

ANTIGUA AND BARBUDA

STATUTORY INSTRUMENT

2006, No. 6

*Published in the
Official Gazette
Vol. XXVI No. 22
dated 20th April,
2006.*

**The Securities (Uncertificated Securities) Regulations, made
by the Minister and on the recommendation of the
Commission under section 153(2) of the Securities Act 2001,
No. 14 of 2001.**

1. These regulations may be cited as the Securities (Uncertificated Securities) Regulations 2006 and shall come into force on a date appointed by the Minister.

Short title and
commencement.

2. In these regulations—

Interpretation.

“approved form” means a form approved by the Commission pursuant to Regulation 18 of these Regulations;

“broker dealer” means a broker dealer within the meaning of Section 2 of the Securities Act;

“certificate” means any certificate, instrument or other document of, or evidencing, title to securities;

“charge” includes any mortgage, assignment, pledge or lien (other than a lien of a company on shares issued by it) on any security for securing money or money’s worth;

“clearing agency” means the holder of a licence to operate a clearing agency granted by the Commission or a company which is deemed by the Securities Act to be the holder of such licence;

“the Commission” means the Eastern Caribbean Securities Regulatory Commission;

“company” means a company incorporated or registered under the Companies Act 1995, No. 18 of 1995;

“corporate debt” means a debt security issued by a company;

“custodian” means the holder of a licence to operate as a custodian granted by the Commission or a company which

is deemed by the Securities Act to be the holder of such licence;

“court” means the Eastern Caribbean Supreme Court or any court with similar jurisdiction established in succession to that Court;

“debt securities” means securities other than shares;

“dematerialised instruction” means an instruction sent or received by means of a registry system pursuant to these Regulations;

“enactment” means an Act or Statutory Instrument or any provision of an Act or Statutory Instrument;

“holder” in relation to securities means the person who is recorded on a register of securities as holding title to those securities and “hold” shall be construed accordingly;

“Inland Revenue Department” means the department established under section 4 of the Inland Revenue Administration Act Cap. 217;

“intermediary” includes a broker dealer, a clearing agency and a custodian;

“issuer” means an issuer within the meaning of Section 2 of the Securities Act;

“listed” means listed on a securities exchange and ‘list’ shall be construed accordingly;

“member” means the holder of shares of a company;

“officer” in relation to a company means a director or liquidator;

“on line issuer service” means a service provided by electronic means by a share registry to a company to enable the company to access its register of members;

“person” includes a company and an individual;

“private transfer” means a transfer of a security or units of that security by a member or holder of a security to

another person effected directly without the services of a securities exchange;

“rectify” means to correct by removing errors;

“register of members” in relation to a listed company or a company which proposes to list means the register of members of a company maintained by a share registry;

“register of debt securities” means the register of holders of listed debt securities maintained by a share registry;

“register of securities” means either a register of members or a register of debt securities;

“registry account number” means a number issued by a share registry to a holder in respect of securities held by him whether solely or jointly with another person or persons;

“registry system” means a computer based system, and procedures, operated by a share registry which enables title to units of a security to be evidenced and transferred without a written instrument and which facilitates supplementary and incidental matters;

“securities” has the meaning given by Section 2 of the Securities Act;

“securities exchange” means the holder of a securities exchange licence granted by the Commission under the Securities Act or a company which is deemed by the Securities Act to be the holder of such licence;

“share” means a share (or stock) in the capital of a company;

“share registry” means the Eastern Caribbean Central Securities Registry Limited and any holder of a licence granted under section 42 of the Securities Act to operate a share registry;

“statutory instrument” means an instrument made under an Act;

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

“the Securities Act” means the Securities Act 2001, No.14 of 2001;

“trustee in bankruptcy” means a trustee in bankruptcy of a debtor’s estate appointed under the Bankruptcy Act or any enactment which replaces it;

“uncertificated” in relation to a unit of a security means that title to the unit is recorded on a register of securities and may, pursuant to these Regulations, be transferred by means of a registry system; and “certificated” in relation to a unit of a security means that the unit is not an uncertificated unit;

“unit” in relation to a security means the smallest possible transferable unit of the security (for example a single share).

Keeping of registers of members.

3.(1) In respect of every listed company there shall be a register of members kept and entered up by a share registry on its registry system in accordance with these Regulations.

(2) Any company which proposes to list may, before listing, if its articles of association permit, contract with a share registry for its register of members to be kept and entered up by the share registry on its registry system in accordance with these Regulations.

(3) References in the Companies Act to a company’s register of members shall, unless the context otherwise requires, be construed in relation to a listed company or a company to which paragraph (2) of this regulation applies as referring to the company’s register of members kept pursuant to these Regulations.

(4) When a register of members is established pursuant to paragraph (1) or paragraph (2) of this regulation the title to shares of the company shall thereafter be evidenced and transferred in manner stipulated by these Regulations and, subject to regulation 22, share certificates issued by the company shall cease to have effect.

(5) In relation to every listed company and every company to which paragraph (2) of this regulation applies the share registry shall enter on the register of members:—

(a) in alphabetical order the full name and address of each member who is an individual, or in the case of

a corporate body its full name, the place where it is incorporated and the address of its registered or principal office;

- (b) with those names and addresses a statement of the shares held by each member and, where the company has more than one class of issued shares, distinguishing each share by its class;
- (c) an identification number distinguishing each member from the other members;
- (d) the registry account number of each member;
- (e) the total amount paid up on the shares;
- (f) where the company has converted any of its shares into stock, the amount and class of stock held by each member, instead of the amount of shares and the particulars relating to shares specified in subparagraph (b);
- (g) if any share of the company is held by two or more persons, the register of members shall contain the names and addresses of all such members.

(6) An entry relating to a member of a company who has ceased to hold any shares in the company may be removed from the register of members after the expiration of 10 years beginning with the day on which the member ceased to hold any such shares.

(7) No notice of any trust, expressed, implied or constructive, shall be entered on a register of members, or a part of such a register, or be receivable by a share registry. This provision shall not prohibit the entry of liens and charges pursuant to regulations 8 and 9.

(8) Every listed company shall, within 30 days of its acceptance for listing on a securities exchange, enter into a contract with a share registry for the share registry to keep its register of members pursuant to these Regulations.

(9) On entering into a contract with a share registry for the keeping by the share registry of its register of members pursuant to paragraph (2) or paragraph (8), the company shall immediately close its register of members and transfer it to the share registry.

(10) The company and the share registry shall complete the transfer of the register of members within 30 days and the register shall be re-opened by the share registry within 7 days after the transfer is completed.

(11) (i) The share registry shall within 30 days of the opening of a register of members pursuant to this regulation at its cost provide each member whose name appears on the register of members with a written statement sent by ordinary mail containing —

(a) the member's identification number;

(b) the member's registry account number;

(c) the name and address of the member as it appears on the registry of members, and

(d) the amount and class of shares or stock held by the member.

(ii) The share registry shall at any time on the written request of a member and on payment by the member of a fee (of an amount approved by the Commission) provide the member with a written statement containing the information set out in paragraph (11) (i).

A statement provided pursuant to this regulation shall be effective only as a record of its contents as at its date.

Keeping of register of debt securities.

4. (1) In respect of every listed issue of debt securities there shall be a register kept and entered up by a share registry on its registry system in accordance with these Regulations.

(2) Each register of debt securities shall comprise the following particulars which the share registry shall enter on it, namely—

(a) in alphabetical order, the full name and address of each holder who is an individual, or in the case of a corporate body its full name, the place where it is incorporated and the address of its registered or principal office;

(b) the number of units of that security each such person holds;

- (c) an identification number distinguishing each holder from the other holders;
- (d) the registry account number of each holder;
- (e) if any relevant security is held by two or more persons, the names and addresses of all such holders.

(3) No notice of any trust, expressed, implied or constructive, shall be entered on a register of debt securities, or a part of such register, or be receivable by a share registry. This provision shall not prohibit the entry of charges pursuant to regulation 9.

(4) An entry in a register of debt securities relating to a person who no longer holds the securities which are the subject of the entry may be removed from the register after the expiration of 10 years beginning with the day on which the person ceased to hold any of those securities.

(5) The Commission shall give such directions as it considers necessary for the opening of a register of debt securities pursuant to this regulation.

5. (1) A register of members is *prima facie* evidence of any matters which are by these Regulations directed or authorised to be inserted in it.

Effect of entries on Registers.

(2) A register of debt securities is *prima facie* evidence of any matters which are by these Regulations directed or authorised to be inserted in it.

(3) A register of securities or an extract thereof shall be admissible in evidence in any court by means of a document printed from the registry system and certified by a director or authorised officer of the share registry which keeps the relevant register.

6. (1) A share registry who rectifies a register of securities kept by him shall immediately notify the issuer of the securities and any member or other person concerned of the change to the entry.

Rectification of registers.

(2) Without prejudice to any lesser period of limitation or prescription, liability incurred by a share registry from the making or deletion of any entry in a register of securities, or from failure

to make or delete any such entry, is not enforceable more than 10 years after the date on which the entry was made or deleted or the failure first occurred.

(3) Without affecting the generality of regulation 3(3), section 47 of the Companies Act shall apply to any register of members kept pursuant to these Regulations.

Recording by a share registry of transfers of securities.

7. (1) Upon completion of a transfer of units of a security in accordance with this regulation (and subject to paragraphs (2) to (6) inclusive thereof) a share registry shall record on the relevant register of securities the transfer of title to those units of that security.

(2) Subject to the provisions of this regulation a transfer of units of a security may be effected by—

- (i) a private transfer, or
- (ii) through an intermediary by way of a trade on a licensed securities exchange.

(3) A private transfer shall be effected by the transferor and the transferee completing and signing an approved form in accordance with regulation 18 and (if stamp duty is chargeable on the transfer) paying such stamp duty which shall be duly recorded on the approved form by the Inland Revenue Department. If a transfer which complies with this paragraph is presented to a share registry the share registry shall subject to paragraphs 5 to 8 of this regulation enter the transferee on the relevant register of securities as the holder of the security.

(4) (i) The holder of a security may contract with an intermediary for sale of units of the security on a securities exchange.

(ii) If such contract is made the intermediary shall, by dematerialised instructions, notify the share registry of the following details of the contract—

- (a) the identification number of the holder of the security;
- (b) the registry account number of the holder of the security;

(c) the number of units to be sold, and,
 subject to paragraphs 5 to 8 of this regulation, the share registry shall enter on the relevant register the intermediary as holder of the security (or the units thereof to be sold).

(iii) if the security (or units thereof) is sold by the intermediary he shall, by dematerialised instructions, notify the share registry of the sale and subject to paragraphs 5 to 8 of this regulation, the share registry shall enter on the relevant register the transferee (or an intermediary holding the security for the transferee) as holder of the security (or the units thereof sold).

(iv) if before a sale of units of a security is effected the contract referred to in paragraph 4 (i) is for any reason terminated the intermediary shall promptly notify the share registry who shall enter the name of the prior holder on the register in place of the intermediary in respect of the security (or the relevant units thereof).

(5) A share registry shall refuse to record a transfer of title to a security if he has actual notice that—

- (a) the transfer is prohibited by order of a court; or
- (b) the transfer is prohibited or avoided by or under an enactment; or
- (c) the transfer is a transfer to a deceased person; or
- (d) in the case of a share the company which issued the share has a lien thereon pursuant to the articles of association of the company; or
- (e) if a charge is recorded in respect of the security in the relevant register of securities, or
- (f) on transfer the security is to be held jointly in the names of more persons than is permitted under the terms of the issue of the security.

(6) A share registry may refuse to record a transfer of title to a security—

- (a) if the transfer is to an entity which is not a natural or legal person; or
- (b) where in respect of a dematerialised instruction received or purportedly received from an intermediary pursuant to regulation 7 (4) (ii) the share registry has actual notice of any of the following facts or matters:—
 - (i) that any information contained in the instruction is incorrect;
 - (ii) that the intermediary expressed to have sent the instruction did not send the instruction;
 - (iii) where relevant, that the person on whose behalf it was expressed to have been sent did not give to the intermediary his authority to send the instruction on his behalf;
 - (iv) that the instruction was not properly authenticated in accordance with the specifications of the share registry.

(7) A share registry shall not record a transfer of title to a security otherwise than in accordance with paragraph (1) unless he is required to do so by order of a court or by or under an enactment.

(8) Paragraph (7) shall not be taken to prevent a share registry from entering on a register of securities as a holder of a security—

- (a) a person to whom title to units of a security has been transmitted by operation of law.
- (b) a company which has enforced its lien on a security in compliance with regulation 8.
- (c) a chargee who has enforced his charge on a security in compliance with regulation 9.

(9) For the purpose of determining under paragraph (5) or paragraph (6)(b) or regulation 8(4) or regulation 9(3) or regulation 9(9) or regulation 9(13) whether a share registry has actual notice of a matter listed in that paragraph or regulation the share registry shall not under any circumstances be taken to be concerned to establish whether or not the fact or matter exists or has occurred.

8. (1) A share registry shall enter in the registry system in respect of any share a lien held by the issuing company on the share of which lien the company has notified the share registry by delivery of an approved form executed by the company under its common seal and witnessed by a notary public.

Recording of company liens on shares.

(2) The share registry shall remove the entry of any lien entered pursuant to paragraph (1) if—

- (i) he receives from the issuing company an approved form of release of lien executed by the company under its common seal, or
- (ii) he receives an order of the court requiring him to remove the lien.

(3) Where under the provisions of its articles of association a company becomes entitled to sell any shares in respect of which a lien has been entered on its register of members the company may make and present to the share registry a statutory declaration in a form approved by the Commission and present the form to the share registry who shall (unless prohibited by an order of the court) enter the company on the register of members as holder of the shares in place of the previous holder of the shares.

(4) A company which is entered on the register of members pursuant to paragraph (3) may sell and transfer the shares in any manner provided in regulation 7 and the transferee shall thereby obtain clear title to the shares without becoming concerned to ascertain whether or not the company was entitled to sell the shares unless he has actual notice that the company was not so entitled.

(5) If a purchaser obtains clear title to shares pursuant to paragraph (4) any right which the previous holder of the shares may have to any part of the proceeds of sale of the shares shall be a right in personam against the company.

(6) A share registry shall not be concerned to inquire whether a company has the right to sell the shares on which it has a lien and shall not be liable to the previous holder of the shares or to any other person if he enters a company on a register of members as holder of any shares where the company has complied with the provisions of paragraph (3).

9. (1) A share registry shall subject to paragraphs (2) and (3) enter in the relevant register in the registry system in respect of any security a charge held by any person on the security.

Recording of charges on securities.

(2) The authorisation for the entry of a charge under paragraph (1) shall be the delivery to the share registry of an approved form duly executed in accordance with regulation 18 by the holder of the security and the chargee.

(3) A share registry shall refuse to record a charge pursuant to paragraph (1) if he has actual notice that—

- (a) the charge is prohibited by order of a court; or
- (b) the charge is prohibited or avoided by or under an enactment; or
- (c) the chargee is a deceased person; or
- (d) in the case of a share the company which issued the share has a lien thereon recorded under regulation 8 or has presented an approved form of lien to the share registry prior to the presentation of the approved form of charge.

(4) A share registry may refuse to record a charge if the charge is to an entity which is not a natural or legal person.

(5) Subject to any provisions to the contrary contained in the document creating any charge, charges shall have priority in order of the entry of the same in the relevant register.

(6) The share registry shall remove the entry of any charge entered pursuant to paragraph (1) if—

- (i) he receives from the chargee an approved form of release of charge duly executed by the chargee in accordance with regulation 18.
- (ii) he receives an order of the court requiring him to do so.

(7) An approved form of charge shall contain an acknowledgment by the chargor that—

- (a) entry of the charge on the relevant register of securities will preclude any transfer by the chargor of the charged security, and
- (b) the charge may not be removed without the consent of the chargee or pursuant to a court order, and

- (c) if the chargee enforces the charge he may be entered on the relevant register of securities as holder of the security in place of the chargor.

(8) Where under the terms of his agreement with the chargor a chargee becomes entitled to enforce his charge in respect of any security the chargee may make and present to the share registry a statutory declaration in a form approved by the Commission and present the declaration to the share registry who shall (unless prohibited by an order of the court) enter the chargee on the relevant register of securities as holder of the security in place of the chargor.

(9) A chargor who is entered on a register of securities pursuant to paragraph 8 may sell and transfer the security in any manner provided in regulation 7 and the transferee shall thereby obtain clear title to the security without becoming concerned to ascertain whether or not the chargor was entitled to enforce the charge unless he has actual notice that the chargee was not so entitled.

(10) If a purchaser obtains clear title to a security pursuant to paragraph (9) any right which the chargor may have to any part of the proceeds of sale of the security shall be a right in personam against the chargee.

(11) A share registry shall not be concerned to inquire whether a chargee has the right to enforce his charge and shall not be liable to the chargor or to any other person if he enters a chargee on a securities register as holder of any security where the chargee has complied with the provisions of paragraph (8).

(12) A chargee may subject to paragraph (13) transfer a subsisting charge. The authorisation for the entry of a transfer of a charge shall be the delivery to the share registry of an approved form executed in accordance with regulation 18 by the holder of the charge and the transferee.

(13) A share registry shall refuse to record a transfer of a charge pursuant to paragraph (12) if he has actual notice that—

- (a) the transfer is prohibited by order of a court; or
- (b) the transfer is prohibited or avoided by or under an enactment; or
- (c) the transferee is a deceased person.

(14) A share registry may refuse to record the transfer of a charge if the transfer is to an entity which is not a natural or legal person.

Transmission of securities.

10. (1) On the death of a holder of securities his personal representative shall be the only person recognised by the share registry as having any title to the securities.

(2) The personal representative of the deceased holder shall on production to the share registry of a Grant of Probate or Letters of Administration issued by the court be entitled to—

- (a) elect to become the holder of the securities; or
- (b) transfer the securities to another person.

(3) A person who becomes entitled to securities in consequence of the bankruptcy of a holder of the securities shall on production to the share registry of an order of the court appointing him as trustee in bankruptcy be entitled to—

- (a) elect to become the holder of the securities; or
- (b) transfer the securities to another person.

(4) If the personal representative or trustee in bankruptcy elects to become the holder of the securities the share registry shall enter his name on the relevant register of securities in place of the deceased or bankrupt holder as the case may be.

(5) If the personal representative or trustee in bankruptcy transfers the securities, all provisions of these regulations relating to the transfer of securities shall apply to the transfer as if it were a transfer executed by the holder and the death or bankruptcy of the holder had not occurred.

(6) A person becoming entitled to a security in consequence of the death or bankruptcy of a holder of the security shall have the rights to which he would be entitled if he were the holder of the security except that in the case of shares or corporate debt he shall not, before being recorded by the share registry as the holder of the security, be entitled in respect of it to attend or vote at any meeting of the company or at any separate meeting of the holders of any class of shares in the company or at any meeting of the holders of corporate debt of the company as the case may be.

11. (1) The rights of survivorship and other rights of joint shareholders given by the articles of association of a company shall be binding on a share registry.

Joint holders of securities.

(2) If the articles of association are silent as to the rights *inter se* of joint shareholders the rights shall be those provided by the Companies Act or, if no provision is made by the Companies Act, by the common law.

(3) Subject to paragraph (5) any dealing with or instructions in respect of shares which are jointly held may be effected only by all joint shareholders unless one or more of them is empowered by Power of Attorney (executed by each grantor in the presence of a notary public and duly stamped by the Inland Revenue Department) to issue instructions and to deal with the shares on behalf of the others.

(4) A notarised copy of any Power of Attorney made pursuant to paragraph (3) shall be delivered to the share registry and shall have no effect in relation to this regulation until it is so delivered.

(5) Where any one or more joint shareholders or joint holders of any other security is a minor no dealings may be effected with the security save pursuant to and in accordance with an order of a court.

12. (1) For the purposes of determining which persons are entitled to attend or vote at a meeting of holders of a security and how many votes such persons may cast, the issuer may specify in the notice of the meeting a time, not more than 48 hours before the time fixed for the meeting, by which a person must be entered on the relevant register of securities in order to have the right to attend or vote at the meeting.

Notice of Meetings.

(2) Change to entries in the relevant register of securities after the time specified by virtue of paragraph (1) shall be disregarded in determining the right of any person to attend or vote at the meeting, notwithstanding any provision in any enactment, articles of association or other instrument to the contrary.

(3) For the purposes of serving notices of meetings, whether under section 92 of the Companies Act or any other enactment, a provision in the articles of association or any other instrument an issuer may determine that persons entitled to receive such notices are those persons entered on the relevant register of securities at the close of business on a day determined by him.

(4) The day determined by the issuer under paragraph (3) may not be more than 7 days before the day on which the notices of the meeting are sent out.

Re-materialisation.

13. (1) This section applies to—

- (a) any company which for any reason ceases to be listed (herein ‘a de-listed company’)
- (b) any company which proposes to list and whose register of members is kept by a share registry and which thereafter decides not to list.

(2) A de-listed company or a company referred to in paragraph (1) (b) shall within 3 months of the date of its de-listing or the date of its decision not to list (as the case may be) and notwithstanding any provision in its articles of association, establish a register of members and issue a share certificate to each member of the company at the date of de-listing or the date of its decision not to list (as the case may be) for the shares of the company held by the member.

(3) The register of members kept by the licensed share registry shall be used for the purposes of compliance with paragraph 2 and all entries recorded on that register of members shall be recorded on the register of members established by the company pursuant to this Regulation.

(4) A company to which this section applies shall, notwithstanding any provision of its articles of association, comply with Sections 41 to 50 inclusive of the Companies Act.

(5) The Commission shall monitor and verify the establishment by the company of its register of members pursuant to paragraphs 2 and 3 and shall, when in its opinion the process is complete, notify the share registry who shall then close the register of members kept by it.

Duties of intermediaries.

14. (1) Every intermediary shall maintain such records and follow such procedures as the Commission may from time to time direct or authorise of or relating to securities in his custody or control or which he is authorised to sell or to purchase.

(2) The Commission may impose conditions for the accounting and payment by intermediaries of monies held by them for the account of holders of securities on whose behalf they act.

15. (1) Every issuer shall contract with a share registry which maintains a register of securities issued by it for on line issue service.

Access by issuers to Records of a share.

(2) The right given by section 45 (2) of the Companies Act to a member or officer of a company or the Registrar to inspect the register of members of the company shall be exercised by means of access through the on line issue service at the registered office of the company.

16. (1) A share registry shall retain for a period of 10 years from the date on which it ceases to have effect each approved form and each Power of Attorney delivered to him pursuant to these Regulations and shall note on each such document or form the date and time of its receipt by the share registry.

Keeping of records of approved forms.

(2) Where a company transfers its register of securities from one share registry to another, the transferee share registry shall take possession of and retain documents and forms as provided in paragraph (1), provided that where any document or form has already ceased to have effect the transferee share registry shall only be required to retain it for the un-expired portion of the statutory 10 year period, and the obligations of the share registry that previously held the register of securities shall cease as soon as the transferee share registry takes possession.

(3) A share registry shall record in the relevant register the date and time of its receipt as shown on the approved form.

17. (1) A share registry shall remain open to the public for a minimum of 3 hours on each day which is not a Saturday, Sunday or public holiday.

Opening times of a share registry.

(2) A notice of the opening hours determined by the share registry pursuant to this regulation and any changes thereto, shall be published in the *Official Gazette*.

18. (1) A share registry shall submit to the Commission all forms which the share registry proposes to use for the purposes of regulations 7, 8 and 9 and shall notify the Commission from time to time of any changes which he proposes to make to any such form and the share registry shall not use any such form unless the form is approved by the Commission.

Approved forms.

(2) Unless otherwise provided in these Regulations, execution by each party of an approved form shall be witnessed by—

- (a) an employee of a share registry, or
- (b) a notary public, or
- (c) a principal licensed by the Commission.

(3) The witness to the signature of each party shall sign the form below the signature of the party and shall write, below his signature, his full name, address and occupation and, in the case of a notary public, shall affix his seal of office to the form.

Power of Commission to issue directions regarding the transfer of registers of securities.

19. If the Commission suspends or revokes the licence of a share registry or if a share registry fails to comply with any direction given to it by the Commission under Section 67 of the Securities Act the Commission may (without prejudice to any other power which it may have under the Securities Act) by notice in writing require the share registry to transfer any register of securities to any other person and the Commission may give such incidental and consequential directions as may appear to the Commission as necessary for the protection of the integrity, safety and accuracy of the register of securities.

Registry system security and capabilities.

20. (1) A registry system must enable the share registry to comply with its obligations under these Regulations and, without affecting the generality of the foregoing, the registry system must be constructed and operated in such a way—

- (a) so as to ensure the ongoing integrity, safety and accuracy of all entries made in it;
- (b) so as to minimise the possibility of unauthorised access to, or modification of, any program or data held in any computer forming part of the registry system;
- (c) that each dematerialised instruction is properly authenticated in accordance with the specifications of the share registry which shall provide that each dematerialised instruction—
 - (i) is identifiable as being from the computers of a particular intermediary; and
 - (ii) is designed to minimise fraud and forgery;

- (d) that each dematerialised instruction, in accordance with the specifications of the share registry, expresses by whom it was sent and, where relevant, on whose behalf it has been sent;
- (e) that the possibility for an intermediary to send a dematerialised instruction on behalf of a person from whom he has no authority is minimised;
- (f) that each dematerialised instruction, in accordance with the specifications of the share registry, indicates, where it is sent to an intermediary or the share registry, that it is addressed to that intermediary or the share registry;

(2) A registry system must ensure that the system can send and respond to properly authenticated dematerialised instructions in sufficient volume and speed.

(3) Before a registry records a transfer of title to uncertificated units of a security, the registry system must be able to establish that the transferor has title to such number of units of the security as is in aggregate at least equal to the number to be transferred.

(4) A registry system must maintain adequate records of all dematerialised instructions.

(5) A registry system must include an on line issue service.

(6) A registry system must be able to make correcting entries in such records as are maintained in order to comply with paragraphs (3) or (4) which are inaccurate.

(7) A registry system must comprise procedures which provide that it responds only to properly authenticated dematerialised instructions which are attributable to an intermediary.

(8) A registry system must comprise procedures which enable it to amend a register of securities kept by the share registry if necessary to correct an error and if in accordance with the rules and practices of the share registry instituted in order to comply with this regulation.

(9) A registry system must comprise procedures which—

- (a) enable intermediaries to notify the share registry of an error in or relating to a dematerialised instruction; and

- (b) ensure that, where the share registry becomes aware of an error in or relating to a dematerialised instruction, he takes appropriate corrective action.

(10) A registry shall institute and maintain such back-up facilities, including but not limited to daily back-up to disk and additional back-up to tape stored off-site, and such other procedures and measures, as are necessary to ensure the ongoing integrity, safety and accuracy of entries in every register of securities kept by the share registry.

(11) A share registry shall report to the Commission in writing within 24 hours of the occurrence of the system problem or failure of any such problem or failure which affects or may affect the integrity, safety and accuracy of entries in any register of securities kept by the share registry.

(12) The Commission may give to a share registry such directions as the Commission considers necessary to maintain the security of his registry system or the capabilities of the system as required by this regulation.

(13) The Commission may at any time conduct a regulatory audit of a share registry system to ensure its compliance with this regulation.

Defaults and
Contraventions.

21. (1) A company which fails to comply with any provision of regulation 3 or 13 of these Regulations and any officer of the Company who knowingly and wilfully authorises or permits the default commits an offence and is liable on summary conviction—

- (a) in the case of an individual to a fine of one hundred thousand dollars;
- (b) in the case of a company to a fine of three hundred thousand dollars,

and in addition the individual and the company is liable to a fine of five hundred dollars for every day that the offence continues after the conviction.

(2) A default by a company and any officer of the company who knowingly and wilfully authorises or permits the default in complying with, or a contravention of, any provision of regulation 3 or 13 of these regulations shall be actionable at the suit of a person who suffers loss as a result of the default, or

contravention, or who is otherwise affected by it, subject to the defences and other incidents applying to actions for breach of statutory duty.

(3) A default by a share registry in complying with, or a contravention of, any provision of regulations 3, 4, 7, 8, 9, 10, 16, 17, 18 or 20 of these regulations shall be actionable at the suit of a person who suffers loss as a result of the default or contravention, or who is otherwise affected by it, subject to the defences and other incidents applying to actions for breach of statutory duty.

(4) Any person who, within three months of the opening by a share registry of a register of members pursuant to regulation 3, or the opening of a register of debt securities pursuant to regulation 4, transfers or attempts to transfer a security entered on the relevant register in respect of which there is a valid and subsisting transfer or charge of the security given by him, commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars.

22. (1) This regulation shall, unless otherwise stated, apply to any person who—

Transitional provisions.

- (a) has prior to the closing of a company's register of members pursuant to regulation 3(9) contracted to purchase from a member any shares of the company (or units thereof) and has obtained from the member a signed share transfer (in form which complies with the company's articles of association) and the member's original share certificate or certificates for the shares but whose transfer has not been recorded by the company, or
- (b) has prior to the closing of a company's register of members pursuant to regulation 3(9) taken from a member of the company a charge (in written form) which subsists over the member's shares of the company (or units thereof) supported by a deposit of the member's original certificate or certificates for the shares, or
- (c) has prior to the opening of a register of debt securities pursuant to regulation 4 taken from a holder of a debt security a charge (in written form) which subsists over the security supported by a deposit of the holder's title document to the security.

(2) A person to whom this regulation apply may, within 3 months of the opening by the share registry of the relevant register of securities, notify the share registry of the transfer or charge held by him, as the case may be, and deposit with the share registry the share transfer or charge document (duly stamped by the Inland Revenue Department) and the original share certificate or certificates held by him or the document of title to the debt security as the case may.

(3) On receipt of the documents listed in paragraph (2) and subject to paragraph (5) the share registry shall enter on the relevant register of securities the transferee as holder of the shares (or units thereof) or the chargee as chargee of the shares or debt security (or units thereof) as the case may be.

(4) After making an entry pursuant to paragraph (3) the share registry shall—

- (a) in the case of a transfer of shares retain the original share transfer and the original share certificate or certificates presented to him, or
- (b) in the case of a charge of shares or securities retain the original charge document and the original share certificate or certificates or documents of title as the case may be.

(5) The share registry shall not make an entry pursuant to paragraph (3) in any of the following cases—

- (a) if the person who gave the transfer or charge is not at the time of its receipt of the documents referred to in paragraph (2) entered on the register of members as the holder of the shares transferred or charged as the case may be;
- (b) if a lien has been noted pursuant to regulation 8 in respect of the shares transferred or charged as the case may be;
- (c) if a charge has been noted in respect of the shares or debt security (or any units thereof) pursuant to Regulation 9 in respect of the shares or debt security transferred or charged as the case may be;
- (d) if the share registry is prohibited by order of a court from making the entry;

- (e) if the transfer or charge is prohibited or avoided by or under an enactment;
- (f) if in the case of a transfer the shares are to be held jointly in the names of more persons than is permitted under the company's articles of association.

(6) Nothing contained in this regulation shall preclude a person who has not complied with the provisions in paragraph (2) from applying to the Court for an order to have his transfer or charge entered and the Court may on such application order the entry on the register of members or the register of debt securities concerned if the person who gave the transfer or charge is entered on the register of members as holder of the shares transferred or charged or the securities charged or if any person other than a purchaser for value without notice of the transfer or charge is so registered.

(7) A company whose register of members is transferred to a share registry pursuant to regulation 3 shall notify the public of the transfer by notice (in form approved by the Commission) published in a newspaper with circulation in the State on four consecutive weekends immediately following the transfer of the register.

(8) A company whose register of securities is transferred from one share registry to another shall notify its members or other holders of its securities at least four weeks prior to the transfer of the register of securities.

23. The Commission shall approve a list of fees which may be charged by a share registry for its services pursuant to these Regulations and may from time to time change the fees so charged. Fees.

Made this 11th day of April, 2006.

L. Erol Cort,
Minister responsible for Finance.

Printed at the Government Printing Office, Antigua and Barbuda,
by Eric T. Bennett, Government Printer
—By Authority, 2006.

ANTIGUA AND BARBUDA
THE SECURITIES (UNCERTIFICATED SECURITIES)
REGULATIONS 2006

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