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**INTERNATIONAL BUSINESS COMPANIES
(AMENDMENT)(NO. 2) ACT, 2023**

Arrangement of Sections

Section

1.	Short title.....	2
2.	Amendment of section 75 of the principal Act.	2
3.	Insertion of new sections 79A – 79F into the principal Act.....	3
4.	Amendment of section 81 of the principal Act.....	10
5.	Amendment of section 83 of the principal Act.	10
6.	Amendment of the principal Act to delete section 84C and substitute sections 84C, 84D and 84E.....	10
7.	Amendment of the First Schedule to the principal Act.....	14



No. 55 of 2023

**INTERNATIONAL BUSINESS COMPANIES (AMENDMENT)
(NO. 2) ACT, 2023**

**AN ACT TO AMEND THE INTERNATIONAL BUSINESS
COMPANIES ACT FOR DEMERGING AN
INTERNATIONAL BUSINESS COMPANY AND FOR
CONVERTING AN INVESTMENT CONDOMINIUM TO AN
INTERNATIONAL BUSINESS COMPANY AND FOR
CONNECTED PURPOSES**

[Date of Assent - 8th December, 2023]

Enacted by the Parliament of The Bahamas

1. Short title.

This Act, which amends the International Business Companies Act (*Ch. 309*), may be cited as the International Business Companies (Amendment)(No. 2) Act, 2023.

2. Amendment of section 75 of the principal Act.

Section 75 of the principal Act is amended—

- (a) by the deletion of the definition of “surviving company”, and the substitution of the following –

“**surviving company**” means the constituent company into which one or more other constituent companies are merged or a demerging company which, on completion of a demerger, continues as a demerged company.”

- (b) by the insertion the following new definitions in appropriate alphabetical order –

“demerged company” means a company resulting from a demerger under section 79A;

“demerging company” means a company that demerges into two or more companies pursuant to section 79A;

“new company” means a company incorporated as a result of a demerger;

3. Insertion of new sections 79A – 79F into the principal Act.

The principal Act is amended by the insertion, immediately following section 79, of new sections 79A, 79B, 79C, 79D, 79E and 79F as follows –

“79A. Companies eligible and not eligible to demerge and be demerged.

- (1) Subject to subsection (2), a company incorporated under this Act may demerge into two or more companies incorporated under this Act–
 - (a) one of which is the surviving company and the other, or others of which, are new companies; or
 - (b) all of which are new companies.
- (2) The following companies shall not be eligible to demerge or to become a demerged company within this section except with the prior written consent of the regulatory authority regulating such company–
 - (a) a company that is licensed by the Central Bank of The Bahamas;
 - (b) a company that is licensed by the Insurance Commission of The Bahamas; or
 - (c) a company that is registered with or licensed by the Securities Commission of The Bahamas.

79B. Plan of Demerger.

- (1) The directors of a company proposing to demerge shall approve a written plan of demerger in accordance with this section.
- (2) A plan of demerger shall state the terms and means of effecting the demerger, and in particular, the following information –
 - (a) details of the proposed demerging company, including –
 - (i) whether or not the company shall be the surviving company; and

- (ii) the names and addresses of the persons who are the directors of the demerging company;
 - (b) details of any arrangements necessary to complete the demerger;
 - (c) details of any payment, other than of a kind described in subsection (3)(b), proposed to be made to a member or director of the demerging company; and
 - (d) in relation to any securities of a demerging company, the information specified in subsection (3).
- (3) The information referred to in subsection (2)(d) is –
- (a) if the securities are to be converted into securities of new company, details of the basis of that conversion and the manner in which the conversion is to be done; or
 - (b) otherwise, the kind of payment that the holders of any securities in the demerging company are to receive instead of the securities of a new company and the manner in which and the time at which they are to receive it.
- (4) If a demerging company is a new company, the plan of demerger shall, in addition to the information required under subsection (2) –
- (a) set out –
 - (i) the proposed memorandum and articles of the new company; and
 - (ii) the name and address of any person who will become a director of the new company; and
 - (b) have attached to it a draft of any other document or information that would be required by this Act to be delivered to the Registrar if the demerged company was being incorporated under this Act otherwise than by demerger.
- (5) If a demerging company is the surviving company, the plan of demerger shall, in addition to the information required under subsection (2) state –
- (a) whether any amendments to the memorandum and articles of the demerging company are proposed to take effect on the demerger and, if so, details of those amendments; and

- (b) whether it is proposed that, on the demerger, any person will become, or cease to be a director of the surviving company and, if so, the name and address of each person.
- (6) A plan of demerger may provide that, at any time before the completion date of the demerger, the plan of demerger may be revoked by the demerging company.
- (7) If a plan of demerger is revoked under a provision included in the plan of demerger in accordance with subsection (6), nothing in this Act requires or authorizes any further steps to be taken to complete the demerger.
- (8) A plan of demerger must identify the undertaking, property, rights and liabilities of the demerging company and must state, in respect of each demerged company, which part of the undertaking, property, rights and liabilities of the demerging company is to become the undertaking, property, rights and liabilities of each demerged company, except that a liability attached to any property of a demerging company must not be separated from that property.

79C. Approval of the plan of demerger.

- (1) Before notice is given of a meeting of a demerging company to approve a plan of demerger, the directors of the demerging company shall pass a resolution that, in the opinion of the directors voting for the resolution, the demerger is in the best interests of the demerging company.
- (2) For the purposes of this section, a solvency statement is a statement that, having made full inquiry into the affairs of the demerging company, the person making the statement reasonably believes that –
 - (a) the demerging company is, and will remain until the demerger is completed, able to discharge its liabilities as they fall due;
 - (b) and the assets of the demerging company exceed its liabilities and will continue to do so until the demerger is completed.
- (3) If the directors voting for the resolution are satisfied on reasonable grounds that they can properly make a solvency statement in respect of the demerging company, the resolution shall in addition state that they are so satisfied.
- (4) If the directors voting for the resolution are not satisfied on reasonable grounds that they can properly make a solvency

statement a demerger shall not proceed in accordance with this section.

- (5) The directors of a demerging company shall submit the plan of demerger for approval by a resolution of members whose shares carry voting rights and, where there is more than one class of members, for approval by a resolution of members of a separate meeting of each class of members with voting shares.
- (6) Notice of each meeting referred to in subsection (5), shall be given and –
 - (a) shall be accompanied by –
 - (i) a copy or summary of the plan of demerger;
 - (ii) a copy of the proposed memorandum and articles of association for each demerged company, or a summary of the principal provisions of the memorandum and articles;
 - (iii) a statement of the material interests in the demerger of the directors of the demerging company and of the persons who shall become directors of the demerged companies; and
 - (iv) such further information a member would reasonably require to make an informed decision on the demerger; and
 - (b) shall contain sufficient information to alert members to their right to dissent to the demerger under section 83 of this Act.
- (7) A demerging company shall, from the date that notice of a meeting is given under subsection (6), make the plan of demerger and copies of the proposed memorandum and articles of each demerged company available for inspection free of charge by its members either electronically at any time or at its registered office during normal office hours.
- (8) A demerger is approved under this section when all of the resolutions required under subsection (5) have been passed in respect of the demerging company.
- (9) A demerger shall not be completed unless it is approved under this section.

79D. Pre-registration steps.

- (1) The demerging company shall apply, in writing to the Registrar to complete the demerger.

- (2) An application under subsection (1) shall be accompanied by –
- (a) a copy of the plan of demerger;
 - (b) a copy of –
 - (i) if the demerging company is to be a new company, its memorandum and articles and any other document required for the incorporation of a new company under this Act, or
 - (ii) if the demerging company is to be the surviving company, any amendment to its memorandum or articles provided for under section 79B(5);
 - (c) in respect of the demerging company, a copy of the resolution passed under section 79C(1), together with, a list identifying the directors who voted in favour of that resolution;
 - (d) a certificate, signed by each director, stating —
 - (i) that the director, and the demerging company of which he is a director, have complied with the requirements of this Act in respect of the demerger; and
 - (ii) that in the director's opinion there has been no material change to the position stated in the solvency statement; and
 - (e) the resolution of members whose shares carry voting rights passed under section 79C(5).
 - (f) any other document or information required by the Registrar to establish that the requirements of this subsection have been met.
- (3) The Registrar shall register notices of the demerger in accordance with section 79E if he is satisfied—
- (a) that the application complies with subsections (1) and (2); and
 - (b) if the plan of demerger provides for the demerging company to be a new company, that he would have registered the memorandum and articles of the company under this Act if it had been incorporated otherwise than by demerger.

79E. Registration of notices of demerger.

- (1) This section applies where the Registrar registers notices of a demerger under section 79D.

- (2) The completion date of a demerger is the date referenced in the certificate of demerger which shall be the date on which the last of the entries is made in the register pursuant to this section.
- (3) The Registrar shall enter in the register, in respect of a demerging company that is not the surviving company, a notice that states that the company has ceased to be incorporated as a separate company because it has demerged into the demerged companies specified in the notice.
- (4) If the demerging company is the surviving company, the Registrar shall enter in the register, in respect of that company, a notice that states that the company has demerged, and has been continued as the surviving company together with the new company or companies specified in the notice.
- (5) If the demerging company is a new company, the Registrar shall register the new company by –
 - (a) registering the memorandum and articles of the new company;
 - (b) issuing a certificate of its incorporation; and
 - (c) entering in the register, in respect of that new company, a notice that states that the new company is the result of a completed demerger of the demerging company specified in the notice.
- (6) In addition to the demerger fee payable in accordance with the First Schedule the fees payable under this Act in respect of the incorporation of a company shall be payable in respect of the incorporation of each new company.
- (7) Each entry on the register–
 - (a) shall include the completion date of the demerger to which it relates; and
 - (b) may include any further information that the Registrar considers useful in relation to the demerger.
- (8) In each case, the Registrar shall issue a certificate under his hand and seal certifying that the demerger has been registered.
- (9) A certificate of demerger issued by the Registrar shall be prima facie evidence of compliance with all the requirements of this Act in respect of the demerger.

79F. Effect of completion of demerger.

- (1) On the completion date of a demerger –

- (a) if the demerging company is the surviving company, the surviving company continues as a demerged company together with one or more demerged companies that are new companies; or
 - (b) if the demerging company is not the surviving company, the demerging company ceases to be incorporated as the original company and continues as two or more demerged companies that are new companies.
- (2) Subject to subsection (3), when a demerger is completed –
- (a) all property and rights to which the demerging company was vested in or entitled to immediately before the demerger was completed become the property and rights of the demerged companies in the parts stated in the plan of demerger under section 79B(8) or jointly in common in equal parts if not stated in the plan of demerger without such property and rights being deemed distributed or otherwise made available to the respective shareholders of the demerged companies;
 - (b) unless otherwise provided in the plan of demerger, the value of the property, rights, assets and liabilities vested in the demerged company or to which the demerged company is entitled shall have the same values assigned to such property, rights, assets and liabilities immediately prior to the demerger and the demerger shall not affect the value of the capital contribution made by the shareholder or the value of the shares in the demerged companies;
 - (c) unless otherwise provided in the plan of demerger, the shares of the demerging company shall convert into shares of the demerged companies in the proportions specified in the plan of demerger and such conversion shall not be deemed a redemption, transfer, or reissuance of shares in the demerging company or the demerged companies;
 - (d) the demerged companies become jointly and severally subject to all financial penalties which the demerging company was subject to immediately before the demerger was completed unless there is an order of the court to the contrary;

- (e) the demerged companies become subject to all civil liabilities and all contracts, debts and other obligations which the demerging company was subject to immediately before the demerger was completed in the parts stated in the plan of demerger under section 79B or jointly and severally if not stated in the plan of demerger; and
 - (f) all actions and other legal proceedings which, immediately before the demerger was completed, were pending by or against the demerging company may be continued by or against all or any of the demerged companies unless there is an order of the court to the contrary.
- (3) A licence held by a demerging company shall not be transferred to a demerged company on completion of the demerger unless with the permission of the authority that granted the licence.”.

4. Amendment of section 81 of the principal Act.

Section 81 of the principal Act is amended in subsection (1) by inserting immediately after the words “section 76” the words “or a dermerger under sections 79A,”.

5. Amendment of section 83 of the principal Act.

Section 83 of the principal Act is amended in subsection (1) —

- (a) in paragraph (d) by the deletion of the word “and”;
- (b) in paragraph (e) by the deletion of the fullstop and the substitution of the words “; and”;
- (c) by the insertion, immediately after paragraph (e), of the following new paragraph —
 - “(f) a demerger, pursuant to section 79A.”

6. Amendment of the principal Act to delete section 84C and substitute sections 84C, 84D and 84E.

The principal Act is amended by the deletion of 84C and the substitution of the following new sections 84C, 84D and 84E —

“84C. Conversion of an investment condominium to an international business company.

- (1) An investment condominium registered under the Investment Condominium Act (*Ch.369G*) may be converted to a company in the manner prescribed in this section.
- (2) The governing administrator of an investment condominium proposing to convert to and be incorporated as a company under this Act shall approve articles of conversion.
- (3) Notice of the conversion shall be given to all participants and articles of conversion shall also be approved by resolution of participants whose participation interests carry voting rights and the outstanding participation interests shall be entitled to vote as a class or series if the governing regulations so provide or if the articles of conversion contain any provisions that, if contained in a proposed amendment to the governing regulations would entitle the class or series to vote on the proposed amendment as a class or series.
- (4) The articles of conversion shall contain the following information—
 - (a) the name which the investment condominium shall operate as a company following conversion;
 - (b) the date on which the investment condominium was registered as an investment condominium under the Investment Condominium Act (*Ch.369G*);
 - (c) provisions detailing the basis upon which participation interests including classes and series of participation interests shall be converted to shares, debt obligations, or other securities in the company along with details of any rights attaching thereto;
 - (d) the names and designations of the proposed directors of the converted company;
 - (e) provisions for the valuation and accounting treatment of the assets and liabilities of the investment condominium and any retained earnings upon conversion;
 - (f) any additional terms and conditions of the conversion; and
 - (g) an annexed copy of the memorandum and articles of association containing the information prescribed in this Act.
- (5) The articles of conversion shall be submitted to the Registrar along with the prescribed fee within seven days of the date of approval of a plan of conversion.

- (6) In addition to any share certificates they may be entitled to receive by virtue of the Articles adopted on conversion, each shareholder and former participant shall be entitled to receive a confirmation issued by the directors of the company stating —
- (a) the number of participation interests converted and the number of shares held by such shareholder;
 - (b) that the conversion of the investment condominium to a company has not affected the value of the capital contribution made by such former participant or the value of the newly converted shares in the converted company.
- (7) The conversion shall be evidenced by a certificate of conversion and incorporation issued by the Registrar indicating that the investment condominium has been converted to a company.
- (8) The investment condominium shall forthwith be struck off the Register of investment condominiums under the Investment Condominium Act (*Ch.369G*) and added to the register of companies maintained under this Act."

"84D. Effect of Conversion from an investment condominium to an international business company.

From the date of conversion specified in the certificate of conversion and incorporation —

- (a) the investment condominium to which the certificate relates shall cease to be an investment condominium registered under the Investment Condominium Act (*Ch.369G*) without dissolving or winding up;
- (b) the participation interests of the participants shall be converted in the manner indicated in the articles of conversion into shares in the company with all attendant rights of shareholders as indicated in the articles of conversion and the memorandum and articles of association annexed to the articles of conversion;
- (c) all of the assets and liabilities of the investment condominium including property of every description and choses in action, shall be vested in the company;
- (d) all participation interests in the company that were outstanding prior to the conversion shall be converted

to shares in conformity with the articles of conversion, and this Act without transfer, redemption or reissue;

- (e) the shareholders in the converted company shall remain liable for the amount unpaid on any participation interest that remains unpaid at the time of conversion;
- (f) no conviction, judgment, ruling, order, claim, debt, liability or obligation due or to become due and no cause existing against the investment condominium or any former officer, agent, governing administrator, or general administrator, is released or impaired by its conversion to a company incorporated under this Act.”.

84E. Continuation of an exempted limited partnership as an international business company.

- (1) An exempted limited partnership incorporated under the Exempted Limited Partnership Act (*Ch. 312*) may be continued as a company by the registration of the articles of continuation as specified in subsection (2).
- (2) The articles of continuation for an exempted limited partnership continuing as a company shall —
 - (a) be written in the English language;
 - (b) be approved by all of the partners of the exempted limited partnership;
 - (c) contain —
 - (i) the name of the exempted limited partnership and the name under which it is being continued;
 - (ii) the date on which it was registered;
 - (iii) the information required to be included in a Memorandum under section 13(1); and
 - (iv) the Memorandum and Articles that are to be effective upon the registration of the articles of continuation; and
 - (d) be accompanied by a copy of the Memorandum and Articles.
- (3) Upon the submission of the articles of continuation as described in subsection (2), the Registrar shall —
 - (a) retain a copy of and register the articles of continuation; and

- (b) issue a certificate of continuation under his hand and seal certifying that the exempted limited partnership has been continued as company.”.

7. Amendment of the First Schedule to the principal Act.

The First Schedule to the principal Act is amended by the insertion immediately after item 37 of the following—

“38.	Conversion under the International Business Companies Act from Exempted Limited Partnership Act (<i>Ch. 312</i>)	
	(Capitalized up to \$50,000)	\$700.00
	(Capitalized over \$50,000)	\$1000.00
39.	Conversion under the International Business Companies Act from Investment Condominium Act (<i>Ch.369G</i>)	
	(Capitalized up to \$50,000)	\$700.00
	(Capitalized over \$50,000)	\$1000.00
40.	Demerger of Company (up to \$50,000).....	\$600.00
41.	Demerger of Company (over to \$50,000)	\$800.00”.