



[L.S.]

I Assent,

James B. Carlisle,
Governor-General.

12th September, 2005.

ANTIGUA AND BARBUDA

No. 15 of 2005

AN ACT to amend the Securities Act, 2001.

*[Published in the Official Gazette Vol. XXV
No. 57 dated 15th September, 2005]*

ENACTED by the Parliament of Antigua and Barbuda as follows:

1. This Act may be cited as the Securities (Amendment) Act, 2005.

Short title.

2. Section 2(1) of the Securities Act, in this act referred to as the principal Act, is amended by deleting the definition of “company” and substituting the following:

Amendment of section 2(1).

“Company” includes a company, limited partnerships, unit trust or other business entity, which is incorporated, registered or otherwise established under the laws of a member territory.”

Insertion of Part XVA.

3. The principal Act is amended by inserting after Part XV, the following:

“PART XVA

**LISTING AND TRADING FOREIGN SECURITIES,
LICENSING AND EXCHANGE MEMBERSHIP OF
FOREIGN MARKET PARTICIPANTS**

Listing and trading foreign securities.

153A. The securities of a foreign company or a foreign government may be listed and

traded on securities exchange licensed under this Part.

Application of other Parts.

153B. Except as expressly exempted or modified by the provisions of this Part, this Act and any Regulations made there under shall apply *mutatis mutandis* to the listing and trading of foreign securities.

Interpretation.

153C. In this Part

“foreign company” includes a company, limited partnership, unit trust or other business entity, which is incorporated or otherwise established under the laws of a jurisdiction other than a member territory;

“foreign custodian” means a custodian incorporated in and governed by the laws of a country other than a member territory;

“foreign government” means a government or political subdivision of a government other than one of a member territory.

“foreign individual” means any individual who is a citizen of, resident of, or belongs to any country other than a member territory;

“foreign investment adviser” means an investment adviser incorporated in and governed by the laws of a country other than a member territory;

“foreign security” means a security issued by a foreign company or foreign government;

“foreign securities exchange” means a licensed securities exchange, incorporated in and governed by the laws of a country other than a member territory;

“foreign securities registry” includes a share registry incorporated in and governed by the laws of a country other than a member territory;

“member territory” has the same meaning as the meaning assigned to it in the Eastern Caribbean Securities Regulatory Commission Agreement dated 24th November, 2000.

Approval of the Commission required.

153D. (1) A securities exchange may list or trade foreign securities in accordance with the terms and conditions of licence granted under subsection (4).

(2) The Commission may, subject to such terms and conditions as it considers appropriate, license a foreign company as a broker dealer, limited service broker, or investment adviser.

(3) A foreign company which is licensed by a foreign securities regulatory commission as a broker dealer or limited service broker may apply to the Commission for a securities exchange licence under this Act.

(4) Subject to section 10(2), the Commission may grant a Securities exchange license to a foreign company which applies under subsection (3).

(5) A foreign broker dealer or a foreign limited service broker wishing to carry on business in Antigua and Barbuda dealing in securities, or holds himself out as carrying on that business must be licensed by the Commission.

(6) Part IV of this Act shall apply to a foreign broker dealer or a foreign limited service broker carrying on the business of dealing in securities pursuant to subsection (5).

(7) A foreign broker dealer or a foreign limited service broker dealing in securities in Antigua and Barbuda shall have an agent resident in Antigua and Barbuda.

(8) No foreign investment Adviser shall carry on business or hold himself out as carrying on business as such foreign investment adviser in a member territory unless he is licensed by the Commission under section 54 and 55.

(9) No person licensed by foreign securities regulatory commission as a principal shall carry on business or hold himself out as carrying on business as such principal in a member territory unless he is licensed under section 60 and 61 of this Act.

(10) No person who is licensed by a foreign securities regulatory commission as a representative shall carry on business or hold himself out as carrying on business in a member territory unless he is licensed by the Commission under sections 62, 63 and 64.

(11) For the purpose of this part the term “carrying on business, or holding himself out as carrying on business” as used in subsection 8, 9 and 10 shall include but not be limited to —

- (a) use of telephone, telegraph, mail, internet, e-mail, or any other means to communicate with investors or potential investors located in a member territory, whether on a regular or sporadic basis;
- (b) visiting investors or potential investors in a member territory,

whether single or in groups, to communicate with them about an investment in securities, whether on a regular or sporadic basis; or

(c) registration as a principal or representative with a securities exchange in connection with a foreign broker dealer or limited service broker's membership in a securities exchange;

(d) engaging in any other activity or combination of activities described in

(i) section 47 in the case of foreign broker dealers or foreign limited service brokers, or

(ii) section 53 in the case of foreign investment advisers,

if any part of the activity or activities take place in a member territory or is designed or intended to communicate with the persons present in a member territory.

(12) A person is subject to the requirements of subsections (8), (9) and (10) if he participates in any of the activities listed in subsection (11) even if he is not physically present in a member territory when he participates in the activity.

Public offer. **153E.** (1) In determining whether or not a public offer of foreign securities has been made in a member territory, or whether the requirements of this Act relating to public offers apply in a particular case, the listing or

trading of foreign securities on a securities exchange shall not be taken into account.

Registration with
the Commission.

153F. (1) The listing and trading of foreign securities on a securities exchange pursuant to this Part shall not, either by itself or in conjunction with other activities by a person, require the issuer of the foreign securities to register with the Commission under section 97(3).

(2) Subsection (1) shall not be interpreted to exempt issuers and offerors, who are otherwise required to register with the Commission under section 97(3), from the requirement to register with the Commission.

Insider dealing and
other

153G. The provisions of Part X shall not apply to the conduct of a foreign company occurring on a foreign securities exchange or otherwise accruing in a foreign jurisdiction, unless the Commission determines on consultation with the securities exchange, where the security of the foreign company is listed, that the conduct has a significant impact on the market in Antigua and Barbuda.

Disclosure of
Shareholder of di-
rectors and sub-
stantial share-
holders.

153H. Part XI shall not apply to foreign securities listed or traded in a securities exchange unless the Commission determines that the regulatory measures in the jurisdiction of incorporation of the foreign issuer, its directors and shareholders are not adequate to protect the interests of the investing public.

Application of
Part XII.

153I. The provisions of Part XII of the Act shall apply

(a) in the case of foreign securities listed or traded on a licensed securities exchange; only to the acts of the issuer within the member territory or to transactions effected on or

information provided to, that securities exchange; and

- (b) in the case of a foreign broker dealer, limited service broker, investment adviser or the principal or representative of that person, only to acts of the licensee within the member territory or to transactions effected on, or information provided to, a securities exchange.

Transfer and ownership of foreign securities.

153J. Notwithstanding any other provision of any law to the contrary—

- (a) the exclusive method of transferring the ownership of foreign securities listed and traded on a securities exchange shall be a transfer made in accordance with the rules and procedure of a clearing agency licensed by the Commission under section 25 where the foreign securities are transferred; and
- (b) the exclusive method of determining the ownership of foreign securities listed and traded on a securities exchange shall be records of a securities registry licensed by the Commission under section 42 where the foreign securities are registered.

Custodian and share registries for foreign securities.

153K. (1) Foreign securities listed and traded on a licensed securities exchange may be held by a foreign custodian and registered with a foreign securities registry pursuant to a written contrast between the foreign custodian or registry and a custodian licensed under section 57 or a securities registry licensed under section 42.

(2) A securities exchange may, by rules, determine the form and content of the contracts referred to in subsection (1).

Simplified listing and membership procedures in certain cases

153L. (1) A securities exchange may, with the approval of the commission, adopt rules for expedited and simplified listing procedures for foreign securities that are already listed on a foreign securities exchange if the foreign securities exchange has suitable listing, compliance and regulatory standards and practices.

(2) A securities exchange may, with the approval of the Commission, adopt rules for expedited and simplified membership procedures for foreign broker dealers or foreign limited service brokers that are already subject to regulation in a suitable jurisdiction if that jurisdiction is recognized for the purposes of this Part by the Commission as having suitable standards, compliance practices and regulatory supervision of its broker dealers.

Amendment of section 160.

4. Section 160(1) of the Principal Act is amended by deleting paragraphs (n) and (o) and substituting the following:

- “(n) the listing and trading of foreign securities;
- (o) the licensing of foreign broker dealers and limited service brokers;
- (p) the licensing of foreign investment advisers;
- (q) the licensing of principals and representatives of foreign intermediaries;
- (r) any matter which this Act provides is to be, or may be, prescribed;
- (s) the better carrying out of purposes and provisions of this Act;

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(t) any supplementary, incidental and traditional provisions as appear to the Minister as necessary or expedient.”

5. Section 165 of the principal Act is hereby repealed. Repeal of section 165 of the principal Act.

Passed by the House of Representatives
this 18th day of July, 2005.

Passed by the Senate this
12th day of August, 2005.

D. Giselle Isaac-Arrindell,
Speaker.

Hazlyn M. Francis,
President.

Yvonne Henry,
*Acting Clerk to the House of
Representatives.*

Yvonne Henry,
Acting Clerk to the Senate.

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— By Authority, 2005.

1. The Securities (Amendment) Bill has been prepared to address issues related to the development of a regional market and to allow the ECSE to compare effectively in CARICOM as a regional exchange. The Bill seeks to address the following:

- a. Permit the listing and trading of securities of a foreign company or a foreign government on a securities exchange licensed by the ECSRC;
- b. Eliminate duplicative registration requirements where listing is solely for ECSE trading and not for other commercial purposes.
- c. Accept compliance with other regulatory authorities where the ECSRC is satisfied that adequate supervision exists. Accordingly, foreign brokers that are members of the ECSE for trading purposes only and not otherwise conducting business in the ECCU will only be required to register with the ECSRC.
- d. Facilitate the use of dematerialisation for the trading of foreign securities listed on the ECSE through immobilisation with a custodian and the recording of ownership with a licensed registry so that evidence of ownership in the ECCU is by book-entry only, while the issuer may still maintain physical certificates in its home market.

2. Under this revised regime, the foreign issuer will need to apply to the ECSE for listing using a simplified application and agree to comply with the rules of the ECSE, which are subject to ECSRC review and approval. This new listing requirement recognises that the issuer is already registered with another securities regulatory authority in its home jurisdiction or listed on another recognised exchange. While required to make disclosure filings with the ECSRC or ECSE, copies of filings made with the primary regulator will generally be acceptable. Where there are additional disclosure requirements by the ECSRC, the issuer may issue addendums to provide the additional information.

THE SECURITIES (AMENDMENT) BILL

SECTION 1

Section 1. addresses the short title of the Bill.

SECTION 2

Section 2 addresses the definition and interpretation of the term “company”. In light of the varying structures that business entities now assume, it has become necessary to expand the definition of company to include those institutions which have been organised, incorporated, registered or otherwise established, but which do not fall within the strict definition of a “company” as defined in the Companies Act.

SECTION 3

Section 3 introduces a new PART XV (A) — Listing and Trading Foreign Securities, Licensing and Exchange Membership of Foreign Market participants

Section 153A

This section broadly authorizes the listing and trading of foreign securities on the ECSE or any Exchange licensed by the Commission as provided in this Part. The section basically opens up the market to the listing and trading of foreign securities.

Section 153B

This section brings the listing and trading of foreign securities under the Securities Act 2001 and makes it subject to all other parts and Regulations made under the Act except where expressly exempted.

Section 153C

This section closely follows the arrangement of the definitions contained in Section 2 (Interpretation) of the *Securities Act 2001*. The foreign element has been added to most of the terms to provided for the institutions that have been incorporated or established outside the member territories for purposes of developing a single market space within CARICOM.

Section 153D

This section grants the ECSRC the power to regulate the gradual expansion of the ECSE into the listing and trading of foreign securities and the admission of foreign broker dealers as members. The section is drafted very broadly to enable the listing of any type of security from any recognised jurisdiction in the world so that the Securities Act need not be constantly amended.

Sub-section 153D (3) requires a foreign broker dealer or limited service broker that is licensed by a foreign securities regulatory commission and who wishes to trade securities on an exchange licensed to conduct business in the ECCU, to register with the ECSRC. Once registered, the foreign broker dealer or limited service broker may become a member of a licensed exchange provided that it meets the exchange requirement for membership as set out in its rules, and trade securities on its own behalf or on behalf of a foreign person. They would not be permitted to trade securities on behalf of persons belonging to member territories.

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A foreign broker dealer or limited service broker wishing to carry on business in a member territory must be licensed by the ECSRC under Part IV of the *Securities Act 2001* and must be represented by an agent resident in the member territory.

The ECSRC has discretion to grant an exemption from the requirements of Part IV of the Securities Act 2001, once the foreign broker dealer or limited service broker has registered with it.

Sub-section 153D (8) requires that foreign investment advisor licensed by a foreign securities regulatory commission, must be licensed by the ECSRC, if he conducts business or holds himself out as conducting business in a member territory. Similarly, a principal or representative of, a foreign broker dealer or limited service broker licensed by a foreign securities regulatory commission, must be licensed by the ECSRC if he conducts business or holds himself out as conducting business in a member territory.

The Terms “conduct business” and “holds himself out as conducting business” are both defined in sub-section 153D (11). A person does not have to be physically present in the member territory when he participates in the activity.

Section 153E and 153F

The listing and trading of foreign securities on a securities exchange shall not be taken into account in determining whether or not a public offer of foreign securities has been made in a member territory. The sections made it clear that the listing and trading of foreign securities on its own, does not subject the foreign issuer to the “public offering” requirement of issuing a new prospectus, registering with the ECSRC etc. However, a foreign issuer whose activities would otherwise subject it to the public offering requirements is still required to register with the ECSRC and issue a new prospectus.

Section 153G

The conduct of foreign company occurring on a foreign securities exchange or in a foreign jurisdiction would not be subject to Part X of the Securities Act 2001, unless the Commission determines that the conduct has or will have a significant impact on the market in a member territory. This section applies only to transactions affecting securities on the ECSE and not to activities of the issuer in other jurisdictions.

Section 153H

Generally Part XI of the Act shall not apply to foreign securities listed or trade on a securities exchange. Where the Commission is of the view that the laws of the

issuer's home jurisdiction are not adequate to protect the interest of the investing public in a member territory, it may require the issuer of foreign securities listed, its directors and substantial shareholders, to comply with Part XI.

Section 153I

Part XII of the *Securities Act 2001*, gives the Commission power to, request information from market participants, exchange information with other commissions and to inspect and investigate the books, records and other documents of a licensee. With respect to foreign securities listed and traded on a licensed securities exchange, the provisions of Part XII of the *Securities Act 2001*, shall only apply to transactions, information and acts effected on or provided to, that securities exchange. The provisions of this part would only be applied to activities taking place in a member territory.

Section 153J

Pursuant to this section, the ownership of foreign securities listed can only be transferred in accordance with the rules and procedures of a licensed clearing agency. Ownership of the said securities can only be determined from the records of the securities registry. The section attempts to guarantee that foreign securities listed and traded on a licensed exchange must be registered and transferred in the same fashion as domestic securities and that no legal dispute about ownership or transfer will arise.

Section 153K

Foreign securities listed and traded on a licensed securities exchange can be held by a foreign custodian or registered with a foreign securities registry provided that there is a written contract between the foreign custodian or registry and a custodian or registry licensed under the *Securities Act 2001*. Therefore this section permits a foreign investor to utilise the services of a foreign custodian or registry, provided that there is a contract between the foreign registry or custodian and the registry of custodian in the member territory.

Section 153L

This section permits a securities (with the permission of the ECSRC) to adopt simplified listing and membership procedures to list foreign securities which are already listed on a recognised securities exchange in another jurisdiction, provided that exchange has suitable listing, compliance, and regulatory standards and practices. Similarly, a securities exchange may adopt simplified listing and membership procedures for foreign broker dealers and foreign limited service brokers that are already subject to regulation in a suitable, recognised jurisdiction. Here this section

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permits the exchange to adopt simplified listing and membership procedures where the foreign jurisdiction has suitable listing, compliance and regularly standards and practices.

SECTION 4

This amendment expands Section 160 (1) of the *Securities Act 2001* to permit the Minister to make additional Regulations with respect to foreign securities and foreign market participants.

SECTION 165

Section 165 of the *Securities Act of 2001* is repealed and the principal Stamp Act in each of the participating member territories will be amended accordingly.

Hon. Justin L. Simon Q.C.,
Attorney General and
Minister of Legal Affairs.

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THE SECURITIES (AMENDMENT) ACT, 2005

ARRANGEMENT OF SECTIONS

Section

1. Short title.
2. Amendment of section 2(1)
3. Insertion of PART XVA.
4. Amendment of section 160.
5. Repeal of section 165 of the principal Act.