

ANTIGUA AND BARBUDA



COMPANIES (AMENDMENT) ACT, 2022

No. 22 of 2022

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COMPANIES (AMENDMENT) ACT, 2022

ARRANGEMENT OF SECTIONS

SECTION

1. Short Title.....	4
2. Interpretation	4
3. Amendment of section 194-Annual returns by a company incorporated under the Companies Act	5
4. Amendment of section 194A- Annual attestation on beneficial ownership and control of a company.....	5
5. Amendment of section 344 – Registering external companies.....	6
6. Insertion of section 344A – Registering a company incorporated under the International Business Corporations Act, Cap. 222 as an external company	6
7. Amendment of section 346 – Attorney of company	7
8. Amendment of section 356 – Returns	7
9. Insertion of section 356B- Annual attestation by a registered external company	8
10. Amendment of section 543 – Definition of technical words	8
11. Amendment of section 598 – Who may file a Plan	8

[L.S.]



I Assent,

Rodney Williams,
Governor-General.

28th July, 2022.

ANTIGUA AND BARBUDA
COMPANIES (AMENDMENT) ACT, 2022
No. 22 of 2022

AN ACT to amend the Companies Act, 1995 No. 18 of 1995 and for other connected purposes.

ENACTED by the Parliament of Antigua and Barbuda as follows:

1. Short Title

This Act may be cited as the Companies (Amendment) Act, 2022

2. Interpretation

In this Act-

“principal Act” means the Companies Act, 1995 No. 18 of 1995

3. Amendment of section 194-Annual returns by a company incorporated under the Companies Act

The principal Act is amended by the repeal of section 194 and the substitution therefor of the following-

“194. Annual returns by a company incorporated under the Companies Act

(1) A company shall, in each year, and not later than 30 days after the anniversary date of its incorporation under this Act or continuance under the former Act, send to the Registrar of Companies a return in the prescribed form containing the prescribed information for the twelve months preceding its anniversary date for that year together with the prescribed fee.

(2) A director, or officer of the company shall certify the contents of every return made under this section.

(3) If the company fails to comply with subsection (1), the Registrar may levy a penalty on the company as prescribed by Regulations.”

4. Amendment of section 194A- Annual attestation on beneficial ownership and control of a company

The principal Act is amended by the repeal of Section 194A and the substitution therefor of the following-

“194A. Annual attestation on beneficial ownership and control of a company

(1) A company shall, in each year, and not later than 30 days after the anniversary date of its incorporation under this Act or continuance under the former Act, send to the Registrar of Companies, an attestation on the beneficial ownership and control of the company together with the prescribed fee.

(2) The Annual Attestation shall include the following –

- (a) the name and address of any person who owns five percent or more of the total voting rights of the company;
- (b) where there is a nominee, the name and address of the ultimate beneficial owner for whom a person holds the shares or their ownership interest;
- (c) the name and address of any person who controls the company acting directly or indirectly, and acting individually or jointly;
- (d) the name of all of the directors and officers; and
- (e) any other information as the Commission may determine.

(3) Any company that wilfully fails to file an attestation report on beneficial ownership is liable to an administrative penalty of \$5,000 and for a further penalty of \$5,000 for each day of default.

(4) The administrative penalty levied pursuant to this section shall be recovered as a civil debt by the Company Registry”

5. Amendment of section 344 – Registering external companies

Section 344 of the principal Act is amended in subsection (1) by inserting a comma immediately after the words “an external company” and by inserting before the word “shall” the following words “not being a company incorporated under the International Business Corporations Act, Cap. 222,”

6. Insertion of section 344A – Registering a company incorporated under the International Business Corporations Act, Cap. 222 as an external company

The principal Act is amended by inserting after section 344 the following new section -

“344A. Registering a company incorporated under the International Business Corporations Act, Cap. 222 as an external company

(1) In order to register under this Act, an external company that was incorporated under the International Business Corporations Act, Cap. 222 shall file the following documents with the Registrar of Companies:

- (a) Certificate of Authorization from the Financial Services Regulatory Authority;
- (b) A statement containing:
 - (i) the name of the company;
 - (ii) the date of its incorporation;
 - (iii) the particulars of its corporate instruments;
 - (iv) the extent, if any, to which the liability of the shareholders or members of the company is limited;
 - (v) the business that the company will carry on within the jurisdiction of Antigua and Barbuda;
 - (vi) the date on which the company intends to commence trading or the provision of services within the jurisdiction of Antigua and Barbuda;
 - (vii) the shares that the company is authorised to issue and their nominal or par value, if any;
 - (viii) the full address of the registered office of the company in Antigua and Barbuda; and
 - (ix) the name, address and occupation of the resident agent of the company;

- (2) The statement under subsection (1) shall be accompanied by –
- (a) a statutory declaration by a director or officer of the company that verifies on behalf of the company that the particulars set out in the statement are true and correct;
 - (b) a copy of the corporate instruments of the company;
 - (c) a statutory declaration by an attorney-at-law that this section has been complied with;
 - (d) an attestation as to the beneficial ownership and control of the company; and
 - (e) a certificate of good standing from the Financial Services Regulatory Commission.

(3) All rules and regulations applicable to an external company shall be applicable to a company registered under the International Business Corporations Act that has been registered under this Act.”

7. Amendment of section 346 – Attorney of company

Section 346 of the principal Act is amended as follows –

- (a) in subsection (1) thereof by inserting a comma “,” immediately after the words “an external company” and by inserting before the word “shall” the following words “not being a company incorporated under the International Business Corporations Act, Cap. 222,”
- (b) by inserting after subsection (3) the following new subsection:

“(4) Service of process in all suits and proceedings by or against an external company that is also a company registered under the International Business Corporations Act and all lawful notices to the company shall be done on the registered office of the company unless an alternate address for service has been provided in court documents issued by the company.”

8. Amendment of section 356 – Returns

The principal Act is amended by repealing section 356 thereof and replacing it as follows –

“356. Returns

(1) An external company shall, in each year, and not later than 30 days after the anniversary date of its registration under this Act or continuance under the former Act, send to the Registrar of Companies an annual return in the prescribed form containing the prescribed information for the twelve months preceding its anniversary date for that year.

(2) A Director or officer of the external company shall certify the contents of any return made under this section.

(3) The Registrar may –

- (a) levy a penalty against the external company; or
- (b) strike the external company off the register of external companies, if it neglects or refuses to file a return required under this section”

9. Insertion of section 356B- Annual attestation by a registered external company

The principal Act is amended by inserting immediately after section 356A the following new section –

“356B. Annual attestation by a registered external company

(1) An external company shall, in each year, and not later than 30 days after the anniversary date of its registration as an external company under this Act or the former Act, send to the Registrar of Companies an annual attestation in the prescribed form containing the prescribed information made up to the last day of the twelve months preceding its anniversary date for that year, together with the prescribed fee.

(2) A director or officer of an external company, shall certify the contents of any return made under this section.

(3) If a company fails to comply with subsection (1), the company shall pay to Registrar a penalty of \$100.00 for late filing and thereafter the Registrar shall levy on the company \$100.00 for every ninety days or part thereof during which the company remains in default.

(4) The Registrar may strike off the register the name of an external company that remains in default of filing annual returns after giving thirty days’ notice to the company, and the name of such company may be reinstated in the register on payment of the prescribed fee for reinstatement of the company, and all the unpaid fees and penalties.”

10. Amendment of section 543 – Definition of technical words

Section 543 of the principal Act is amended by repealing the definition of “external company” and replacing it with the following:

“external company” means any firm or other body of persons, whether incorporated or unincorporated, that is formed under the laws of a country other than Antigua and Barbuda or a firm or body corporate that was incorporated under the International Business Corporations Act, Cap. 222 and has been registered under this Act, with the approval of the Financial Services Regulatory Authority, for the purpose of trading or providing services within the jurisdiction of Antigua and Barbuda;

11. Amendment of section 598 – Who may file a Plan

Section 598 of the principal Act is amended as follows:

(a) by repealing subsection (4) thereof and replacing it as follows –

“(4) Subject to subsection (5) any party in interest may apply to the court to extend the 120-day period or the 180-day period referred to in this section notwithstanding that the 120-day period or the 180-day period has expired at the date of making the application.”

(b) in subsection (5) by repealing the words “18 months” and replacing this with the words “24 months”.

(c) in subsection (6) by repealing the words “20 months” and replacing this with the words “30 months”.

Passed the House of Representatives on
The 31st day of May, 2022.

Passed the Senate on the 19th day of
July, 2022.

Gerald Watt, Q.C.,
Speaker.

Alicia Williams-Grant,
President.

A. Peters,
Clerk to the House of Representatives.

A. Peters,
Clerk to the Senate.