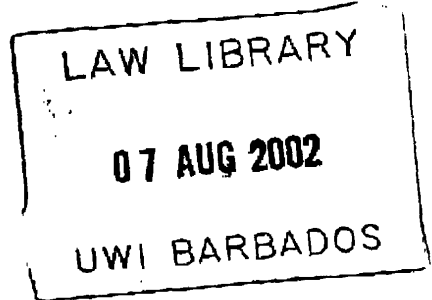


Statutory Instruments Supplement No. 41
Supplement to Official Gazette No. 58 dated 11th July, 2002

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S.I. 2002 No. 68

**The Companies Act
Cap. 308**



THE TAKE-OVER BID REGULATIONS, 2002

The Minister in exercise of the powers conferred on him by section 195B(1) of the *Companies Act*, and after consultation with the Barbados Stock Exchange, makes the following Regulations:

1. These Regulations may be cited as the *Take-Over Bid Regulations, 2002*. Citation.

Preliminary

2. In these Regulations,

Interpre-
tation.

"Exchange" means the Barbados Stock Exchange Inc.;

"market purchase take-over bid" means a purchase of shares of an offeree company made on the floor of the Exchange by the issuer itself or by an insider of the issuer which, when combined with the number of shares purchased by the issuer, insider or their associates and affiliates in the preceding 180 days, shall not exceed 10 per cent of the shares which are not already owned by the issuer, insider and their associates and affiliates.

STATUTORY INSTRUMENT

Application

Application
of section
126(4) of
the
Securities
Act, 2001.
Cap. 308

3. Section 126(4) of the *Securities Act, 2001* shall apply to all take-over bids and to any business registered in accordance with the *Companies Act*.

Mandatory
offer to all
sharehold-
ers.

4. (1) For the purpose of this regulation "Regulator" means the Securities Commission.

(2) Where a person directly or indirectly acquires 25 per cent or more of the equity of a company, that person shall deliver by registered mail to the Regulator and to the company at its registered office or principal place of business within 24 hours of the acquisition, a written statement that shall contain the following information:

- (a) the identity, occupation, place of residence and citizenship of the person acquiring the equity in the company; and
- (b) a declaration as to
 - (i) the amount of the equity being acquired in the company and confirming trigger of the take-over code;
 - (ii) the share price at which the equity was purchased;
 - (iii) the purpose of the acquisition;
 - (iv) whether further purchases of equity in the company are intended; and
 - (v) whether that person intends to acquire control of the business or majority shareholding in the company.

STATUTORY INSTRUMENT

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(3) Where the declaration made in accordance with paragraph (2)(b) states that the person intends to acquire control or majority shareholding of the company, that person shall mail or deliver a take-over bid circular to each registered shareholder of the company inviting each registered shareholder to tender his shares

- (a) at the same price;
- (b) at a better price; or
- (c) in exchange for other equivalent or better consideration.

(4) The take-over bid circular referred to in paragraph (3) shall be mailed or delivered to each registered shareholder within 7 days of the date of the purchase of the equity, and not less than 28 days before the date on which the take-over bid is to close.

Take-Over Bid Circular

5. An offeror making a take-over bid shall mail or deliver to each registered shareholder of the offeree company a take-over bid circular inviting shareholders to tender their shares to the take-over bid. Delivery of circular.

6. (1) A take-over bid circular shall be mailed not less than 28 days before the date on which the take-over bid is to close. Time.

(2) Where the take-over bid is subsequently varied in any material respect, the closing date of the take-over bid shall be extended by 14 days.

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STATUTORY INSTRUMENT

Information
to be
included in
take-over
bid circular.

7. A take-over bid circular shall contain the following information:

- (a) the identity and business background of the offeror;
- (b) a statement of the withdrawal rights of offerees and the dates before which and after which offerees who deposit their shares may exercise those rights;
- (c) the date on which any other time period mentioned in the circular begins or ends;
- (d) the details of the method and time of payment of the money or other consideration to be paid for the shares of the offeree company;
- (e) where the obligation of the offeror to take up and pay for shares under a take-over bid is conditional upon a minimum number of shares being deposited, the details of the condition;
- (f) the number, without duplication, and designation of any securities of the offeree company beneficially owned or over which control or direction is exercised by
 - (i) the offeror;
 - (ii) an associate or affiliate of the offeror;
 - (iii) each director and each officer of the offeror and their respective associates; and
 - (iv) any person known to the directors or officers of the offeror who beneficially owns or exercises control or direction over shares of the offeror carrying more than 25 per cent of the votes attached to shares of the offeror, or, where none are so owned, controlled or directed, a statement to that effect;

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- (g) where known to the offeror or the directors or officers of the offeror, the number and designation of any shares of the offeree company traded by a person referred to in paragraph (f) during the 6 months preceding the date of the take-over bid, including the purchase or sale price and the date of each transaction;
- (h) details of any contract, arrangement or understanding, formal or informal between the offeror and
 - (i) any shareholder of the offeree company with respect to the take-over bid; and
 - (ii) any person with respect to any shares of the offeree company in relation to the take-over bid;
- (i) where the shares of the offeree company are to be paid for wholly or partly in money, details of any arrangements that have been made by the offeror to ensure that the required funds are available to take up and pay for the shares of the offeree company deposited pursuant to the take-over bid;
- (j) details of any contract or arrangement made or proposed to be made between the offeror and any of the directors or officers of the offeree company, including details of any payment of other benefit proposed to be made or given by way of compensation in respect of loss of office or in respect of their remaining in or retiring from office if the take-over bid is successful;
- (k) details of any business relationship between the offeror and offeree company that is material to either of them;
- (l) where a purpose of the take-over bid is to acquire effective control of the business of the offeree company, any plans or proposals that the offeror has to liquidate the offeree company, to sell, lease or exchange all or substantially all of its assets or to amalgamate it with any other company, or to make any other major change in its business, corporate structure, management or personnel;

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Cap. 308.

(m) where the offeror intends to invoke the right conferred by section 186 of the Act to acquire the shares of offerees who do not accept the take-over bid,

(i) a statement of that intention; and

(ii) a statement of the right of an offeree to dissent and to demand the fair value of his shares and the method by which it may be exercised;

(n) where reasonably ascertainable, a summary showing, in reasonable detail for the 6 months preceding the date of the take-over bid, the volume of trading and price range of the shares sought to be acquired pursuant to the take-over bid;

(o) particulars of any information known to the offeror that indicates any material change in the financial position or prospects of the offeree company since the date of the most recent publicly filed interim or annual financial statements of the offeree company; and

(p) all other material facts known to the offeror.

Information to be included in circular where part of consideration offered is securities.

8. Where all or part of the consideration being offered is securities of the offeror, a take-over bid circular shall also include:

(a) the financial statements of the offeror on a *pro forma* basis as of the date of the offeror's financial statement giving effect to the take-over bid based on the information in the most recent publicly filed financial statements of the offeree company;

(b) a description of the financial statements of the offeree company relied upon and of the basis of preparation of the *pro forma* financial statements;

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- (c) basic and fully diluted earnings per share figures prepared in accordance with international accounting standards based upon the *pro forma* financial statements; and
- (d) a reasonable statement of the plans of the offeror for the offeree company, including a summary of the consolidated financial results on a fully diluted basis.

9. Where an offeror exercises effective control over the offeree company when the offeror makes a take-over bid, the take-over bid circular shall also contain the information to be included in a directors' circular under regulation 14 where that information is not already contained in the take-over bid circular.

Circular to include information set out in regulation 14.

10. Where a take-over bid is made by a company to repurchase its own shares, the take-over bid circular shall contain, instead of the information required under regulation 7, the following information:

Information to be included in circular where company seeks to repurchase its shares.

- (a) the identity of the offeror;
- (b) the information required by paragraphs (b) to (e) and (h) to (j) of regulation 7, and paragraphs (i) to (k), and (q) of regulation 14;
- (c) where reasonably ascertainable, a summary showing, in reasonable detail for the 12 months preceding the date of the take-over bid, the volume of trading and price range of the shares sought to be acquired pursuant to the take-over bid;
- (d) the number, without duplication, and designation of any securities of the company beneficially owned or over which control or direction is exercised by
 - (i) each director and each officer of the company and their respective associates,

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- (ii) any person known to the directors or officers who beneficially owns or exercises control or direction over shares of the company carrying more than 10 per cent of the votes attached to shares of the company; and
- (iii) an associate or affiliate of the company, or if none are so owned, controlled or directed, a statement to that effect;
- (e) where known to the directors or officers of the company, the number and designation of any shares of the company traded by a person referred to in paragraph (d) during the 12 months preceding the date of the take-over bid, including the purchase or sale price and the date of each transaction;
- (f) the number and designation of any shares of the company traded, that is, the sales and purchases, by the company during the 12 months preceding the date of the take-over bid, including the purchase or sale price, the date and the purpose of each transaction;
- (g) where known to the directors or officers of the company, whether any person referred to in paragraph (d) accepted or intends to accept the offer in respect of any shares of the company;
- (h) details of the effects of the take-over bid on the company, the persons referred to in paragraph (d) and the offerees;
- (i) the purpose of the take-over bid, including any plans or proposals to liquidate the company, to sell, lease or exchange all or substantially all of its assets or to amalgamate it with any other company, or to make any major changes in its business, corporate structure, management or personnel;

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- (j) financial statements of the company prepared for public filing subsequent to the date of its most recent publicly filed financial statements and not previously sent to shareholders;
- (k) the information required by paragraphs (o) and (p) of regulation 14 to be included in a directors' circular;
- (l) the information required by paragraph (d) of regulation 14 to be included in a take-over bid circular;
- (m) a summary of any appraisal, known to the directors or officers of the company, its material assets or securities within the two-year period preceding the date of the take-over bid;
- (n) where shares of the class subject to the take-over bid were offered to the public by the company during the 5 years preceding the date of the take-over bid, the offering price per share, and the aggregate proceeds received by the company;
- (o) the frequency and amount of dividends with respect to shares of the company during the 2 years preceding the date of the take-over bid, any restrictions on the ability of the company to pay dividends and any plan or intention to declare a dividend or to alter the dividend policy of the company;
- (p) a general description of the consequences of the take-over bid to the company and offerees under the *Income Tax Act*; Cap. 73.

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- (q) where offerees are to be solicited otherwise than by mail, the identity of all persons employed or retained by the company for that purpose, the material features of any contract or arrangement for the solicitation, the parties to the contract or arrangement and the cost or anticipated cost thereof;
- (r) a statement of the expenses incurred or to be incurred in connection with the take-over bid; and
- (s) all other material facts known to the directors or officers of the company.

Circular of a company.

11. Where the offeror is a company, a take-over bid circular shall contain a statement, signed by one or more directors, that the contents and the sending of the circular have been approved by the directors of the offeror.

Permissible Conditions On a Formal Offer

Formal take-over bid.

12. A take-over bid must be made without conditions except the condition that it may be withdrawn where

- (a) a specified percentage of the shares that are outstanding and not already owned are not tendered;
- (b) a government or government agency moves to prevent it from proceeding or to alter the status of the offeree company materially; or
- (c) a natural disaster or the directors of the offeree company intervene between the making of the offer and the closing date to materially change the value or nature of the offeree company.

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Directors' Circular

13. Where a take-over bid is made to the shareholders of a company, the directors of that company shall in a directors' circular

Information
to be
provided in
directors'
circular.

- (a) provide up-to-date information relevant to the company and the position of the directors;
- (b) provide a recommendation to shareholders concerning acceptance of the take-over bid;
- (c) disclose what course of action the directors plan to take; and
- (d) disclose the other information required by regulation 14.

14. A directors' circular shall also contain:

Other
information.

- (a) the number, without duplication, and designation of any securities of the offeree company beneficially owned or over which control or direction is exercised
 - (i) by each director and each officer of the offeree company and their associates; and
 - (ii) where known to the directors or officers, by each person who beneficially owns or exercises control or direction over shares of the offeree company carrying more than 10 per cent of the votes attached to shares of the offeree company;

or, where none are so owned, controlled or directed, a statement to that effect;

STATUTORY INSTRUMENT

(b) where the offeror is a company the number, without duplication, and designation of any securities of the offeror beneficially owned or over which control or direction is exercised

(i) by each director and officer of the offeree company and their associates; and

(ii) where known to the directors or officers, by each person who beneficially owns or exercises control or direction over shares of the offeree company carrying more than 10 per cent of the votes attached to shares of the offeree company;

or, where none are so owned, controlled or directed, a statement to that effect;

(c) where known to the directors or officers of the offeree company, the number and designation of any shares of the offeree company or of the offeror traded by a person referred to in sub-paragraph (a) or (b) during the 6 months preceding the date of the take-over bid, including the purchase or sale price and the date of each transaction;

(d) where the offeror is a company, the number and designation of any securities of the offeror beneficially owned or over which control or direction is exercised by the offeree company;

(e) the number and designation of any shares of the offeree company or of the offeror traded by the offeree company during the 6 months preceding the date of the take-over bid, including the purchase or sale price, the date and the purpose of each transaction;

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(f) where the directors

- (i) make a recommendation in relation to the take-over bid, a statement of the recommendation and the reasons for the recommendation; or
- (ii) do not recommend acceptance or rejection of a take-over bid, the reasons for their failure to make a recommendation and, if a reason is a division among the directors, the nature of the division;

(g) whether

- (i) a director or officer of the offeree company or an associate of such director or officer; or
- (ii) where known to the directors or officers, any person who beneficially owns or exercises control or direction over shares of the offeree company carrying more than 10 per cent of the votes attached to the shares of the offeree company;

has accepted or intends to accept the offer in respect of any shares of the offeree company;

(h) whether

- (i) a director or officer of the offeree company or an associate of a director or officer; or
- (ii) where known to the directors or officers, any person who beneficially owns or exercises control or direction over shares of the offeree company carrying more than 10 per cent of the votes attached to shares of the offeree company;

has any interest in any material contract to which the offeror is a party and, if so, details of the nature and extent of the interest;

STATUTORY INSTRUMENT

- (i) details of all service contracts of directors and officers of the offeree company or any of its affiliates with more than a 12-month period remaining or, if there are no such contracts, a statement of that fact;
- (j) where a contract referred to in sub-paragraph (i) has been entered into or amended within the 6 months preceding the date of the take-over bid, the details of the contract replaced or amended;
- (k) details of any contract or arrangement made or proposed to be made between the offeror and any of the directors or officers of the offeree company, including details of any payment or other benefit proposed to be made or given by way of compensation in respect of loss of office or in respect of their remaining in or retiring from office if the take-over bid is successful;
- (l) where known to the directors or officers of the offeree company, the details of any special contract, arrangement or understanding, formal or informal, made or proposed to be made between the offeror and any shareholder of the offeree company with respect to the take-over bid;
- (m) where reasonably ascertainable, a summary showing, in reasonable detail for the 6 months preceding the date of the take-over bid, the volume of trading and the price range of the shares sought to be acquired pursuant to the take-over bid if such information is not disclosed in the take-over bid circular or if, in the opinion of the directors of the offeree company, such information is not adequately disclosed therein;
- (n) financial statements of the offeree company prepared for public filing subsequent to the date of its most recent publicly filed financial statements and not previously sent to shareholders;

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- (o) where the information contained in the most recent financial statements of the offeree company is materially misleading because of events subsequent to its preparation, a statement of the material events necessary to correct any such misleading representations;
- (p) details of any information known to any director or officer of the offeree company concerning any material change in the prospects of the offeree company since the date of the last financial statements of the offeree company;
- (q) where a director or officer of the offeree company intends to purchase shares of the offeree company during a take-over bid or where he knows of the existence of such an intention on the part of any person, a statement of the intention and the purpose of such purchases, or if no such intention is known to exist, a statement to that effect; and
- (r) all other material facts known to the directors or officers of the offeree company.

15. (1) The directors of an offeree company shall send a directors' circular to each shareholder of the offeree company, to the offeror and to the Exchange.

Director's
circular to
be distrib-
uted.

(2) Where it is not possible for the directors to mail the directors' circular within 10 days of the date of the take-over bid, they shall cause a press release to be issued stating when that circular will be forthcoming and, in any case, the directors shall send the circular not later than 7 days before the take-over bid terminates.

Miscellaneous

Consideration to be offered

16. (1) All offeree shareholders must receive exactly the same consideration or choices of consideration.

(2) A currently controlling shareholder may not sell out without all shareholders having the same opportunity at the same time and the same price.

(3) A company may not repurchase more than 10 per cent of its own shares, except on a take-over bid made equally to all shareholders or where the amount is not more than 10 per cent, it is done by way of a market purchase take-over bid, made on the Exchange by posted bids which are open to any seller and subject to the prior approval of the shareholders in a General Meeting.

Time for withdrawal of shares.

17. A shareholder may withdraw his shares from a take-over bid at anytime up to 2 business days prior to the close of the offer.

Offeror to announce his intentions.

18. (1) Within 2 business days after the close of a take-over bid the offeror must announce whether he is proceeding with the offer or whether there is an unfulfilled condition which he is invoking in order to withdraw the offer and return the shares.

(2) Where the take-over bid is withdrawn, the shares must be returned forthwith.

(3) A withdrawing offeror is liable for any damages resulting from the tardy return of deposited shares.

(4) If the offeror elects to complete the take-over bid he must take up and pay for the shares within 30 days of the closing of the offer.

STATUTORY INSTRUMENT

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19. (1) The offeror on a take-over bid shall appoint one or more members of the Exchange as manager, one of whom must be a clearing and settling member.

Appoint-
ment of
manager.

(2) Shares shall be tendered directly or through other members of the Exchange to the manager appointed under subparagraph (1).

(3) Where other members of the Exchange are involved in the processing of tenders, the manager shall pay them a reasonable commission for processing the tenders.

20. A shareholder who owns 10 per cent or more of the shares of a listed company shall declare every trade of those shares to the Exchange within one week of each such trade.

Declaration
of trade.

21. A market purchase take-over bid for the shares of a listed company, made in accordance with these regulations, shall be deemed to have been made through the Exchange.

Market
purchase
take-over
bid.

Made by the Minister this 3rd day of July, 2002.

R. R. FARLEY
Minister responsible for Corporate Affairs.

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BARBADOS

I assent
C. STRAUGHN HUSBANDS
Governor-General
7th June, 2007.

2007 - 17

An Act to amend the Companies Act.

ENACTED by the Parliament of Barbados as follows:

(14th June, 2007.) Commence-
ment.

1. This Act may be cited as the *Companies (Amendment) Act, 2007*. Short title.

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COMPANIES (AMENDMENT) ACT, 2007 - 17

Amend-
ment to
section 153
of Cap.
308.

2. Section 153 of the *Companies Act*, in this Act referred to as the principal Act, is amended by deleting subsections (1) and (2) and substituting the following:

"(1) Subject to section 154, a person who satisfies the requirements of subsection (2) is qualified for appointment as an auditor of a company.

(2) A person qualifies for appointment as an auditor of a company, where

(a) in the case of an individual, that person is a member of the Institute of Chartered Accountants of Barbados, in this section called "the Institute" and holds a practising certificate from that Institute;

(b) in the case of a body corporate

(i) not less than 75 per cent of the body of persons who have responsibility for the governance and affairs of that body corporate satisfy the requirements of paragraph (a); and

(ii) the principal business of that body corporate as specified in its articles is the business of providing accounting and auditing services; or

(c) that person is for the time being authorised to be appointed as an auditor of a company under subsection (3)."

COMPANIES (AMENDMENT) ACT, 2007 - 17

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3. Section 154 of the principal Act is repealed and the following section is substituted:

Repeal and replacement of section 154 of Cap. 308.

"Disqualifying auditor. **154.** (1) Subject to subsection (7), an individual or a body corporate is not qualified to be an auditor of a company if that individual or body corporate is not independent of the company, of its affiliated companies and of the directors and officers of the company and its affiliated companies.

(2) For the purposes of this section, whether or not an individual or a body corporate is independent is a question of fact to be determined having regard to all the circumstances.

(3) An individual or a body corporate is presumed not to be independent of a company if the individual or body corporate or the business partner or affiliate of the individual or body corporate, as the case may be

- (a) is a business partner or affiliate, a director, an officer or an employee of the company or any of its affiliates, or a business partner or affiliate of any director, officer or employee of any such company or its affiliates;
- (b) beneficially owns or controls, directly or indirectly, a material interest in the shares or debentures of the company or any of its affiliates; or
- (c) has been a receiver, receiver-manager, liquidator or trustee in bankruptcy of the company or any of its affiliates within 2 years of the proposed appointment of the individual or body corporate as auditor of the company.

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COMPANIES (AMENDMENT) ACT, 2007 - 17

(4) The provision of secretarial services by or on behalf of an individual, a business partner, a body corporate or an affiliate does not by itself deprive an individual, a business partner, a body corporate or an affiliate of the independence of the individual, the business partner, the body corporate or the affiliate for the purposes of this section.

(5) An auditor who becomes disqualified under this section must, subject to subsection (7), resign forthwith after that auditor becomes aware of the disqualification.

(6) An interested person may apply to a court for an order declaring an auditor disqualified under this section and the office of auditor vacant.

(7) An interested person may apply to the court for an order exempting an auditor from disqualification under this section and the court may, if it is satisfied that an exemption would not adversely affect the shareholders, make an exemption order on such terms as it thinks fit; and the order may be given retroactive effect."

Amend-
ment to
section 157
of
Cap. 308.

4. Section 157 of the principal Act is amended by deleting subsection (1) and substituting the following:

- "(1) An auditor of a company ceases to hold office when
- (a) in the case of an individual, the individual
 - (i) dies or resigns; or
 - (ii) is removed pursuant to section 158; or
 - (b) in the case of a body corporate, the body corporate
 - (i) is wound up or dissolved;
 - (ii) goes into receivership; or
 - (iii) is removed pursuant to section 158."

COMPANIES (AMENDMENT) ACT, 2007 - 17

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5. Section 163 of the principal Act is amended by deleting

(a) subsection (1) and substituting the following:

Amend-
ment to
section 163
of
Cap. 308.

"(1) An auditor who

(a) resigns;

(b) receives a notice or otherwise learns of a meeting of shareholders called for the purpose of removing that auditor from office;

(c) receives a notice or otherwise learns of a meeting of directors or shareholders at which another person is to be appointed to fill the office of auditor, whether because of the resignation or removal of the incumbent auditor or because that auditor's term of office has expired or is about to expire; or

(d) receives a notice or otherwise learns of a meeting of shareholders at which a resolution referred to in section 156 is to be proposed,

may submit to the company a written statement giving the reasons for the resignation or the reasons why that auditor opposes any proposed action or resolution."; and

(b) subsections (3) and (4) and substituting the following:

"(3) No individual or body corporate may accept appointment, consent to be appointed or be appointed as auditor of a company if that individual or body corporate is replacing an auditor who has resigned, been removed or whose term of office has expired or is about to expire, until the individual or body corporate has requested and received from the former auditor, a written statement of the circumstances and the reasons that, in that auditor's opinion, that individual or body corporate is to be replaced.

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COMPANIES (AMENDMENT) ACT, 2007 - 17

(4) Notwithstanding subsection (3), an individual or body corporate otherwise qualified may accept appointment or consent to be appointed as auditor of a company if, within 15 days after making the request referred to in that subsection, that individual or body corporate does not receive a reply to it."

Amend-
ment to
section 164
of
Cap. 308.

6. Section 164 of the principal Act is amended by deleting subsection (1) and substituting the following:

"(1) An auditor of a company must make the examination that is in the auditor's opinion necessary to enable a report to be made in the prescribed manner on the financial statements required by this Act to be placed before the shareholders, except such financial statements or parts thereof that relate to the immediately preceding financial year referred to in sub-paragraph (ii) of paragraph (a) of subsection (1) of section 147."

Amend-
ment to
section 165
of
Cap. 308.

7. Section 165 of the principal Act is amended by deleting the word "him" appearing

(a) in the closing words of subsection (1) and substituting the words "the auditor"; and

(b) in subsection (2)(a) and substituting the words "the auditor".

Amend-
ment to
section 166
of
Cap. 308.

8. Section 166 of the principal Act is amended by deleting subsection (2) and substituting the following:

"(2) When the auditor or a former auditor of a company is notified or becomes aware of an error or misstatement in a financial statement upon which that auditor has reported to the company, and in the auditor's opinion, the error or misstatement is material, the auditor shall inform each director of the company accordingly."

COMPANIES (AMENDMENT) ACT, 2007 - 17

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9. Section 167 of the principal Act is repealed and the following section is substituted:

Repeal and replacement of section 167 of Cap. 308.

"Privilege of auditor.

167. An auditor is not liable to any person in an action for defamation based on any act done or not done, or any statement made by that auditor in good faith in connection with any matter which the auditor is authorised or required to do under this Act."

10. Section 179(4C) of the principal Act is amended by deleting the words "8(3)" appearing therein and substituting the words "8(4)".

Amendment to section 179 of Cap. 308.

11. Section 448 of the principal Act is amended by deleting paragraph (d) and substituting the following:

Amendment to section 448 of Cap. 308.

"(d) "auditor" includes a partnership of auditors and a body corporate that satisfies the requirements of section 153(2)(b);".

Supplement to Official Gazette No. 106 dated 23rd December, 2004

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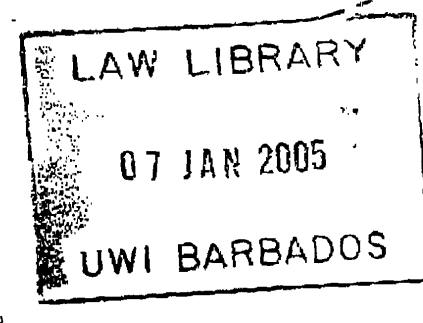
**CARICOM SINGLE MARKET AND ECONOMY
(IMPLEMENTATION) (MISCELLANEOUS
PROVISIONS) ACT, 2004 - 24**

Arrangement of Sections

Section

1. Short title.
2. Amendment of enactments set out in the Schedule.

SCHEDULE



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BARBADOS

I assent
C. STRAUGHN HUSBANDS
Governor-General
20th December, 2004.

2004 - 24

An Act to amend certain Acts relating to the implementation of the Revised Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM Single Market and Economy.

(23rd December, 2004) Commence-
ment.

ENACTED by the Parliament of Barbados as follows:

1. This Act may be cited as the *CARICOM Single Market and Economy (Implementation) (Miscellaneous Provisions) Act, 2004.* Short title.

2. The enactments set out in Column 1 of the *Schedule* are amended in the respects specified opposite thereto in Column 2 of the *Schedule.* Amendment of enactments set out in the Schedule.

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CARICOM SINGLE MARKET AND ECONOMY (IMPLEMENTATION) (MISCELLANEOUS PROVISIONS) ACT, 2004 - 24

SCHEDULE

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
1. <i>The Franchises (Registration and Control) Act, Cap. 179A</i>	<p>In section 2</p> <p>(a) insert, in the correct alphabetical order, the following definitions:</p> <p>(i) "Community" means the Caribbean Community established by the <i>Revised Treaty of Chaguaramas Establishing the Caribbean Community, including the CARICOM Single Market and Economy</i> that was signed in the Bahamas on the 4th day of July, 2001;</p> <p>(ii) "national" means a person who</p> <p>(A) is a citizen of a Member State; or</p> <p>(B) has a connection with that State of a kind which entitles him to be regarded as belonging to or, if it be so expressed, as being a native or permanent resident of the State;"</p> <p>(b) section 2A, delete the words "other than a citizen or permanent resident," appearing in subparagraph (ii) of sub-section (1)(a)";</p>

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CARICOM SINGLE MARKET AND ECONOMY (IMPLEMENTATION)
(MISCELLANEOUS PROVISIONS) ACT, 2004 - 24

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SCHEDULE - *Cont'd*

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
<i>The Franchises (Registration and Control) Act, Cap. 179A - Cont'd</i>	<p>(c) section 3.</p> <p>(i) insert after the words "other than a citizen or permanent resident" appearing in paragraph (h) of subsection (1), the words "or a national of a Member State of the Community";</p> <p>(ii) insert after the words "not being a citizen or permanent resident" appearing in paragraph (h) of subsection (1A), the words "or a national of a Member State of the Community";</p> <p>(iii) delete the words "13th March 1989" wherever they appear in subsection (1B) and (1C) and substitute the words "on or after the commencement of this Act"; and</p> <p>(iv) insert after the words "other than a citizen or permanent resident" appearing in subsection (1B) the words, "or a national of a Member State of the Community".</p>

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CARICOM SINGLE MARKET AND ECONOMY (IMPLEMENTATION)
(MISCELLANEOUS PROVISIONS) ACT, 2004 - 24

SCHEDULE - *Cont'd*

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
2. <i>Aliens Act</i> , Cap. 185	<p>In section 2.</p> <p>(a) delete the definition of "alien" and substitute the following:</p> <p>"alien" means a person who is not</p> <p>(a) a national of a Member State of the Caribbean Community; or</p> <p>(b) a Commonwealth citizen, a British protected person or a citizen of the Republic of Ireland;</p> <p>(b) insert the following definitions in the appropriate alphabetical order:</p> <p>(i) "Caribbean Community" means the Caribbean Community established by the Treaty;</p> <p>(ii) "national of a Member State" means a person who</p> <p>(A) is a citizen of a Member State;</p> <p>(B) has a connection with that State of a kind which entitles him to be regarded as belonging to or, if it be so expressed, as being a native or resident of the State for the purposes of the laws thereof relating to immigration; or</p> <p>(C) is a company or other legal entity constituted in the Member State in conformity with the laws thereof and which that State regards as</p>

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CARICOM SINGLE MARKET AND ECONOMY (IMPLEMENTATION)
(MISCELLANEOUS PROVISIONS) ACT, 2004 - 24

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SCHEDULE - *Cont'd*

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
<p>2. <i>Aliens Act, Cap. 185</i> - <i>Cont'd</i></p>	<p>belonging to it, provided that such company or other legal entity has been formed for gainful purposes and has its registered office and central administration, and carries on substantial activity, within the Community and which is substantially owned and effectively controlled by persons mentioned in subparagraphs (ii)(A) and (ii)(B) of this paragraph</p> <p>but does not include a person who has attained nationality by virtue of an economic connection.</p> <p>(iii) "Treaty" means the Revised Treaty of Chaguaramas Establishing the Caribbean Community, including the CARICOM Single Market and Economy, that was signed in the Bahamas on the 5th day of July, 2001.</p>
<p>3. <i>Immigration Act, Cap. 190</i></p>	<p>1. In section 2, insert in the appropriate alphabetical order the following definitions:</p> <p>"Community" means the Caribbean Community established by Article 2 of the Treaty and includes the CARICOM Single Market and Economy signed at Nassau, the Bahamas on 5th July, 2001;</p> <p>"Member State" means a Member State of the Community, excluding an Associate member within the meaning of Article 231 of the Treaty;</p>

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(MISCELLANEOUS PROVISIONS) ACT, 2004 - 24

SCHEDULE - *Cont'd*

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
3. <i>Immigration Act, Cap. 190 - Cont'd</i>	<p>"national" means a person who</p> <ul style="list-style-type: none"> (a) is a citizen of a Member State; or (b) has a connection with that State of a kind which entitles him to be regarded as belonging to or, if it be so expressed, as being a native or resident of the State for the purposes of the laws thereof relating to immigration; (c) is a company or other legal entity constituted in the Member State in conformity with the laws thereof and which that State regards as belonging to it, provided that such company or other legal entity has been formed for gainful purposes, has its registered office and central administration and carries on substantial activity within the Community and which is substantially owned and effectively controlled by persons mentioned in paragraphs (a) and (b) herein.

but does not include a person who has attained nationality by virtue of economic citizenship.

"Treaty" means the Revised Treaty of Chaguaramas Establishing the Caribbean Community, including the CARICOM Single Market and Economy, that was signed in the Bahamas on the 5th day of July, 2001.

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CARICOM SINGLE MARKET AND ECONOMY (IMPLEMENTATION)
(MISCELLANEOUS PROVISIONS) ACT, 2004 - 24

SCHEDULE - *Cont'd*

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
3. <i>Immigration Act,</i> Cap. 190 - <i>Concl'd</i>	2. In section 17, delete in subsections (1) and (2) the words "or immigrant" and substitute the words " ", immigrant or national of a Member State to whom (a) the right of establishment referred to in Articles 32, 33, paragraph (c) of Article 34, 36 and 37 of the Treaty applies; and (b) the provision of services referred to in Articles 37 and 38 of the Treaty, applies".
4. <i>Companies Act,</i> Cap. 308.	In section 198(1), delete paragraph (a).
5. <i>The Insurance Act,</i> Cap. 310	1. In this Act, delete the words "Common Market" wherever they appear and substitute the words "CARICOM Single Market and Economy". 2. In section 2, insert in the appropriate alphabetical order the following definition: "CARICOM Single Market and Economy" has the meaning assigned to it by section 2(1) of the <i>Caribbean Community Act</i> ". 3. In section 82, delete subsection (7). 4. Insert immediately after section 82 the following section: Registration of brokers "82A. (1) A person is entitled to be registered as a broker under this Part if, on application made to the Supervisor, that person satisfies the Supervisor that he

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(MISCELLANEOUS PROVISIONS) ACT, 2004 - 24

SCHEDULE - *Cont'd*

Column 1	Column 2	
<i>Enactments</i>	<i>Amendments</i>	
5. <i>The Insurance Act, Cap. 310 - Cont'd</i>	<p>(a) is qualified to be a broker in Barbados;</p> <p>(b) is</p> <p>(i) a citizen or a permanent resident of Barbados within the meaning of the <i>Immigration Act</i>; or</p> <p>(ii) a national of a Member State of the Caribbean Community;</p> <p>(c) is insured with a registered insurer against liability for not less than one million dollars or such greater amount as may be prescribed for claims arising out of any error or omission on the part of the broker, his employees or agents;</p> <p>(d) complies with</p> <p>(i) subsections (5) and (6) of section 82; and</p> <p>(ii) paragraph (b) of subsection (1) of section 99;</p> <p>(e) is not holding an official position at any insurance company; and</p> <p>(f) has established a permanent office in Barbados.</p>	5.

CARICOM SINGLE MARKET AND ECONOMY (IMPLEMENTATION)
(MISCELLANEOUS PROVISIONS) ACT, 2004 - 24

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SCHEDULE - *Cont'd*

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
5. <i>The Insurance Act, Cap. 310 - Cont'd</i>	<p>(2) For the purposes of paragraph (a) of subsection (1), a person is qualified as a broker in Barbados if</p> <p>(a) in the case of a person working in the long term insurance business, that person</p> <p>(i) is a Chartered Life Underwriter or the equivalent with not less than 5 years experience with a registered insurer; or</p> <p>(ii) has at least 10 years experience with a registered insurer, including not less than 3 years in a managerial position;</p> <p>(b) in the case of a person working in the general insurance business, that person</p> <p>(i) is an Associate of a Chartered Insurance Institute with not less than 3 years experience in a managerial position or senior technical position with a registered insurer, agent or broker; or</p> <p>(ii) has at least 7 years experience in a senior technical position with a registered insurer, agent or broker;</p> <p>(c) in the case of a person working in the long term and general insurance business, that person</p> <p>(i) is a Chartered Life Underwriter or the equivalent;</p>

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CARICOM SINGLE MARKET AND ECONOMY (IMPLEMENTATION)
(MISCELLANEOUS PROVISIONS) ACT, 2004 - 24

SCHEDULE - *Cont'd*

Column 1	Column 1
<i>Enactments</i>	<i>Amendments</i>
5. <i>The Insurance Act, Cap. 310 - Cont'd</i>	<p>(ii) is an Associate of a Chartered Insurance Institute; and</p> <p>(iii) he has at least 10 years experience with a registered insurer of which not less than 3 of those years are in managerial or senior technical position with a registered insurer, agent or broker.</p> <p>(3) For the purposes of this section,</p> <p>(a) "national of a Member State" means a person who</p> <p>(i) is a citizen of a Member State;</p> <p>(ii) has a connection with that State of a kind which entitles him to be regarded as belonging to or, if it be so expressed, as being a native or resident of the State for the purposes of the laws thereof relating to immigration; or</p> <p>(iii) is a company or other legal entity constituted in the Member State in conformity with the laws thereof and which that State regards as belonging to it, provided that such company or other legal entity has been formed for gainful purposes and has its registered office and central administration, and carries on substantial activity, within the Community and which is substantially owned and effectively controlled by persons mentioned in sub-paragraphs (i) and (ii),</p>

CARICOM SINGLE MARKET AND ECONOMY (IMPLEMENTATION)
(MISCELLANEOUS PROVISIONS) ACT, 2004 - 24

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SCHEDULE - *Cont'd*

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
5. <i>The Insurance Act</i> Cap. 310 - <i>Concl'd</i>	<p>but does not include a person who has attained nationality by virtue of an economic connection;</p> <p>(b) "Caribbean Community" includes the CARICOM Single Market and Economy."</p> <p>3. In section 83, delete the words "section 81" appearing in paragraph (a) of subsection (1) and substitute the words "sections 81 and 81A".</p>
6. <i>Legal Profession Act</i> , Cap. 370A	<p>In</p> <p>(a) section 2, insert in the correct alphabetical order the following definitions:</p> <p>"Member State" has the meaning assigned to it by the Revised Treaty of Chaguaramas, establishing the Caribbean Community, including the CARICOM Single Market and Economy that was signed in the Bahamas, on 5th July 2001;</p> <p>"national" means a person who</p> <p>(a) is a citizen of a Member State;</p> <p>(b) has a connection with a Member State of a kind which entitles that person to be regarded as belonging to or being a native or resident of such Member State for the purposes of the laws thereof relating to immigration,</p>

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 CARICOM SINGLE MARKET AND ECONOMY (IMPLEMENTATION)
 (MISCELLANEOUS PROVISIONS) ACT, 2004 - 24

SCHEDULE - *Cont'd*

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
6. <i>Legal Profession Act, Cap. 370A - Cont'd</i>	<p>but does not include a person who has attained nationality by virtue of an economic connection:"</p> <p>(b) section 5,</p> <p>(i) in subsection (1), delete the words "31st March, 1973", and substitute the words "31st December, 2004";</p> <p>(ii) delete the semicolon at the end of sub-paragraph (a)(iii) and insert the words ", or";</p> <p>(iii) insert immediately after sub-paragraph (a)(iii) the following new paragraph:</p> <p style="padding-left: 40px;">"(iv) a national of another Member State";</p> <p>(c) section 6(1), insert immediately after the word "Barbados" appearing in paragraph (a) the words "or any other Member State";</p> <p>(d) section 7(1), insert immediately after the word "Barbados" appearing in the fourth line thereof, the words "or any other Member State";</p> <p>(e) section 8, insert immediately after the words "a citizen of Barbados" the words "or a national of any other Member State";</p> <p>(f) the First Schedule, delete the words "Antigua", "Bahamas", "British Honduras", "Dominica", "Grenada", "Guyana", "Jamaica", "Montserrat", "St. Kitts-Nevis", "St. Lucia", "Trinidad and Tobago".</p>

CARICOM SINGLE MARKET AND ECONOMY (IMPLEMENTATION)
(MISCELLANEOUS PROVISIONS) ACT, 2004 - 24

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SCHEDULE - *Cont'd*

Column 1

Column 2

Enactments

Amendments

7. *Travel Services Act,* in
Cap. 373A

(a) section 2, insert the following definitions:

"Community" means the Caribbean Community established by Article 2 of the Treaty and includes the CARICOM Single Market and Economy signed at Nassau, the Bahamas on 5th July, 2001;

"Member State" means a Member State of the Community, excluding an Associate member within the meaning of Article 231 of the Treaty;

(b) In section 5, delete subsection (1) and substitute the following:

"(1) An applicant must satisfy the Registrar that

(a) he has attained the age of 18 years;

(b) he is

(i) a citizen, a permanent resident of Barbados or an immigrant within the meaning of the *Immigration Act*, or
Cap. 190.

(ii) a national of a Member State of the Community;

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CARICOM SINGLE MARKET AND ECONOMY (IMPLEMENTATION)
(MISCELLANEOUS PROVISIONS) ACT, 2004 - 24

SCHEDULE - *Cont'd*

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
<p>7. <i>Travel Services Act, Cap. 373A - Cont'd</i></p>	<p>(c) the persons entrusted with the day-to-day management and control of a business referred to under section 3(1)</p> <p style="padding-left: 2em;">(i) possess a working knowledge of the business and the premises to which the licence relates;</p> <p style="padding-left: 2em;">(ii) have the resources necessary for the efficient running of the travel services to which the licence relates; and</p> <p>(d) he is of good character and is a fit and proper person to carry on business as a travel agent or a tour operator."</p>
<p>8. <i>Small Business Development Act. (Act 1999-23)</i></p>	<p>1. In section 3, delete</p> <p>(a) paragraph (b) of subsection (1);</p> <p>(b) paragraph (h) of subsection (1) and substitute the following:</p> <p style="padding-left: 2em;">"(h) has no agreement for the payment of fees on a continuing basis for managerial or other services to any person where those services do not form part of the normal business operations of the enterprise;"</p>

(*)

CARICOM SINGLE MARKET AND ECONOMY (IMPLEMENTATION)
(MISCELLANEOUS PROVISIONS) ACT, 2004 - 24

2/17

SCHEDULE - *Cont'd*

Column 1

Column 2

Enactments

Amendments

8. *Small Business
Development Act,
(Act 1999-23) - Cont'd*

(c) subsection (2) and substitute the following:

"(2) For the purposes of paragraphs (f) and (g) of subsection (1), "controlled" has the meaning assigned to it by section 441 of the *Companies Act*".

2. In section 4,

(a) delete the semicolon at the end of paragraph (c) of subsection (3) and add the following:

"together with the address of the registered offices of those companies and the place where the substantial activity of those companies is carried on;"

(b) delete the word "and" appearing at the end of paragraph (a) of subsection (4);

(c) insert the words "; and" at the end of paragraph (b) of subsection (4); and

(d) add the following as paragraph (c) of that subsection 1(4):

"(c) carries on an activity which is of significant or substantial socio-economic benefit to Barbados."

CARICOM SINGLE MARKET AND ECONOMY (IMPLEMENTATION)
(MISCELLANEOUS PROVISIONS) ACT, 2004 - 24

SCHEDULE - *Cont'd*

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
<p>9. <i>International Financial Services Act, (Act 2002-5)</i></p>	<p>1. In section 2, insert in the appropriate alphabetical order the following definition:</p> <p style="padding-left: 40px;">""Member State" means a Member State of the Caribbean Community, established by the Revised Treaty of Chaguaramas, Establishing the Caribbean Community including the CARICOM Single Market and Economy, signed at Nassau, the Bahamas on 5th July, 2001 but does not include a State admitted to associate membership under Article 231 of the Treaty;"</p> <p>2. In section 5, insert in subsection (8) immediately after the word "incorporated" the words "or registered".</p>
<p>10. <i>Architects Registration Act, (Act 2003-5)</i></p>	<p>In</p> <p>(a) section 2, insert in the appropriate alphabetical order the following definitions:</p> <p style="padding-left: 40px;">""Community" means the Caribbean Community established by Article 2 of the Treaty and includes the CARICOM Single Market and Economy signed at Nassau, the Bahamas on 5th July, 2001;</p> <p style="padding-left: 40px;">"Member State" means a Member State of the Community, excluding an Associate member within the meaning of Article 231 of the Treaty;</p>

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(MISCELLANEOUS PROVISIONS) ACT, 2004 - 24

SCHEDULE - *Cont'd*

Column 1

Column 2

Enactments

Amendments

10. *Architects Registration Act, (Act 2003-5) - Cont'd*

"national" means a person who

- (a) is a citizen of a Member State; or
- (b) has a connection with that State of a kind which entitles him to be regarded as belonging to or, if it be so expressed, as being a native or resident of the State for the purposes of the laws thereof relating to immigration;

but does not include a person who has attained nationality by virtue of an economic connection.

"Treaty" means the Revised Treaty of Chaguaramas Establishing the Caribbean Community, including the CARICOM Single Market and Economy, that was signed in the Bahamas on the 5th day of July, 2001."

(b) in section 4, delete paragraphs (iv) and (v) of subsection (4) and substitute the following paragraph:

"(iv) not being citizens, permanent residents or nationals of a Member State of the Community.

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CARICOM SINGLE MARKET AND ECONOMY (IMPLEMENTATION)
(MISCELLANEOUS PROVISIONS) ACT, 2004 - 24SCHEDULE - *Concl'd*

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
10. <i>Architects Registration Act, (Act 2003-5) - Cont'd</i>	(A) have ceased to be domiciled and resident in Barbados; or (B) are no longer holders of a work permit"; (c) in section 7, delete the words "in another country" appearing in paragraph (a) and substitute the words "in a country other than Barbados or any other Member State".