (e) appoint an auditor, if required, to hold office until the first annual meeting of shareholders;
 - (f) make banking arrangements; and
 - (g) transact any other business.
- (4) An incorporator or director may call the meeting of directors referred to in subsection (3) by giving by post not less than five days notice of the meeting to each director and stating in the notice the time and place of the meeting.

- (5) Subsection (3) does not apply to a corporation to which a certificate of amalgamation has been issued under section 173.
- Disqualified directors. 65.
Amended 5/2004
- (1) The Board may on the recommendation of the appropriate official direct a corporation to effect changes in the composition of the corporation board of directors and the management of the board considers that such a change is required to ensure that directors and officers of the corporation are fit and proper persons and have the skills commensurate with the size and nature of the activities of the corporation.
- (a) beginning.
- (i) with the date of the order; or
- (ii) if the person is undergoing, or is to undergo, a term of imprisonment and the court so directs, with the date on which he completes that term of imprisonment or is otherwise released from prison,
- And
- (b) not exceeding five years, as may be specified in the order.
- (2) Any corporation that fails to comply with the directions of the Board under Paragraph (1) commits an offence and on conviction is liable to a fine not exceeding EC\$20,000.00.
- (3) Before making an application under this section in relation to any person, the Director must give that person not less than ten days notice of the Director's intention to make the application.
- (4) On the hearing of an application made by the Director under this section or an application for leave under this section to be concerned with the management of a corporation, the Director and any person concerned with the application may appear and call attention to any matters that are relevant, and may give evidence, call witnesses and be represented by counsel.
- (5) When a person is disqualified under this section from being a director of a corporation, he may not, during that period of disqualification, be a director of any corporation.
- No qualification required. 66. Unless the articles of a corporation otherwise provide, a director of the corporation need not hold shares issued by the corporation.
- Election of directors. 67. (1) The shareholders of a corporation must, at the first meeting of the corporation and at each following annual meeting at which an election of directors is required, elect directors to hold office for a term expiring not later than the close of the third annual meeting of the shareholders

of the corporation following the election.

- (2) It is not necessary that all the directors of a corporation elected at a meeting of shareholders hold office for the same term.
- (3) A director who is not elected for an expressly stated term ceases to hold office at the close of the first annual meeting of shareholders following his election.
- (4) Notwithstanding subsection (2) of section 65 or subsections (1) and (3) of this section, if directors are not elected at a meeting of shareholders, the incumbent directors continue in office until their successors are elected.
- (5) If a meeting of shareholders fails, by reason of the disqualification, incapacity or death of any candidates, to elect the number or the minimum number of directors required by the articles of the corporation, the directors elected at that meeting may exercise all the powers of the directors as if the number of directors so elected constituted a quorum.
- (6) The articles of a corporation or an unanimous shareholder agreement may, for terms expiring not later than the close of the third annual meeting of the shareholders following the election, provide for the election or appointment of directors by the creditors or officers of the corporation or by any classes of those creditors or officers.
- (7) The corporation must send in the prescribed form to the Director a notice of the names of the directors after each election or appointment of directors of the corporation.

Termination of office. 68. A director of a corporation ceases to hold office when -

- (a) he dies, resigns or is dissolved;
- (b) he is removed in accordance with section 70; or
- (c) he becomes disqualified under section 65 or 66.

Resignation of director. 69. The resignation of a director of a corporation becomes effective at the time his written resignation is sent to the corporation or at the time specified in the resignation, whichever is later.

Removal of director. 70. (1) The shareholders of a corporation may, by ordinary resolution at a special meeting, remove any directors from office.

(2) Where the holders of any class or series of shares of a corporation have an exclusive right to elect one or more directors, a director so elected may only be removed by an ordinary resolution at a meeting of the shareholders of that class or series of shares.

(3) A vacancy created by the removal of a director may be filled at the meeting of the shareholders at which the director is removed or, if the vacancy is not so filled, it may be filled pursuant to section 72.

Right to notice.

71. (1) A director of a corporation 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 corporation a written statement giving the reasons for his resignation or the reasons why he opposes any proposed action or resolution.
- (3) The corporation shall forthwith send a copy of the statement referred to in subsection (2) to the Director and to every shareholder entitled to receive notice of any meeting referred to in subsection (1).
- (4) No corporation or person acting on its behalf incurs any liability by reason only of circulating a director's statement in compliance with subsection (3).

Filling vacancy.

72. (1) Subject to subsections (3) and (4), a quorum of directors of a corporation may fill a vacancy among the directors of the corporation, except a vacancy resulting from an increase in the number or minimum number of directors required by the articles of the corporation.
- (2) If there is no quorum of directors, or if there has been a failure to elect the number or minimum number of directors required by the articles, the directors then in office must forthwith call a special meeting of shareholders to fill the vacancy; and, if they fail to call a meeting or if there are no directors then in office, the meeting may be called by any shareholder.
- (3) Where the holders of any class or series of shares of a corporation have an exclusive right to elect one or more directors and a vacancy occurs among those directors -
- (a) then, subject to subsection (4), the remaining directors elected by that class or series may fill the vacancy except a vacancy resulting from an increase in the number or minimum number of directors for that class or series or from a failure to elect the number or minimum number of directors for that class or series; or
 - (b) if there are not such remaining directors, any holder of shares of that class or series may call a meeting of the holders thereof for the purpose of filling the vacancy.

- (4) The articles of a corporation may provide that a vacancy among the directors be filled only -
- (a) by a vote of the shareholder; or
 - (b) by a vote of the holders of any class or series of shares having an exclusive right to elect one or more directors, if the vacancy occurs among the directors elected by that class or series.
- (5) A director appointed or elected to fill a vacancy holds office for the unexpired term of his predecessor.
- Numbers changed.** 73. The shareholders of a corporation may amend the articles of the corporation to increase or to decrease the number of directors, or the minimum or maximum number of directors; but no decrease shortens the term of an incumbent director.
- Notice of change.** 74. (1) When fifteen days after a change is made among its directors, a corporation must send to the Director a notice in the prescribed form setting out the change; and the Director must file the notice.
- (2) Any interested person, or the Director, may apply to the court for an order to require a corporation to comply with subsection (1); and the court may so order and make any further order it thinks fit.
- Directors' meetings.** 75. (1) The directors of a corporation shall hold the annual meeting of directors within Antigua and Barbuda and unless otherwise provided in the articles or by-laws, any other meeting of directors may be held at any place upon such notice as the by-laws require.
- (2) Subject to the articles or by-laws, a majority of the number of directors or minimum number of directors required by the articles constitutes a quorum at any meeting of directors; and, notwithstanding any vacancy among the directors, a quorum of directors may exercise all the powers of the directors.
- Notice and waiver.** 76. (1) A notice of a meeting of the directors of a corporation must specify any matter referred to in subsection (2) of section 80 that is to be dealt with at the meeting; but, unless the by-laws of the corporation otherwise provide, the notice need not specify the purpose of or the business to be transacted at the meeting.
- (2) A director may, in any manner, waive a notice of a meeting of directors; and attendance of a director at a meeting of directors is a waiver of notice of the meeting by the director except when he attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.
- Adjourned meeting.** 77. Notice of an adjourned meeting of directors need not be given if the time and place of the adjourned meeting is announced at the original meeting.
- One director board.** 78. Where a corporation has only one director; that director may constitute a meeting.

Telephone participation. 79. (1) Subject to the by-laws of a corporation, a director may, if all the directors of the corporation consent, participate in a meeting of directors of the corporation or of a committee of the directors by means of such telephone or other communication facilities as permit all persons participating in the meeting to hear each other. Such a meeting will be deemed to have been held within Antigua and Barbuda so long as at least one director is present in Antigua and Barbuda during the meeting.

Delegation of powers. 80. (1) Directors of a corporation may appoint from their number a managing director or a committee of directors and delegate to the managing director or committee any of the powers of the directors.

(2) Notwithstanding subsection (1), no managing director and no of a corporation may -

- (a) submit to the shareholders any question or matter requiring the approval of the shareholders;
- (b) fill a vacancy among the directors or in the office of auditor;
- (c) issue shares except in the manner and on the terms authorised by the directors;
- (d) declare dividends;
- (e) purchase, redeem or otherwise acquire shares issued by the corporation;
- (f) approve any financial statements referred to in section 142; or
- (g) adopt, amend or repeal by-laws.

Validity of acts. 81. An act of a director or officer is valid notwithstanding any irregularity in his election or appointment or any defect in his qualification.

Meeting by resolution. 82. (1) When a resolution in writing is signed by all the directors entitled to vote on that resolution at a meeting of directors or committee of directors -

- (a) the resolution is a valid as if it had been passed at a meeting of directors or a committee of directors; and
- (b) the resolution satisfies all the requirements of this Act relating to meetings of directors or committees of directors.

(2) A copy of every resolution referred to in subsection (1) must be kept with the minutes of the proceedings of the directors or committee of directors.

LIABILITIES OF DIRECTORS

Liability for share issue. 83. Directors of a corporation who vote for or consent to a resolution authorising the issue of a share under section 30 for a consideration other than money are jointly and severally liable to the corporation to make good any amount by

which the consideration received is less than the fair equivalent of the money that the corporation would have received if the share had been issued for money on the date of the resolution.

- Liability for other acts.** **84.** Directors of a corporation who vote for or consent to a resolution authorising -
- (a) a purchase, redemption or other acquisition of shares contrary to section 39, 40 or 41;
 - (b) a payment of a dividend contrary to section 51 or 52;
 - (c) financial assistance contrary to section 53;
 - (d) a payment of an indemnity contrary to any of the provisions of sections 99 to 101; or
 - (e) a payment to a shareholder contrary to any of the provisions of sections 191 to 200 or 204,
- are jointly and severally liable to restore to the corporation any amounts so distributed or paid and not otherwise recovered by the corporation.
- Contribution for judgment.** **85.** A director who has satisfied a judgment founded on a liability under section 83 or 84 is entitled to contribution from the other directors who voted for or consented to the unlawful act upon which the judgment was founded.
- Recovery by action.** **86.** (1) A director who is liable under section 84 may apply to the court for an order compelling a shareholder or other recipient to pay or deliver to the director any money or property that was paid or distributed to the shareholder or other recipient contrary to section 39, 40, 41, 51, 52, 53, 54 or 56.
- (2) In connection with an application under subsection (1), the court may, if it is satisfied that it is equitable to do so -
- (a) order a shareholder or other recipient to pay or deliver to a director any money or property that was paid or distributed to the shareholder or other recipient contrary to any of the provisions of sections 39, 40, 41, 51, 52, 53, 54, 56, 99 to 101, 191 to 200 or 204;
 - (b) order a corporation to return or issue shares to a person from whom the corporation has purchased, redeemed or otherwise acquired shares; or
 - (c) make any further order it thinks fit.
- Defence to liability.** **87** A director of a corporation is not liable under section 83 if he did not know and could not reasonably have known that the share was issued for a consideration less than the fair equivalent of the money that the corporation would have received if the share had been issued for money.
- Time limit on liability.** **88.** An action to enforce a liability imposed under section 83 or 84 may not be commenced after two years from the date of the resolution authorising the action complained of.

CONTRACTUAL INTERESTS

Interests in contracts. 89.

- (1) A director or officer of a corporation -
 - (a) who is a party to a material contract or proposed material contract with the corporation; or
 - (b) who is a director or an officer of any body, or has a material interest in any body, that is a party to a material contract or proposed material contract with the corporation,must disclose in writing to the corporation or request to have entered in the minutes of meetings of directors the nature and extent of his interest.
- (2) The disclosure required by subsection (1) must be made, in the case of a director of a corporation -
 - (a) at the meeting at which a proposed contract is first considered;
 - (b) if the director was not then interested in a proposed contract, at the first meeting after he becomes so interested;
 - (c) if the director becomes interested after a contract is made, at the first meeting after he becomes so interested; or
 - (d) if a person who is interested in a contract later becomes a director of the corporation, at the first meeting after he becomes a director.
- (3) The disclosure required by subsection (1) must be made, in the case of an officer of a corporation who is not a director -
 - (a) forthwith after he becomes aware that the contract or proposed contract is to be considered or has been considered at a meeting of directors of the corporation;
 - (b) if the officer becomes interested after a contract is made, forthwith after he becomes so interested; or
 - (c) If a person who is interested in a contract later becomes an officer of the corporation, forthwith after he becomes an officer.
- (4) If a material contract or a proposed material contract is one that, in the ordinary course of the corporation's business, would not require approval by the directors or shareholders of the corporation, a director or officer of the corporation must disclose in writing to the corporation or request to have entered in the minutes of meetings of directors the nature and extent of his interest forthwith after the director or officer becomes aware of the contract or proposed contract.
- (5) A director of a corporation who is referred to in subsection (1) may vote on any resolution to approve a contract that he has an interest in, if the contract -
 - (a) is an arrangement by way of security for money loaned to or

obligations undertaken by him for the benefit of the corporation or an affiliate of the corporation;

- (b) is a contract that relates primarily to his remuneration as a director, officer, employee or agent of the corporation or affiliate of the corporation;
- (c) is a contract for indemnity or insurance under section 99 to 101;
- (d) is a contract with an affiliate of the corporation; or
- (e) is a contract other than one referred to in paragraphs (a) to (d),

but, in the case of a contract described in paragraph (e), no resolution is valid unless it is approved by not less than two-thirds of the votes of the shareholders of the corporation to whom notice of the nature and extent of the director's interest in the contract is declared and disclosed in reasonable detail.

Interest declaration. 90. For the purposes of section 89, a general notice to the directors of a corporation by a director or an officer of the corporation declaring that he is a director or officer of or has a material interest in another body and is to be regarded as interested in any contract with that body is a sufficient declaration of interest in relation to any such contract.

Avoidance of nullity. 91. A material contract between a corporation and one or more of its directors or officers, or between the corporation and another body of which a director or officer of the corporation is a director or officer or in which he has a material interest, is neither void nor voidable -

- (a) by reason only of that relationship; or
- (b) by reason only that a director with an interest in the contract is present at or is counted to determine the presence of a quorum at a meeting of directors or a committee of directors that authorised the contract,

if the director or officer disclosed his interest in accordance with subsection (2), (3) or (4) of section 89 or section 90, as the case may be, and the contract was approved by the directors or the shareholders and was reasonable and fair to the corporation at the time it was approved.

Setting aside contract. 92. When a director or officer of a corporation fails to disclose, in accordance with section 89 or 90, his interest in a material contract made by the corporation, the court may, upon the application of the corporation or a shareholder of the corporation, set aside the contract on such terms as the court thinks fit.

OFFICERS OF THE CORPORATION

Designation of Offices etc. 93. Subject to the articles or by-laws of a corporation or any unanimous shareholder agreement -

- (a) the directors of the corporation may designate the offices of the corporation, appoint natural persons of full capacity as

officers, specify their duties and delegate to them powers to manage the business and affairs of the corporation, except powers to do anything referred to in subsection (2) of section 80;

- (b) a director may be appointed to any office of the corporation; and
- (c) two or more offices of the corporation may be held by the same person.

BORROWING POWERS OF DIRECTORS

- Borrowing powers.** 94. (1) Unless the articles or by-laws of, or any unanimous shareholder agreement relating to, the corporation otherwise provide, the articles of a corporation are presumed to provide that the directors of the corporation may, without authorisation of the shareholders -
- (a) borrow money upon the credit of the corporation;
 - (b) issue, re-issue, sell or pledge debentures of the corporation;
 - (c) subject to section 53, give a guarantee on behalf of the corporation to secure performance of an obligation of any person; and
 - (d) mortgage, charge, pledge, or otherwise create to secure any obligation of the corporation a security interest in all or any property of the corporation that is owned or subsequently acquired by the corporation.
- (2) Notwithstanding subsection (2) of section 80 and paragraph (a) of section 93, unless the articles or by-laws of, or any unanimous shareholder agreement relating to, a corporation otherwise provide, the directors of the corporation may by resolution delegate the powers mentioned in subsection (1) to a director, a committee of directors or an officer of the corporation.
- (3) For the purposes of this Act “security interest” means any interest in or charge upon any property of a corporation, by way of mortgage, bond, lien, pledge or other means, that is created or taken to secure the payment of an obligation of the corporation.

DUTY OF DIRECTORS AND OFFICERS

- Duty of care.** 95. (1) Every director and officer of a corporation in exercising his powers and discharging his duties must -
- (a) act honestly and in good faith with a view to the best interests of the corporation; and
 - (b) exercise the care, diligence and skill that a reasonably prudent

