



ANGUILLA

**INTERNATIONAL BUSINESS COMPANIES
(AMENDMENT) ACT, 2018**


Published by Authority

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I Assent



Timothy J. Foy, OBE
Governor

18 September 2018
Date

ANGUILLA

No. 9/2018

INTERNATIONAL BUSINESS COMPANIES (AMENDMENT) ACT, 2018

[Gazette Dated: 20th September, 2018] [Commencement: Assent under section 57 of the Constitution]

AN ACT to amend the International Business Companies Act, R.S.A. c. I20 to abolish bearer shares and for incidental and connected purposes.

ENACTED by the Legislature of Anguilla

Interpretation

1. In this Act, “principal Act” means the International Business Companies Act, R.S.A. c. I20.

General amendments

2. The principal Act is amended by deleting the phrase “books and records” wherever it appears and substituting the phrase “records and underlying documents”.

Amendment of section 1

3. Section 1 of the principal Act is amended by inserting the following definitions in their alphabetical order—

“competent authorities” mean the Anguilla Financial Services Commission, the Comptroller of Inland Revenue, the Permanent Secretary, Finance and includes any person acting as, or, to the extent of his or her authority, performing the functions of, the Comptroller of Inland Revenue and Permanent Secretary, Finance;

“records” includes accounting records.

Amendment of section 3

4. Section 3 of the principal Act is amended—

(a) in subsection (1) by deleting paragraphs (a) and (e); and

(b) by deleting subsections (2) and (3).

Amendment of section 16

5. Section 16 of the principal Act is amended by deleting paragraph (a) of subsection (1) and substituting the following —

“(a) registered shares;”.

Amendment of section 24

6. Section 24 the principal Act is amended in subsection (1) by deleting paragraphs (e) and (f).

Amendment of section 27

7. Section 27 of the principal Act is deleted and substituted with the following—

“Issue and transfer of bearer shares prohibited

27. (1) Notwithstanding any provision in this Act an international business company shall—

(a) not issue bearer shares form after 30th September 2018; and

(b) cause bearer shares issued by the international business company to be converted to registered shares before 31st January, 2019.

(2) An international business company shall by Notice or through the custodian notify the beneficial owner of a bearer share of the requirements of subsection (1).

(3) The notification referred to in subsection (2) shall be done before the 30th October, 2018.

(4) An international business company or custodian notifying a beneficial owner pursuant to this section shall either—

(a) obtain confirmation from the beneficial owner of a name in which a share converted pursuant to subsection (1) is to be registered; or

(b) register the share converted pursuant to subsection (1) in the name of a custodian.

(5) An international business company shall by the 31st January 2019 enter the name provided under subsection (4) or the name of the custodian as the case may be into the register of shareholders pursuant to section 24.

(6) In relation to an international business company which has been struck off the companies register, subsections (1) to (5) apply to that company if the company is reinstated.

(7) An Order of the Court shall not permit an international business company which has been struck off the companies register to be reinstated with bearer shares in issue.

(8) An international business company for which shares were converted pursuant to subsection (1) shall by the 31st March, 2019 file a declaration in the manner designated by the Registrar with the Registrar confirming that any bearer shares issued by that company have been registered in the form required by this section.

(9) An international business company that fails to comply with subsection (8) shall not for the purposes of this Act be considered to be in good standing.

(10) Bearer shares which have not been converted pursuant to subsection (1) shall be null and void and be without effect for all purposes of this Act.

(11) For the purposes of this section—

(a) “bearer share” means a share represented by a certificate which states that the bearer of the certificate is the owner of the share;

(b) “custodian” in relation to any bearer share means a person who would have been a custodian under the Custody of Bearer Shares Regulations and who has direct control or custody of bearer shares.”

Amendment of section 35

8. Section 35 of the Principal Act is amended—

(a) in subsection (1) by deleting the phrase “, the holder of the bearer share or”; and

(b) by deleting subsection (2).

Amendment of section 63

9. The principal Act is amended by deleting section 63 and substituting with the following—

“Service of notice on shareholders

63. Any notice, information or written statement required under this Act to be given by an international business company to shareholders must be served in the case of shareholders holding registered shares—

(a) in the manner provided in the articles or by-laws, as the case may be; or

(b) in the absence of a provision in the articles or by-laws, by personal service or by mail addressed to each shareholder at the address shown in the share register.”.

Amendment of section 65

10. The principal Act is amended by deleting section 65 and substituting with the following—

“Records, underlying documents and common seal

65. (1) An international business company must keep records and underlying documents such as books, deeds, contracts, vouchers and receipts that—

- (a) are sufficient to record and explain the transactions of the company; and
 - (b) will, at any time, enable the financial position of the company to be determined with reasonable accuracy.
- (2) The period for which all records and underlying documents must be maintained is 6 years beginning on the date—
- (a) on which all activities taking place in the course of the transaction in question were completed; or
 - (b) of the ending of the business relationship for whose formation the record was compiled.
- (3) The records and underlying documents required to be kept under this section must be kept at the registered office of the international business company or at such other place as the directors may by resolution determine.
- (4) Where the records and underlying documents required to be kept under this section are kept at a place or places other than at the registered office of the international business company, the international business company shall provide the registered agent with a written—
- (a) record of the physical address of the place at which the records and underlying documents are kept; and
 - (b) record of the name of the person who maintains or controls the records and underlying documents ; and
 - (c) undertaking advising that the registered agent shall, at any time it so requests, have access to and be provided with the records and underlying documents without delay.
- (5) Where the place or places at which the records and underlying documents, or the name of the person who maintains or controls the records and underlying documents, change, the international business company shall provide its registered agent with the physical address of the new location of the records and underlying documents or the name of the new maintainer or controller of the records and underlying documents, as the case may be, within 14 days of the change of the place or places.
- (6) The registered agent shall keep and maintain a record of the place or places outside Anguilla at which the international business company keeps its records and underlying documents and such record shall comprise—
- (a) the name of the international business company;
 - (b) the address or addresses of the place or places at which the international business company's records and underlying documents are kept;
 - (c) the name of the person who maintains or controls the records and underlying documents; and

(d) the date the written undertaking under subsection (4) (c) was given to the registered agent.

(7) Whenever required to do so by the Commission or any other competent authority in Anguilla, the registered agent shall request and obtain from the international business company, the records and underlying documents in respect of the international business company.

(8) An international business company shall keep—

(a) minutes of all meetings of—

- (i) directors,
- (ii) shareholders,
- (iii) committees of directors,
- (iv) committees of officers, and
- (v) committees of shareholders;

(b) copies of all resolutions consented to by—

- (i) directors,
- (ii) shareholders,
- (iii) committees of directors,
- (iv) committees of officers, and
- (v) committees of shareholders; and

(c) the articles and the by-laws and all amendments to them.

(9) The articles and the by-laws of an international business company, and all amendments thereto, must be kept at the registered office of the company.

(10) An international business company shall have a common seal and an imprint of it shall be kept at the registered office of the company.

(11) For the purposes of this section “business relationship” means a continuing arrangement between a company and one or more persons with whom the company engages in business, whether on a one-off, regular or habitual basis.

(12) An international business company that contravenes subsections (1) to (9) commits an offence.”

Amendment of section 76

11. Section 76 of the principal Act is amended in subsection (1)(e) by deleting the phrase “unless the charge is a security to bearer,”.

Amendment of section 117

12. Section 117 of the principal Act is amended by deleting subsection (5) and substituting with the following—

“(5) Subsection (4) does not apply to an instrument relating to a transfer of property situated in Anguilla, including any interest in land in Anguilla and in shares in a company incorporated under the Companies Act.”.

Insertion of section 129A

13. The principal Act is amended by inserting the following section after section 129—

“Volume Purchase Agreements

129A. (1) The Registrar may enter into a volume purchase agreement with a Registered Volume Purchaser.

(2) Under a volume purchase agreement, the Registrar may allow other Registered Agents who have the same registered office address as that of the Registered Volume Purchaser to register international business companies pursuant to subsection (4) for the purpose of meeting the minimum registration requirements as specified in the volume purchase agreement.

(3) Notwithstanding subsection (2) the Registered Volume Purchaser is liable for breach of the agreement whether the breach was caused by an act or omission of the Registered Volume Purchaser or a Registered Agent referred to in subsection (2).

(4) Under a volume purchase agreement the Registered Volume Purchaser agrees to register a minimum number of international business companies within the incorporation period as specified in the volume purchase agreement.

(5) Where the Registered Volume Purchaser fails to register the minimum number of international business companies in accordance with the agreement the Registered Volume Purchaser shall pay a penalty as specified by Regulations.

(6) For the purpose of this section a Registered Volume Purchaser means a registered agent who has entered into a Volume Purchase Agreement with the Registrar.”.

Amendment to Schedule

14. The Table in the Schedule is amended by inserting a the following new offence and penalty directly after the offence and penalty created by section 21(5)—

65(1) - (9)	Failure to comply with record keeping requirements under section 65	\$75,000	\$75,000	
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Repeal of Custody of Bearer Shares Regulations

15. The Custody of Bearer Shares Regulations R.R.A. c. I20-3 is hereby repealed.

Citation

16. This Act may be cited as the International Business Companies (Amendment) Act, 2018.



Terry T.C. Harrigan
Deputy Speaker

Passed by the House of Assembly this 14th day of September, 2018.



Lenox J. Proctor
Clerk of the House of Assembly

OBJECTS AND REASONS

(The Objects and Reasons do not form part of this Bill)

International Business Companies (Amendment) Bill amends the International Business Companies Act, R.S.A. c. I20.

The Bill consists of 16 clauses.

Clause 1 is the Interpretation section of the Bill

Clause 2 amends the Bill by deleting the phrase “books and records” wherever it appears and substituting with the phrase “records and underlying documents”.

Clause 3 amends section 1 by inserting the definitions of records and competent authorities in their alphabetical order.

Clause 4 amends section 3 by removing some restriction on IBC's. The amendment now allows IBCs to carry on business with persons resident in Anguilla. Similarly IBCs can own and hold interest in real property in Anguilla.

Clause 5 amends section 16 by removing bearer shares as a type of share in which IBCs are allowed to issue.

Clause 6 removes the requirement for IBCs to include bearer share information in their register of shareholders.

Clause 7 repeals section 27 and replaces it with a new section which prohibits the issuing and transferring of bearer shares.

Clause 8 amends section 35 by deleting reference to bearer shares in relation to a mortgage or charge of shares of an international business company.

Clause 9 amends section 63 to remove any service of notice requirements in relation to holders of bearer shares.

Clause 10 amends section 65 dealing with records, underlying documents etc., by further detailing the record keeping requirements of IBCs.

Clause 11 amends section 76 (1) (e) by deleting the phrase “unless the charge is a security to bearer,”.

Clause 12 amends section 117 by deleting a reference to a breach which no longer exists by virtue of an amendment made to section 3 in clause 4.

Clause 13 creates a new section dealing with volume purchase agreements.

Clause 14 amends the table in the Schedule by creating a new offence and penalty of failure to comply with record keeping requirements under section 65.

Clause 15 repeals the Custody of Bearer Shares Regulations.

Clause 16 deals with the citation.