

ANTIGUA AND BARBUDA



**THE INTERNATIONAL BUSINESS CORPORATIONS (AMENDMENT) ACT, 2010**

**No. 3 of 2010**

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**THE INTERNATIONAL BUSINESS CORPORATIONS (AMENDMENT) ACT, 2010  
ARRANGEMENT**

**Sections**

1. Short title
2. Interpretation
3. Amendment of section 2
4. Amendment of section 136
5. Insertion of sections 139A, 139B, 139C, 139D, 139E, 139F, 139G, 139H, 139I

[L.S.]



I Assent,

**Louise Lake-Tack,**  
*Governor-General.*

12th April, 2010

**ANTIGUA AND BARBUDA**

**THE INTERNATIONAL BUSINESS CORPORATIONS (AMENDMENT) ACT, 2010**

**No. 3 of 2010**

**AN ACT** to amend the International Business Corporations Act, Cap 222 and for incidental and connected purposes.

**ENACTED** by the Parliament of Antigua and Barbuda as follows:—

**1. Short title**

This Act may be cited as the International Business Corporations (Amendment) Act, 2010 and shall come into operation on a date that the Minister may appoint, by Notice published in the *Gazette*.

**2. Interpretation**

In this Act “the principal Act” means the International Business Corporations Act, Cap 222.

**3. Amendment of Section 2 — Interpretation**

Section 2 of the principal Act is amended by the insertion of the following definitions—

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

“Corporate Management and Trust Service Providers Act” means the Corporate Management and Trust Service Providers Act, No 20 of 2008;

“custodian” means a licensed custodian and a recognised custodian;

“existing bearer share” means a share in a company issued as or converted to a bearer share prior to the commencement of this Act and that remains a bearer share at the commencement of this Act;

“disabled bearer share” means a share that is disabled in accordance with the provisions of this Act;

“licensed custodian” means a person licensed by the Commission under the Corporate Management and Trust Service Providers Act, 2008, to perform the duties and functions of a licensed custodian of bearer shares;

“person” includes any entity, natural or juridical, a corporation, partnership, trust of estate, joint stock company, association, syndicate, joint venture or other unincorporated organisation or group, capable of acquiring rights or entering into obligations;

“recognised custodian” means a person outside the jurisdiction approved by the Commission under section 6A of the Corporate Management and Trust Service Providers Act to perform the duties and functions of a recognised custodian of bearer shares;

“transition date” means three months after the commencement of this Act or such other date as the Commission may determine in accordance with section 139C(4)”.<sup>1</sup>

#### **4. Amendment of Section 136 — Transfer of securities**

Section 136(1) of the principal Act is amended by repealing “The transfer of a bearer certificate of the corporation shall be effected by delivery of the certificate.” and substituting the following—

“The transfer of a bearer share shall be in accordance with sections 139G, 139H and 139I of this Act or, where a custodian’s licence or approval is revoked or surrendered, in accordance with the Corporate Management and Trust Service Providers Act.”.

#### **5. Insertion of Sections 139A, 139B, 139C, 139D, 139E, 139F, 139G, 139H, 139I.**

The principal Act is amended by inserting after section 139 the following sections—

“139A. Prohibition of transfer or possession of bearer share

(1) A person shall not transfer a bearer share otherwise than in accordance with this Act, or, where a custodian’s licence or approval is surrendered or revoked, in accordance with the Corporate Management and Trust Service Providers Act.

(2) A bearer share transferred otherwise than in accordance with subsection (1) is disabled.

(3) After the transition date, a bearer share held by anyone other than a custodian is disabled.

**139B. Effect of disabled bearer share**

(1) A disabled bearer share does not carry any of the entitlements which it would otherwise carry and any transfer or purported transfer of an interest in the bearer share is void and of no effect.

(2) Without limiting the scope of subsection (1), an “entitlement” includes an entitlement to vote, an entitlement to a distribution and an entitlement to a share in the assets of the company on its winding up or its dissolution.

**139C. Existing bearer shares**

(1) An existing bearer shall on or before the transition date, be —

- (a) deposited with a custodian;
- (b) converted to, or exchanged for, registered shares;
- (c) cancelled and forfeited.

(2) A company or an interested person may apply to the Commission to extend the period of time in subsection (1).

(3) An application to the Commission shall be in writing and shall state in detail the reasons for the request for an extension of time.

(4) The Commission may extend the period of time by such period or periods of time as it sees fit, but not exceeding one year in total.

(5) If a company is unable to locate a bearer share, but it knows the identity and address of the beneficial owner, it may cancel and reissue the bearer share and transfer possession of the bearer share to a custodian in accordance with this Act.

**139D. Mandatory redemption of existing bearer shares**

(1) A bearer share which is disabled pursuant to section 139A (3) is subject to mandatory redemption.

(2) Where a company is unable, after making reasonable enquiries, to ascertain the identity or address of the holder of a bearer share—

- (a) it is not required to give the holder of the bearer share notice; and
- (b) the company shall hold the proceeds of redemption in trust for the owner of the bearer share.

(3) Subject to sections 26A and 26B of the Corporate Management and Trust Service Providers Act, subsection (1) shall not apply to a bearer share that is held by a person who received the share at a time when he was a custodian but who has ceased to be a custodian.

#### **139E. Application for Winding Up**

After the transition date, if a company has one or more existing bearer shares that have not been deposited with a custodian in accordance with this Act, the Commission may apply to the Court for a winding up of the company.

#### **139F. Deposit of bearer share**

- (1) A person deposits a bearer share by delivering it to a custodian who has agreed to hold it.
- (2) A bearer share deposited under subsection (1) must be accompanied by a written notice setting out the name and address of—
  - (a) every beneficial owner of the bearer share;
  - (b) any other person having an interest in the bearer share; and
  - (c) every corporate management and trust service provider of the company on behalf of which the bearer share is being deposited.
- (3) A person depositing a bearer share shall provide any further information in such manner as may be required by the custodian or as may be prescribed.
- (4) A custodian shall not accept a bearer share unless it is accompanied by a notice complying with subsections (2) and (3).
- (5) When an existing bearer share is deposited with a custodian in accordance with this section, it shall, for the purposes of this section, cease to be registered as an existing bearer share and shall thereafter be treated as if it had been issued after the transition date.
- (6) Upon receipt of a bearer share, a custodian shall give a receipt to the person depositing the bearer share.

(7) The receipt shall—

- (a) confirm that the custodian has accepted possession of the bearer share;
- (b) indicate the date of acceptance of possession of the bearer share; and
- (c) set out the information provided under subsections (2) and (3).

(8) Where the person depositing the bearer share is not the company, if the licensed custodian is not the sole corporate management and trust service provider for the company on behalf of which the licensed custodian holds the bearer share, then the licensed custodian shall send to every other corporate management and trust service provider of the company a copy of the deposit receipt or other proof of deposit of the bearer share, in such form as may be prescribed.

(9) Where a company is the person depositing the bearer share and the licensed custodian is not the sole corporate management and trust service provider for the company then the company shall send to every other corporate management and trust service provider a copy of the deposit receipt or other proof of deposit of the bearer share, in such form as may be prescribed.

(10) Where a bearer share is deposited with a recognised custodian, the recognised custodian shall send to each corporate management and trust service provider, a copy of the deposit receipt or other proof of deposit of the bearer share, in such form as may be prescribed.

(11) If the licensed custodian is not the sole corporate management and trust service provider of the company on behalf of which it holds the bearer share, then an existing bearer share in that company is deemed not to have been deposited until each other corporate management and trust service provider of the company has received written notification of the deposit.

(12) In the case of a recognised custodian, an existing bearer share is deemed not to have been deposited until written notification and proof of the deposit is received by each corporate management and trust service provider of the company on behalf of which the recognised custodian holds the bearer share in a manner as may be prescribed

### **139G. Transfer of possession of bearer share**

(1) A bearer share is transferred by depositing it with a custodian in accordance with section 139F.

(2) A custodian shall not transfer possession of a bearer share except—

- (a) to another licensed or recognised custodian who has agreed to hold the share;
- (b) to the company where the bearer share has been—



- (i) converted to, or exchanged for, a registered share;
- (ii) redeemed, purchased or otherwise acquired by the company; or
- (iii) cancelled and forfeited.

(3) A custodian shall not transfer a bearer share to a company unless it receives written evidence from the company in the form of a directors' or shareholders' resolution indicating which of the conditions in subsection (2) (b) is applicable.

(4) Where a licensed custodian transfers possession of a bearer share, it shall—

- (a) make and retain a copy of all notices provided to it and any notices sent to a corporate management and trust service provider in respect of the bearer share;
- (b) deliver with the bearer share, all original notices provided to it and copies of any notices sent, in respect of the share, to each corporate management and trust service provider of the company on behalf of which it held the bearer share;
- (c) if it is not the sole corporate management and trust service provider of the company, within seven (7) days, send written notice of the transfer, to every other corporate management and trust service provider of the company on behalf of which it held the bearer share.

(5) Where a recognised custodian transfers possession of a bearer share, it shall deliver with the bearer share, all original notices provided to it and a copy of any notices sent to a corporate management and trust service provider of the company on behalf of which it held the share.

(6) Where a recognised custodian transfers possession of a bearer share to the company, the company shall, within fourteen (14) days of receipt of the share, send notification of its receipt of the share to each of its corporate management and trust service providers.

(7) A custodian which transfers possession of a bearer share otherwise than in accordance with this Act commits an offence and is liable on summary conviction to a fine of \$10,000.

### **139H. Transfer of beneficial ownership of bearer certificate**

(1) Where there is a change in the beneficial ownership of a bearer certificate, a company or the former beneficial owner shall, within seven days of the change, send a notice to the custodian in possession of the bearer certificate.

(2) A notice shall be accompanied by any directors' or shareholders' resolution relevant to the change in beneficial ownership and shall include the following—

- (a) the name and address of the new beneficial owner of the bearer share;
- (b) the name and address of any other person having an interest in the bearer share; and
- (c) the circumstances under which the change in beneficial ownership occurred.

(3) Where a licensed custodian which is not the sole corporate management and trust service provider receives a notice under subsection (2), it shall, within seven (7) days of receipt of the notice, send a copy of the notice to every other corporate management and trust service provider of the company on behalf of which it holds the bearer share.

(4) Where the bearer share, subject to the change of ownership, is in the possession of a recognised custodian, the company shall, within seven (7) days of sending the notice to the recognised custodian, deliver a copy of the notice to each of its corporate management and trust service providers.

(5) A transfer of the beneficial ownership of, or an interest in, a bearer share held by a custodian is not effective until a notice under subsection (2) is submitted—

- (a) to the custodian; and
- (b) to each corporate management and trust service provider of the company.

### **139I. Procedure on custodian wishing to discontinue holding bearer share**

(1) Where a custodian desires to discontinue acting as a custodian in respect of a bearer share in a company, it shall give the beneficial owner and any person who it knows has an interest in that share, not less than sixty (60) days notice of its intention to discontinue acting as a custodian in respect of the share.

(2) Where a licensed custodian which is not the sole corporate management and trust service provider for the company on behalf of which it holds the bearer share desires to discontinue acting as a custodian in respect of a bearer share, it shall give to every other corporate management and trust service provider of the company, not less than sixty (60) days notice of its intention to discontinue acting as custodian in respect of the share.

(3) Within the 60 day notice period, the custodian shall seek to get written instructions from the beneficial owner of the bearer share as to the transfer of possession of the share to—

- (a) a custodian who has agreed to hold the share; or

- (b) the company where the bearer share has been—
- (i) converted to, or exchanged for, a registered share;
  - (ii) redeemed, purchased or otherwise acquired by the company; or
  - (iii) cancelled and forfeited.

(4) Where instructions are received pursuant to subsection (3), the custodian shall act in accordance with the instructions, except that it shall not transfer a bearer share to a company unless it receives written evidence from the company in the form of a directors' or shareholders' resolution indicating which of the conditions in subsection (3) (b) is applicable.

(5) Subject to subsections (6) and (7), where at the expiration of the sixty (60) day notice period, the custodian has not received, or is unable to act upon, instructions from the beneficial owner, the custodian shall transfer the bearer share to another licensed or recognised custodian as it sees fit and who agrees to hold the share.

(6) In the case of a recognised custodian, if at the expiration of the 60 day period, it has not received or is unable to act upon instructions from the beneficial owner, the recognised custodian may transfer the bearer share to a corporate management and trust service provider of the company on behalf of which it holds the share.

(7) In the case of a licensed custodian which is not the sole corporate management and trust service provider of the company on behalf of which it holds the share, if at the expiration of the sixty (60) day period, the licensed custodian has not received or is unable to act upon instructions from the beneficial owner, then the licensed custodian may transfer the bearer share to another corporate management and trust service provider of the company on behalf of which it holds the share.

(8) A corporate management and trust service provider who receives a bearer share shall hold the share on behalf of the beneficial owner of the share and shall only transfer possession of that share in accordance with instructions received under subsection (9) or, if no instructions are received within the time period specified, then in accordance with subsection (10).

(9) A corporate management and trust service provider shall, within thirty (30) days of receipt of a bearer share under subsection (5), seek to get written instructions from the beneficial owner as to the transfer of possession of the share to—

- (a) a custodian who has agreed to hold the share; or
- (b) the company where the bearer share has been—

- (i) converted to, or exchanged for, a registered share;
- (ii) redeemed, purchased or otherwise acquired by the company; or
- (iii) cancelled and forfeited.

(10) A corporate management and trust service provider shall act in accordance with instructions from the beneficial owner, except that a transfer shall not be made to the company unless the company provides written evidence in the form of a directors' or shareholder's resolution indicating which of the conditions in subsection (9)(b) is applicable.

(11) If at the expiration of the thirty (30) day period, the corporate management and trust service provider does not receive or is unable to act upon instructions from the beneficial owner, the corporate management and trust service provider shall, within fourteen (14) days, transfer possession of the bearer share to a licensed or recognised custodian as it sees fit and who agrees to hold the share.

(12) A corporate management and trust service provider who is unable to transfer the bearer share within the time specified in subsection (9) may—

- (a) apply to the Commission for an extension of time within which to transfer the bearer share to a licensed or recognised custodian; or
- (b) apply to the Court for an order transferring the bearer share to such custodian as the Court sees fit or to the Company in accordance with this Act.

(13) If a corporate management and trust service provider fails to transfer possession of a bearer share in accordance with instructions received under subsection (9), the Commission may apply to the Court for an order that the bearer share be disabled.

(14) On an application under subsection (13), the Court may make such order as it considers appropriate.

(15) Where a corporate management and trust service provider transfers possession of a bearer share received under this section, it shall—

- (a) make a copy of all notices provided to it in respect of the bearer shares and retain the copies made for at least six years or such other period of time as requested by a competent authority or as prescribed; and
- (b) deliver, with the bearer share—
  - (i) the original notices received; and

(ii) a copy of all notices received from the custodian, previously holding the share.

(16) A corporate management and trust service provider commits an offence and is liable on summary conviction to a fine of \$10,000 if it—

- (a) transfers possession of a bearer share otherwise than in accordance with instructions received from the beneficial owner; or
- (b) subject to subsection (12), fails to transfer possession of a bearer share in accordance with subsection (11).”

Passed by the House of Representatives on  
the 12th day of February, 2010.

Passed by the Senate on the 1st day  
of March, 2010.

**D. Gisele Isaac-Arrindell,**  
*Speaker.*

**Hazlyn M. Francis,**  
*President.*

**T. Thomas,**  
*Clerk to the House of Representatives.*

**T. Thomas,**  
*Clerk to the Senate.*