



**CHANCERY**  
CORPORATE SERVICES



## Chancery Corporate Services Limited ("CCSL")

### Client Update October, 2021 - Barbados Announces More Legislative Changes

#### *Overview*

Since our last legislative update in December 2019, the following pieces of legislation and Statutory Instruments, were passed and are in effect:

Companies (Amendment)(No 2) Act 2019-51  
Companies (Economic Substance)(Amendment) Act 2019-61  
Companies (Amendment) Act 2020-31  
Companies (Economic Substance)(Amendment) Act 2021-10  
Corporate (Miscellaneous Provisions) Act 2021-19  
Companies (Amendment) Regulations 2021

Kindly note that with the implementation of the **Companies (Economic Substance)(Amendment) Act 2021-10**, updated **Barbados Economic Substance Guidelines** have been issued effective August 31st 2021.

CCSL is committed to ensuring that our clients are updated on the said changes, and the impact on how you do business through any relevant corporate entity. Within this document are the main highlights of the changes ushered in by these pieces of legislation. The following information represents information available to us as at October 8th 2021. **Details may be subject to change should any additional guidance be issued following the date of this update.**

Additionally please note for your general information that we have also included a copy of the revised Barbados Economic Substance Guidelines.

## Core Legislative and Practice Changes

### Features:

- ◆ The *Companies Act* has been amended to, *inter alia*, provide the framework for Annual General Meetings of Shareholders of Companies to be held electronically. Further, the amendments to the Companies Act have created the legal framework for the Registrar of Companies to request that Corporate and Trust Service Providers produce evidence that the Companies are in compliance with the Act. (*for details see below*).
- ◆ Annual General Meetings are required to be held within 12 months of the previous meeting.
- ◆ The *Companies (Economic Substance) Act* was amended to include "partnerships" in the definition of resident companies.
- ◆ All resident Companies, whether carrying on a relevant activity under the *Companies (Economic Substance) Act* or not are required to file an Economic Substance Declaration with the Ministry of International Business.
- ◆ All former grandfathered entities have transitioned to Foreign Currency Permit entities and are governed by the *Foreign Currency Permits Act*.
- ◆ Foreign Currency Permits are issued to eligible entities that earn 100% of their income in foreign currency. There is no longer any restriction on conducting business locally provided earnings are 100% in foreign currency. The permits are valid for 12 months from the date of issue. The renewal period for the Foreign Currency Permit holding entities is no longer based on the date of incorporation.
- ◆ There is no longer provision for late renewals of Foreign Currency Permits. All applications must be filed by the deadline date for their renewal (12 months after the date of issue).
- ◆ For companies not holding a foreign currency permit, Class 3 licensees under the Insurance Act and licensees under Part IIIB of the Financial Institutions Act, annual returns must be filed with the Corporate Registry in every succeeding year after incorporation. Where incorporated between January 1st and June 30th in any year, filing is no later than 30 June; between 15 July and 31 December filing is no later than December 31st. Late filing fees are capped at \$3,000.00 per year.
- ◆ All External Companies must have their corporate services performed by a service provider who holds a licence issued under the *Corporate and Trust Service Providers Act, 2015* (Act 2015-12). The Registrar must be notified of first time appointments within 14 days. Where there is a change to the service provider on record, the change must be communicated within 28 days
- ◆ Companies or Societies the gross revenue of which, as shown in the most recent financial statements, exceeds BBD 1,000,000.00 and (a) does not hold a licence under the *Financial Institutions Act, Cap. 324A*; (b) is not registered or licensed under the *Financial Services Commission Act, 2020* (Act 2020-21); and (c) is not itself a service provider who holds a licence under the *Corporate and Trust Service Providers Act, 2015* (Act 2015-12), are exempt from the filing of annual returns with the Corporate Registry, however they are required to have their corporate services performed by a service provider who holds a licence issued under the *Corporate and Trust Service Providers Act, 2015* (Act 2015-12). The Registrar must be notified of first time appointments within 14 days. Where there is a change to the service provider on record, the change must be communicated within 28 days

## The Companies Act, Cap. 308 - Amendments

As we strive to strengthen our Anti Money Laundering procedures a number of changes have been made to our Companies Act and we wish to highlight some of those changes.

### Annual General Meetings:

The *Corporate (Miscellaneous Provisions) Act 2021-19* amended section 103 of the Companies Act to allow for Annual General Meetings of the Shareholders to be held electronically. The provision has a retroactive effect and validates any shareholder meetings held in this manner between March 1, 2020 and the proclamation of the *Corporate (Miscellaneous Provisions) Act 2021-19* on August 19th 2021.

### Beneficial Ownership:

Previous amendments to the Companies Act created the legal framework for registers of beneficial ownership to form part of the list of registers that Companies are required to maintain at their registered office. The *Companies (Amendment)(No 2) Act 2019-51* amended section 170 of the Companies Act and required that an up to date and accurate record of the basic and beneficial information of the company be maintained at the registered office. This section has been further amended by the *Corporate (Miscellaneous Provisions) Act 2021-19*, and requires that where there is a change to the beneficial ownership information of the Company, the Directors of the Company are required to notify the Registrar within **14 days**. This notification is completed by way of filing a statutory declaration verifying the change and confirming that the company continues to maintain an accurate record of the beneficial ownership at the registered office. The *Corporate (Miscellaneous Provisions) Act 2021-19* also makes provision for a late penalty fee of **BDS\$500.00 (US\$250) per each day** of non-compliance up to a **maximum of BDS\$10,000.00 (US\$5,000)** and directors are also individually and jointly liable if they knowingly and wilfully authorise or permit the default.

The *Companies (Amendment) Act 2020-31* inserted section 448A to the Companies Act which permits the Registrar of Companies to issue guidelines on the application and interpretation of the term “beneficial ownership” and the identification of beneficial owners whether by reference to thresholds in respect of ownership or control or otherwise. Failure to comply with the guidelines issued in accordance with this section is guilty of an offence and is liable on summary conviction to a fine of **BBD\$100,000 (US\$50,000)** or to imprisonment of a term of 5 years or to both.

We note that this amendment takes no account of companies where the ultimate beneficial owner is a publicly traded company, however we continue to seek formal clarification on this matter.

For your general information that we have included a copy of the Guideline issued by the Corporate Registry pursuant to section 448A of the Companies Act.

### Access to Records:

The *Companies (Amendment) Act 2020-31* inserted new provisions in section 175 of the Companies Act. This amendment grants the Registrar of Companies the authority to require the company to produce any corporate records which are required to be maintained under the Act. It also grants the Registrar of Companies the authority to examine the records herself, or direct auditors, directors, officers, company affiliates or other controlling persons to produce information for that purpose. The *Corporate (Miscellaneous Provisions) Act 2021-19* further amended this section and indicates that where a directive is issued by the Registrar of Companies pursuant to section 175, the Company shall have **14 days** from the date of service of the notice to provide the requested information. The penalty for non-compliance with such directive is **BBD\$5,000 (US\$2,500)**. Where the penalty is not paid on the due

date, an additional penalty of **BBD\$500 (US\$250)** is applied for every day during which the default continues, up to a maximum of **BBD\$15,000 (US\$7,500)**.

The *Corporate (Miscellaneous Provisions) Act 2021-19* added section 175A to the Companies Act, making it a criminal offence (attracting a fine, imprisonment or both) to contravene any of the record keeping requirements in sections 170(1)-(3) (typical corporate record keeping obligations for constating documents, minutes, shareholder records and debentures) or 172(1)-(3) (accounting records & meeting minutes and resolutions for director and director committee meetings).

### **Penalties for untrue statements:**

The Companies Act currently makes provision for penalties for filing statements which contain untrue statements of a material fact. The *Corporate (Miscellaneous Provisions) Act 2021-19* amended section 432 of the Companies Act and increased the penalty to **BBD\$20,000 (US\$10,000)** or imprisonment for a term of 2 years. This penalty is applicable to all filings and submissions that **do not have a separate penalty outlined in the Act**.

### **Conclusion**

If you have any questions or concerns about the pending changes and how they may impact on you and your company or society, please do not hesitate to reach out to us. As soon as further information is made available or any practice directives are issued we will be sure to update you accordingly.

### **Contact us**

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### **Our Team**

The Board of Directors and management team of CCSL is comprised of attorneys and professionals who have been providing a high caliber of focused guidance, services and counsel to both international and domestic clients for decades. The Company is managed by a Chief Executive Officer with years of experience in the financial services sector of Barbados and a background in Law, International Tax Law, Company Management and Compliance. Client portfolios are managed by a group of highly motivated and experienced corporate administrators who blend knowledge with dedication to the details of clients' business affairs. The group is made up of STEP professionals, Lawyers, Corporate Secretaries and general administrators with years of service in the field. This offers a wide variety of expertise and knowledge for our clients.

**Disclaimer**

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