

ANTIGUA AND BARBUDA



LAW (MISCELLANEOUS AMENDMENTS) BILL, 2024

No. of 2024

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ARRANGEMENT OF CLAUSES

CLAUSES

1. Short title
2. Amendment to International Foundations Act, 2007
3. Amendment of the International Trusts Act, 2007
4. Amendment to the International Limited Liability Companies Act, 2007
5. Amendment to the Corporate Management and Trust Service Providers Act, 2008
6. Amendment to the Tax Administration and Procedure Act, 2018
7. Amendment to the Antigua and Barbuda Tax Information Exchange Act, 2002
8. Amendment to the International Business Corporations Act, Cap. 222

ANTIGUA AND BARBUDA

LAW (MISCELLANEOUS AMENDMENTS) BILL, 2024

No. of 2024

AN ACT to amend the provisions of certain Acts of Parliament to strengthen the effectiveness of the legal and regulatory framework relating to global standards of transparency as it relates to ownership and identity information, accounting information and banking information and other related purposes.

ENACTED by the Parliament of Antigua and Barbuda as follows:

1. Short title

This Act may be cited as the Law (Miscellaneous Amendments) Bill, 2024.

2. Amendment of the International Foundations Act, 2007

(1) The principal Act is amended in **section 2** by repealing the definition of ‘beneficial owner’ immediately after the definition of “auditor” and inserting the following new definition—

“ (a) “beneficial owner” refers to—

(i) the natural person(s) who ultimately owns or controls a customer; and/or

(ii) the natural person on whose behalf a transaction is being conducted; and/or

(iii) those natural persons who exercise ultimate effective control over a legal person or arrangement.

(b) Reference to “ultimately owns or controls” and “ultimate effective control” refer to situations in which ownership/control is exercised through a chain of ownership or by means of control other than by direct control.”

(2) The principal Act is amended in **section 18** by repealing subsection (6) and substituting it as follows—

“(6) Where a foundation whose Certificate of Registration has not been renewed in accordance with subsection (1) or has not been reinstated in accordance with subsection (5), the provisions of this Act shall cease to apply except for the requirement to maintain accounting records and underlying documentation as required under section 46.”

(3) The principal Act is amended by repealing section **18A** and substituting it with the following new section—

“18A Annual attestation report on beneficial ownership and control

- (1) A foundation shall submit annually an attestation report to the corporate management service provider (hereinafter “the provider”) on beneficial ownership and control of the foundation for the year ending 31 December each year.
- (2) The report, which shall be in the prescribed form, shall include the following—
 - (a) the name and address of any person who controls the foundation acting directly or indirectly, and acting individually or jointly;
 - (b) the name of the founder and members of the foundation;
 - (c) the name of any beneficiary of the foundation;
 - (d) the name of any nominee who is a legal owner and who acts on behalf of a nominator who may or may not be the beneficial owner of the interests of the legal person; and
 - (e) any other information as the Commission may determine.
- (3) The provider shall file the report with the Commission no later than 31 January for the period ending 31 December of the previous year.
- (4) Where the foundation fails to submit the report as required under subsection (1) the provider shall, not later than five (5) business days after the report was due, notify the Commission of the fact that the report has not been submitted stating—
 - (a) the name of the foundation; and
 - (b) the last filing date of any report on beneficial ownership and control submitted by the foundation.
- (5) Where the provider fails to notify the Commission of a foundation’s failure to submit the report, the provider is liable to an administrative penalty of EC \$5,000.
- (6) A Foundation that has failed to submit a report to the provider for filing with the Commission shall be subject to an automatic penalty of US \$200.
- (7) For each month or part thereof that the filing of the report remains outstanding, the Foundation shall pay a further penalty of US \$500 per month to a maximum of US \$1500; and
- (8) Where a Foundation is liable to the maximum penalty and the report has not been filed with the Commission, the Commission shall cancel the register entry of the Foundation.
- (9) A Foundation shall pay all outstanding penalties before the report shall be filed.”
- (4) The principal Act is amended by inserting after section 18A the following section—

“18B Filing change of information

- (1) A provider shall file with the Commission a notice of change of—

- (a) the name and address of any person who controls the foundation acting directly or indirectly, and acting individually or jointly;
 - (b) the name of any new foundation members;
 - (c) the name of any new beneficiaries;
 - (d) the address of the registered office of the foundation; and
 - (e) any other information which the Commission may require from time to time.
- (2) The notice of change shall be—
- (a) filed with the Commission no later than 15 days after the date of the change; and
 - (b) in the form prescribed by regulations.
- (3) Where the foundation fails to file the notice of change the following penalties shall apply—
- (a) if the change is filed after the 15 days but within 30 days, a penalty of US\$50 plus the regular filing fee;
 - (b) if the change is made after 30 days but within 60 days—a penalty of US\$100 plus the regular filing fee;
 - (c) if the change is filed after 60 days but within 90 days a penalty of US\$200 plus the regular filing fee;
 - (d) after 90 days a penalty of US\$500 plus the regular filing fee.
- (5) The principal Act is amended in **section 19** by renumbering the existing section as subsection (1) and inserting the following new subsection after subsection (1)—
- “(2) A foundation shall also submit a report to the provider in the event of dissolution of the foundation under section 25 and the provider shall retain the report for a period of 6 years.”
- (6) The principal Act is amended in **section 46** by—
- (a) repealing the section heading and replacing it as follows:
“**Accounting records and underlying documentation**”
 - (b) inserting the following new subsection immediately after subsection (1)—
“(1a) The Foundation Council shall submit annually to the Corporate Management and Trust Services Provider accounting information and underlying documentation.”
 - (c) inserting the following new subsection immediately after subsection (8)—
“(9) A foundation council that contravenes subsection (8) commits an offence and shall be liable to an administrative penalty ten thousand dollars (\$10,000) which shall be recovered as a civil debt by the Commission.

3. Amendment of the International Trusts Act, 2007

(1) The principal Act is amended in **section 2** by repealing the definition of “beneficial owner” and substituting it with the following definition—

“(a) “beneficial owner” refers to—

the identity of the settlor, the trustee(s), the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust (including through a chain of control/ownership);

(b) Reference to “ultimate effective control” refer to situations in which ownership/control is exercised through a chain of ownership or by means of control other than by direct control.”

(2) The principal Act is amended in **section 10** by repealing subsection (1) and substituting it as follows—

“(1) The registered office of an international trust shall be the address of the corporate management and trust service provider licenced under the Corporate Management and Trust Service Provider Act.”

(3) The principal Act is amended by repealing **section 18A** and substituting it with the following new section—

“**18A Annual attestation report on beneficial ownership and control**”

(1) A trust shall submit annually an attestation report to the corporate management service provider (hereinafter “provider”) on beneficial ownership and control of the trust for the year ending 31 December each year.

(2) The report, which shall be in the prescribed form, shall include the following—

(a) the names and addresses of the trustees;

(b) the name and address of the settlor;

(c) the names and addresses of the beneficiaries;

(d) the name and address of the Protector, if any;

(e) the name and address of any other natural person exercising ultimate effective control over the trust;

(f) the name of any nominee who is a legal owner and who acts on behalf of a nominator who may or may not be the beneficial owner of the interests in the legal person; and

(g) any other information as the Commission may determine.

(3) The provider shall file the report with the Commission no later than 31 January for the period ending 31 December of the previous year.

(4) A trust shall also submit a report to the provider in the event that the trust has been revoked or terminated, and the provider shall retain the report for a period of 6 years.

(5) Where the trust fails to submit the report as required under subsection (1) the provider shall, not later than five (5) business days after the report was due, notify the Commission of the fact that the report has not been submitted stating—

(a) the name of the trust; and

(b) the last filing date of any report on beneficial ownership and control submitted by the trust.

(6) Where the provider fails to notify the Commission of a trust's failure to submit the report, the provider is liable to an administrative penalty of EC \$5,000.

(7) A trust that has failed to submit a report to the provider for filing with the Commission shall be subject to an automatic penalty of US \$200.

(8) For each month or part thereof that the filing of the report remains outstanding, the trust shall pay a further penalty of US \$500 per month to a maximum of US \$1500; and

(9) Where a trust is liable to the maximum penalty and the report has not been filed with the Commission, the Commission shall cancel the register entry of the trust.

(10) A trust shall pay all outstanding penalties to the Commission before the reports shall be filed with the Commission.

(4) The principal Act is amended by inserting after section 18A the following section—

“18B Filing change of information

(1) A trustee shall file with the Commission a notice of change of—

(a) the name and address of any new trustee, settlor, beneficiary or Protector;

(b) the name and address of any other new natural person exercising ultimate effective control over the trust;

(c) the name of any new nominator;

(d) the address of the registered office of the trust; and

(e) any other information which the Commission may require from time to time.

(2) The notice of change shall be—

(a) filed with the Commission no later than 14 days after the date of the change; and

(b) in the form prescribed by regulations.

(3) Where the foundation fails to file the notice of change the following penalties shall apply—

(a) if the change is filed after the 14 days but within 30 days, a penalty of US\$50 plus the regular filing fee;

- (b) if the change is made after 30 days but within 60 days –a penalty of US\$100 plus the regular filing fee;
- (c) if the change is filed after 60 days but within 90 days a penalty of US\$200 plus the regular filing fee;
- (d) after 90 days a penalty of US\$500 plus the regular filing fee.”

(5) The principal Act is amended by repealing subsection (8) in **section 42** and substituting it as follows—

“(8) A trustee shall retain all accounting records referred to in subsection (6) and underlying documentation for a minimum period of six (6) years from the date of termination or from the date the trust ceases to exist to enable compliance with this Act, the Money Laundering (Prevention) Act and the Prevention of Terrorism Act.”

(6) The principal Act is amended in section **42** by inserting the following new subsection immediately after subsection (8)—

“(9) A trustee who contravenes this section commits an offence and shall be liable to an administrative penalty of \$10,000 and shall be recovered as a civil debt by the Commission.”

4. Amendment of the International Limited Liability Companies Act, 2007

(1) The principal Act is amended in **section 2** by repealing the definition of “beneficial owner” and substituting it with the following definition—

“(a) “beneficial owner” refers to—

- (i) the natural person(s) who ultimately owns or controls a customer; and/or
- (ii) the natural person on whose behalf a transaction is being conducted; and/or
- (iii) those natural persons who exercise ultimate effective control over a legal person or arrangement.

(b) Reference to “ultimately owns or controls” and “ultimate effective control” refer to situations in which ownership/control is exercised through a chain of ownership or by means of control other than by direct control.”

(2) The principal Act is amended in **section 2** by repealing the definition of “registered agent” and substituting it with the following new definition—

““registered agent” means a person duly licenced under the Corporate Management and Trust Service Provider Act.”

(3) The principal Act is amended by repealing section **18A** and substituting it with the following new section—

“18A Annual attestation report on beneficial ownership and control

(1) A limited liability company shall submit annually an attestation report to the registered agent on beneficial ownership and control of the company for the year ending 31 December each year.

(2) The report, which shall be in the prescribed form, shall include the following—

- (a) the name and address of any person who owns fifteen percent (15%) or more of the company;
- (b) the name and address of any person who controls the company acting directly or indirectly, and acting individually or jointly;
- (c) the name of all of the directors and officers;
- (d) the name and address of any other natural person exercising ultimate effective control over the company;
- (e) the name of any nominee who is a legal owner and who acts on behalf of a nominator who may or may not be the beneficial owner of the interests in the legal person; and
- (f) any other information as the Commission may determine.

(3) The provider shall file the report with the Commission no later than 31 January for the period ending 31 December of the previous year.

(4) Where the company fails to submit the report as required under subsection (1) the provider shall, not later than five (5) business days after the report was due, notify the Commission of the fact that the report has not been submitted stating—

- (a) the name of the company; and
- (b) the last filing date of any report on beneficial ownership and control submitted by the company.

(5) Where the provider fails to notify the Commission of a company's failure to submit the report, the provider is liable to an administrative penalty of EC \$5,000.

(6) A company that has failed to submit a report to the provider for filing with the Commission shall be subject to an automatic penalty of US \$200.

(7) For each month or part thereof that the filing of the report remains outstanding, the company shall pay a further penalty of US \$500 per month to a maximum of US \$1500.

(8) Where a company is liable to the maximum penalty and the report has not been filed with the Commission, the Commission shall remove the company from the register pursuant to section 64(2) and (3).

(9) A company shall pay all outstanding penalties to the Commission when an application is made to be restored to the register.”

(4) The principal Act is amended by inserting after section 18A the following section—

“18B Filing change of information

- (1) A company shall file with the Commission a notice of change of—
 - (a) the name and address of any new shareholder;
 - (b) the name and address of any shareholder who has an increase in the percentage of shares in the company and the new percentage of shares which the shareholder now owns;
 - (c) the name and address of any new person who controls the company acting directly or indirectly, and acting individually or jointly;
 - (d) the name of any new director and/or officer;
 - (e) the name and address of any other new natural person exercising ultimate effective control over the company;
 - (f) the name of any new nominator;
 - (g) the address of the registered office of the company; and
 - (h) any other information which the Commission may require from time to time.

- (2) The notice of change shall be—
 - (a) filed with the Commission no later than 14 days after the date of the change; and
 - (b) in the form prescribed by regulations.

- (3) Where the company fails to file the notice of change the following penalties shall apply—
 - (a) if the change is filed after the 15 days but within 30 days, a penalty of US\$50 plus the regular filing fee;
 - (b) if the change is made after 30 days but within 60 days –a penalty of US\$100 plus the regular filing fee;
 - (c) if the change is filed after 60 days but within 90 days a penalty of US\$200 plus the regular filing fee;
 - (d) after 90 days a penalty of US\$500 plus the regular filing fee.”

- (5) The principal Act is amended by repealing section 55A(8) and substituting the following new subsection—

“(8) A limited liability company shall retain all accounting records referred to in section 55A(1) and (6) for a minimum period of six years from the date of the last transaction to enable compliance with the Money Laundering Prevention Act and the Prevention of Terrorism Act.”

- (7) The principal Act is amended by inserting the following subsections immediately after subsection (8)—

“(9) Where an international limited liability company is dissolved, struck off or ceases to exist the accounting records and underlying documentation shall be maintained by the

managers who were in office prior to the dissolution, strike off or cessation of the international limited liability company for the time period specified in subsection (8).

(9) Where the management of an international limited liability company which has been dissolved, struck off or ceases to exist is not within the jurisdiction of Antigua and Barbuda, the corporate service provider shall maintain the accounting records and underlying documentation which the international limited liability company has submitted to the corporate service provider for the time period specified in subsection (8).

(10) A limited liability company which contravenes this section commits an offence and shall be liable to an administrative penalty of \$10,000 which shall be recovered as a civil debt by the Commission.”

5. Amendment of the Corporate Management and Trust Service Providers Act, 2008

(1) The principal Act is amended in **section 2** by repealing the definition of “beneficial owner” and substituting it with the following definition—

“(a) “beneficial owner” refers to—

- (i) the natural person(s) who ultimately owns or controls a customer; and/or
- (ii) the natural person on whose behalf a transaction is being conducted; and/or
- (iii) those natural persons who exercise ultimate effective control over a legal person or arrangement.

(b) Reference to “ultimately owns or controls” and “ultimate effective control” refer to situations in which ownership/control is exercised through a chain of ownership or by means of control other than by direct control.”

(2) The principal Act is amended by inserting after subsection (4) a new subsection as follows—

“(5) A licensee who contravenes section 18(2), (3) (4) of this section shall be liable to an administrative penalty of \$10,000 which shall be recovered as a civil debt by the Commission.”

(3) The principal Act is amended by repealing section **18A** and substituting it with the following new section—

“18A Annual attestation report on beneficial ownership and control

(1) A corporate management and trust service provider (hereinafter “licensee”) shall file annually an attestation report to the Commission on the beneficial ownership of the licensee’s company for the year ending 31 December each year by 31 January each year.

(2) The report, which shall be in the prescribed form, shall include the following—

- (a) the name and address of any person who owns fifteen percent (15%) or more of the company;
- (b) the name and address of any person who controls the company acting directly or indirectly, and acting individually or jointly;
- (c) the name of all of the directors and officers;
- (d) the name and address of any other natural person exercising ultimate effective control over the company;
- (e) the name of any nominee who is a legal owner and who acts on behalf of a nominator who may or may not be the beneficial owner of the interests in the legal person; and
- (f) any other information as the Commission may determine.

(2) A licensee that has failed to submit a report to the Commission shall be subject to an automatic penalty of US \$200.

(3) For each month or part thereof that the filing of the report remains outstanding, the licensee shall pay a further penalty of US \$500 per month to a maximum of US \$1500.

(4) Where a licensee is liable to the maximum penalty and the report has not been filed with the Commission, the Commission shall remove the provider from the register.

(5) A licensee shall pay all outstanding penalties to the Commission when an application is made to be restored to the register.”

(4) The principal Act is amended by inserting after section 18A the following section—

“18B Filing change of information

(1) A licensee shall file with the Commission a notice of change of—

- (a) the name and address of any new shareholder;
- (b) the name and address of any shareholder who has an increase in the percentage of shares in the company and the new percentage of shares which the shareholder now owns;
- (c) the name and address of any new person who controls the company acting directly or indirectly, and acting individually or jointly;
- (d) the name of any new director and/or officer;
- (e) the name and address of any other new natural person exercising ultimate effective control over the company;
- (f) the name of any new nominator;
- (g) the address of the registered office of the company; and
- (h) any other information which the Commission may require from time to time.

- (2) The notice of change shall be—
- (a) filed with the Commission no later than 14 days after the date of the change; and
 - (b) in the form prescribed by regulations.
- (3) Where the licensee fails to file the notice of change the following penalties shall apply—
- (a) if the change is filed after the 15 days but within 30 days, a penalty of US\$50 plus the regular filing fee;
 - (b) if the change is made after 30 days but within 60 days –a penalty of US\$100 plus the regular filing fee;
 - (c) if the change is filed after 60 days but within 90 days a penalty of US\$200 plus the regular filing fee;
 - (d) after 90 days a penalty of US\$500 plus the regular filing fee.”
- (5) The principal Act is amended by repealing **section 19** and substituting the following new section—

“19. Keeping records of clients

In addition to the requirement to keep client records under section 18(2), a licensee shall, in respect of each client, maintain adequate information on a file for a minimum period of six (6) years from the termination of the relationship with the client to enable compliance with this Act, the Money Laundering (Prevention) Act, the Prevention of Terrorism Act, the International Limited Liability Companies Act or any other law in force in Antigua and Barbuda requiring a licensee to comply with these laws.”

6. Amendment to the Tax Administration and Procedure Act, 2018

- (1) The principal Act is amended in **section 2** by—
- (a) inserting the following definition of “beneficial owner” immediately after the definition of “assessment”—
 - “(a) “beneficial owner” refers to—
 - (i) the natural person(s) who ultimately owns or controls a customer; and/or
 - (ii) the natural person on whose behalf a transaction is being conducted; and/or
 - (iii) those natural persons who exercise ultimate effective control over a legal person or arrangement.
 - (b) Reference to “ultimately owns or controls” and “ultimate effective control” refer to situations in which ownership/control is exercised through a chain of ownership or by means of control other than by direct control.”
 - (b) inserting the following definitions after the definition of “law”—

“legal arrangement” means express trusts or other similar arrangements;

“legal persons mean any entities, other than natural persons, that can establish a permanent customer relationship with a financial institution or otherwise own property and can include companies, bodies corporate, foundations, anstalt, partnerships, or associations and other relevantly similar entities that have legal personality. It also includes non-profit organisations (NPOs) that can take a variety of forms which vary between jurisdictions, such as foundations, associations or cooperative societies.”; and

(c) deleting the definition of “person”.

(2) The principal Act is amended in **section 11** by—

(a) repealing subsection (6) and substituting it as follows—

“(6) A taxpayer shall notify the Commissioner in writing of a change in name to include legal ownership and beneficial ownership information (including business name or other trading name), address, place of business, or nature of the taxable activity carried on by the taxpayer within fourteen days of the change occurring.”

(b) repealing subsection (7).

(3) The principal Act is amended in **section 22** by inserting after subsection (1) the following new subsections—

“(1a) Any person who is required to pay tax under the Income Tax Act, the Antigua and Barbuda Sales Tax Act, the Unincorporated Business Tax Act or any other law within Schedule 1 of the Tax Administration and Procedure Act who is required to make a return under tax legislation is required to keep and maintain in Antigua and Barbuda information on the legal ownership or beneficial owner and to ensure that such information is accessible to the Commissioner.

(1b) A person in Antigua and Barbuda who is a trustee of a trust is required to keep and maintain in Antigua and Barbuda records and accounts sufficient to record all transactions, whether or not the income of the trust is subject to tax in Antigua and Barbuda, or the trustee is required to make a return under tax legislation.”

(4) The principal Act is amended in **section 22** by inserting after paragraph (b) in subsection (3) the following new paragraph—

“(c) If a partnership ceases to exist, the records shall be kept by the representatives of the partnership immediately before the partnership ceased to exist, with representative being construed in accordance with section 44(1)(c) of this Act.”

(5) The principal Act is amended by repealing **section 23** and replacing it as follows—

“23. Obligations of Financial Institutions

(1) A bank or financial institution shall take reasonable steps to understand in relation to a customer’s business—

- (a) the nature of the business;
- (b) the ownership of the business; and
- (c) the control structure of the business.

(2) A bank or financial institution shall identify each customer and verify the customer's identity through the following information—

- (a) name, legal form and proof of existence;
- (b) the powers that regulate and bind the legal person or arrangement, as well as the names of the relevant persons having a senior management position in the legal person or arrangement; and
- (c) the address of the registered office and, if different, a principal place of business.

(3) A bank or financial institution shall identify and take reasonable measures to verify the identity of beneficial owners of any customers that are legal persons through the following information—

- (a) the identity of the natural person(s) if any, who ultimately has a controlling ownership interest in a legal person; and
- (b) the identity of the natural person(s) (if any) exercising control of the legal person or arrangement through other means in cases where there is doubt as to whether the person(s) with the controlling ownership interest is the beneficial owner(s), or where no natural person exerts control through ownership interests;
- (c) where no natural person is identified under (a) or (b) above, the identity of the relevant natural person who holds the position of senior managing official; and
- (d) where there is a nominee, ownership information shall include the name and address and status of the nominee and the name and address of the nominator for whom the nominee acts.

(4) A bank or financial institution shall identify and take reasonable measures to verify the identity of beneficial owners of any customers that are legal arrangements through the following information—

- (a) for trusts, the identity of the settlor, the trustee(s), the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust (including through a chain of control/ownership);
- (b) for other types of legal arrangements, the identity of persons in equivalent or similar positions.”

7. Amendment to the Antigua and Barbuda Tax Information Exchange Act, 2002

(1) The principal Act is amended in **section 5A** by repealing the definition of “beneficial owner” and substituting it with the following definition—

“(a) “beneficial owner” refers to—

- (i) the natural person(s) who ultimately owns or controls a customer; and/or
 - (ii) the natural person on whose behalf a transaction is being conducted; and/or
 - (iii) those natural persons who exercise ultimate effective control over a legal person or arrangement.
- (b) Reference to “ultimately owns or controls” and “ultimate effective control” refer to situations in which ownership/control is exercised through a chain of ownership or by means of control other than by direct control.”

(2) The principal Act is amended in subsections (2) and (3) of **section 5A** by inserting the words “**custody or control**” after the word “**possession**”.

(3) The principal Act is amended in section **5A** by repealing subsection (4) and substituting the following—

“(4) The Commissioner may in the execution of any request require a company, or person connected with the company to disclose ownership information, to include beneficial ownership, legal ownership and identity information which may be in their possession, custody or control for specific exchange of information for tax purposes.”

8. Amendment to the International Business Corporations Act, Cap. 222

(1) The Principal Act is amended in **section 2** by inserting after the definition of “bearer shares” the following definition—

“(a) “beneficial owner” refers to—

- (i) the natural person(s) who ultimately owns or controls a customer; and/or
- (ii) the natural person on whose behalf a transaction is being conducted; and/or
- (iii) those natural persons who exercise ultimate effective control over a legal person or arrangement.

(b) Reference to “ultimately owns or controls” and “ultimate effective control” refer to situations in which ownership/control is exercised through a chain of ownership or by means of control other than by direct control.”

(2) The principal Act is amended by repealing section **18A** and substituting it with the following new section—

“18A Annual attestation report on beneficial ownership and control

(1) A corporation shall submit annually an attestation report to the provider on beneficial ownership and control of the corporation for the year ending 31 December each year.

(2) The report, which shall be in the prescribed form, shall include the following—

- (a) the name and address of any person who owns fifteen percent (15%) or more of the corporation;

- (b) the name and address of any person who controls the corporation acting directly or indirectly, and acting individually or jointly;
- (c) the name of all of the directors and officers;
- (d) the name and address of any other natural person exercising ultimate effective control over the corporation;
- (e) the name of any nominee who is a legal owner and who acts on behalf of a nominator who may or may not be the beneficial owner of the interests in the legal person; and
- (f) any other information as the Commission may determine.

(3) The provider shall file the report with the Commission no later than 31 January for the period ending 31 December of the previous year.

(4) Where the corporation fails to submit the report as required under subsection (1) the provider shall, not later than five (5) business days after the report was due, notify the Commission of the fact that the report has not been submitted stating—

- (a) the name of the corporation; and
- (b) the last filing date of any report on beneficial ownership and control submitted by the corporation.

(5) Where the provider fails to notify the Commission of a corporation's failure to submit the report, the provider is liable to an administrative penalty of EC \$5,000.

(6) A corporation that has failed to submit a report to the provider for filing with the Commission shall be subject to an automatic penalty of US \$200.

(7) For each month or part thereof that the filing of the report remains outstanding, the corporation shall pay a further penalty of US \$500 per month to a maximum of US \$1500.

(8) Where a corporation is liable to the maximum penalty and the report has not been filed with the Commission, the Commission shall remove the corporation from the register.

(9) A corporation shall pay all outstanding penalties to the Commission when an application is made to be restored to the register.”

(3) The principal Act is amended by inserting after section 18A the following section—

“18B Filing change of information

- (1) A corporation shall file with the Commission a notice of change of—
 - (a) the name and address of any new shareholder;

- (b) the name and address of any shareholder who has an increase in the percentage of shares in the corporation and the new percentage of shares which the shareholder now owns;
- (c) the name and address of any new person who controls the corporation acting directly or indirectly, and acting individually or jointly;
- (d) the name of any new director and/or officer;
- (e) the name and address of any other new natural person exercising ultimate effective control over the corporation;
- (f) the name of any new nominator;
- (g) the address of the registered office of the corporation; and
- (h) any other information which the Commission may require from time to time.

(2) The notice of change shall be—

- (a) filed with the Commission no later than 15 days after the date of the change; and
- (b) in the form prescribed by regulations.

(3) Where the corporation fails to file the notice of change the following penalties shall apply—

- (a) if the change is filed after the 14 days but within 30 days, a penalty of US\$50 plus the regular filing fee;
- (b) if the change is made after 30 days but within 60 days—a penalty of US\$100 plus the regular filing fee;
- (c) if the change is filed after 60 days but within 90 days a penalty of US\$200 plus the regular filing fee;
- (d) after 90 days a penalty of US\$500 plus the regular filing fee.”

(4) The Principal Act is amended in **section 130A** by—

- (a) repealing the introductory words of subsection (1) and replacing it as follows—

“(1) A corporation shall keep at the Office of its Agent and such other place within or outside of Antigua and Barbuda records that—”

- (b) repealing subsections (5) and (6) and replacing them as follows—

“(5) The accounting records that must be maintained and kept under this section shall be retained for a minimum period of six (6) years after the date on which the Agent’s relationship with the corporation has been terminated.

(6) The accounting records and underlying documentation required to be kept under this section shall be kept either in written or electronic form.”

- (5) The Principal Act is amended in **section 130A** by inserting after subsection (6) the following new subsections—

“(7) The Commission or other competent authority may request in writing from an Agent at any time records specified under subsection (1) and An Agent who has received such a request shall provide the records without delay.

(8) A corporation which contravenes this section commits an offence and shall be liable to an administrative penalty of thirty thousand dollars (\$30,000) which shall be recovered as a civil debt by the Commission.”

- (6) The Principal Act is amended by repealing section **299**.

- (7) The Principal Act is amended in section **300** by—

- (a) deleting the words, “under section 299 of this Act” in subsection (3);
- (b) deleting the words, “section 299” in subsection (4).

- (8) The Principal Act is amended by repealing **section 315** and replacing it as follows—

“315. Revival of a dissolved corporation by the Court

(1) Application may be made to the Court to revive a dissolved company to the Register by—

- (a) a creditor, former director, former member or former liquidator of the corporation; or
- (b) any person who can establish an interest in having the corporation revived to the Court.

(2) An application under subsection (1) shall—

- (a) not be made after 7 years of the date of dissolution;
- (b) be accompanied by information on the beneficial and legal owner of the corporation; and
- (b) be for the purpose of—
 - (i) initiating, continuing or discontinuing legal proceedings in the name of or against the corporation; or
 - (ii) distributing assets of the corporation.

(3) On hearing an application, the court shall—

- (a) make an order to revive the corporation to the Register on being satisfied that—
 - (i) a licensed person has agreed to act as registered agent of the corporation; and
 - (ii) the corporation has paid all outstanding fees and penalties owed to the Commission; and
 - (b) impose such conditions and directions to the Commission as the Court considers appropriate.
- (4) Where the Court makes an order to restore a corporation to the Register, a sealed copy of the Order shall be filed with the Commission by the interested person who made the application to the Court under subsection (1).
- (5) Upon receipt of the sealed Order by the Court, the Commission shall restore the corporation to the register with effect from the date and time that the copy of the sealed order was filed, subject to the conditions and directions of the Court.
- (6) Where a dissolved corporation was in liquidation prior to being restored to the register, the corporation shall file with the Commission a statement of liquidation when the liquidation is complete.
- (7) When the statement of liquidation has been filed, the corporation shall—
- (a) be dissolved with effect from the date of filing of the statement of liquidation; and
 - (b) not be restored to the register to carry on business.”
- (6) The Principal Act is amended by repealing **section 335** and replacing it as follows—

“335. Director’s strike off and dissolution

- (1) Subject to subsection (2), the Director may strike a corporation from the register if—
- (a) the corporation fails to send any return, notice, document or prescribed fee to the Commission as required by this Act;
 - (b) the corporation has failed to file an annual attestation report even after being liable to the maximum penalty;
 - (c) the corporation is amalgamated with one or more other corporations or bodies corporate;
 - (d) the corporation does not carry out an undertaking given under section 339 (a)(i) of this Act; or
 - (e) the registration of the corporation is revoked pursuant to this Act;
 - (f) the corporation fails to satisfy the request made pursuant to section 130A;
 - (g) the corporation has not commenced business within three years after the date shown in its certificate of incorporation;

(h) has not carried on business for three consecutive years.

(2) Before striking a corporation from the register on the grounds specified in subsection (1), the Director shall—

- (a) send the corporation a notice stating that, unless the corporation shows cause to the contrary, it will be struck from the register on a date specified in the notice which shall be no less than 90 days after the date of the notice; and
- (b) publish a notice in the Gazette of his or her intention to strike the corporation off the register.

(3) After the expiration of the period specified in the notice, unless the corporation has shown cause to the contrary, the Director shall strike the name of the company off the register.

(4) The Director shall publish a notice in the Gazette of the striking of a corporation from the register.

(5) The striking of a corporation is effective from the date published in the Gazette.

(6) When a corporation is struck off the register, all licences issued to that corporation to engage in international insurance business are simultaneously rendered null and void.

(7) Where a corporation is struck off the register under subsection (3), the company is dissolved on the date the Director publishes a notice of the striking off in the Gazette under subsection (5).

(8) Where a company has been struck off the Register and dissolved, the Registrar may, subject to receipt of an application in the prescribed form restore the corporation to the register upon payment of all fees and penalties.”

(7) The Principal Act is amended by numbering **section 342** as (1) and inserting the following new subsection immediately after—

“(2) Where a corporation remains dissolved after 7 years, the name of the dissolved corporation shall become available for reuse by another corporation.”

EXPLANATORY MEMORANDUM

The purpose of this bill is to implement the recommendations in the 2023 Peer Review Report (“the Report”) of the Global Forum on Transparency and Exchange of Information for Tax Purposes into the legal framework of Antigua and Barbuda. This report analyses the implementation of the **international standard of transparency and exchange of information** in Antigua and Barbuda via the legal and regulatory framework that was in force in on 4 May 2023. The report concludes that Antigua and Barbuda is rated overall **Partially Compliant** with the standard.

One of the major amendments in this bill across several laws is to insert a definition of beneficial owner which is in line with the standard. The purpose of this is to ensure that beneficial owners are correctly identified and that ownership information is available in all cases and is in accordance with the standard.

The amendments in this Bill are intended to ensure that the appropriate laws mandate up to date identity information including beneficial ownership information for financial institutions, International Foundations, International Trusts, International Business Corporations and International Limited Liability Companies. Additionally, the bill also addresses the recommendation that financial institutions should conduct customer due diligence and ensure that beneficial ownership information is obtained for their customers who are legal persons or legal arrangements (trusts).

The bill also makes provision for appropriate sanctions to be imposed on International Trusts, International Foundations, International Business Corporations and International Limited Liability Companies that have not complied with the obligation to keep accounting records and underlying documents.

In cases where the types of entities (International Foundations, International Trusts, International Business Corporations and International Limited Liability Companies) have been struck off and dissolved, the bill also mandates that accounting records should be maintained and accessible for 6 years after and that beneficial ownership information should be submitted for revival or re-registration.

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Hon. Gaston A. Browne
Prime Minister and
Minister of Finance and
Corporate Governance.