

COMPANIES (AMENDMENT) ACT

SAINT LUCIA

No. OF 2004

A

BILL

ENTITLED

AN ACT to amend the Companies Act No. 19 of 1996 to make changes to the means by which shares and debentures are transferred, . . . and matters connected therewith.

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BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly and Senate of Saint Lucia, and by the authority of the same, as follows -

Short title

1. This Act may be cited as the Companies (Amendment) Act, 2004.

Interpretation

2. In this Act -

“Principal Act” means the Companies Act No. 19 of 1996.

Amendment of section 4

3. Section 4 of the Principal Act is amended by replacing subsection (3) as follows:

“Articles of incorporation submitted to the Registrar shall be accompanied by a statutory declaration in the prescribed form by an attorney-at-law, or justice of the peace engaged in the formation of the company or by a person named in the articles or in the documents accompanying the articles as a director of the company that to the best of his knowledge and belief no signatory to the articles is an individual described in subsection (2) and that all requirements precedent to the formation of a company under this Act have been complied with, and the Registrar may accept such a declaration as sufficient evidence for the purposes of this Act, of the facts therein declared.

Amendment of Section 64

4. (a) Section 64 of the Principal Act is amended by replacing subsection (1) as follows:

“64 (1) The directors of a company shall by resolution make bye-laws for the regulation of the business or affairs of the company and shall register a copy of the bye-laws with the Registrar. In the absence of bye-laws made by the company, the model bye-laws in the Regulations shall apply or, where the company is a former Act company, the Articles of Association, so far as they are not inconsistent with this Act shall apply.”

- (b) Section 64 of the Principal Act is amended by replacing subsection (2) as follows:

“64 (2) The directors of a company shall submit a bye-law, or any amendment or repeal of a bye-law made under subsection (1) to the shareholders of the company at the next meeting of shareholders after the making, amendment or repeal of the bye-law; and the shareholders may, by ordinary resolution, confirm, amend or reject the bye-law, amendment or repeal and such amendment shall be filed with the Registrar.”

Amendment of Section 95

5. Section 95 of the Principal Act is amended by replacing subsection (c) as follows:

“95 (c) two or more offices of the company may be held by the same person except that in the case of the a company having only one director, the director cannot also be the Secretary.”

Amendment to Section 195

6. (1) Section 195 of the Principal Act is amended by replacing subsection (1) as follows:

“195 (1) (a) The shares or debentures of a company may be transferred by a written instrument of transfer signed by the transferor and the transferee and approved by the Registrar.

(b) The Registrar shall not approve any instrument of transfer referred to in subsection (1) (a) unless stamp duty has been paid on the said instrument to transfer in accordance with the Stamp Duty Ordinance (Cap. 219) and where the payment of the stamp duty has been exempted under any other law the Registrar shall so certify.

(c) All instruments of transfer approved by the Registrar shall be filed with the Registry of Companies and Intellectual Property on payment of the prescribed fee.

- (d) Notwithstanding any other provisions of this Act any instrument of transfer which does not bear evidence that stamp duty has been paid or that it has been exempted from such payment and does not bear evidence of the approval of the Registrar, shall be treated for all purposes as a nullity; and all monies paid by the transferee to the transferor shall be irrecoverable; and the property in the said shares shall remain with the transferor.”
- (2) Section 195 of the Principal Act is amended by replacing subsection 4 as follows:
 - “195 (4) Subject to subsection (5) and to any enactment, the beneficial ownership of the shares or debentures of a company passes to the transferee -
 - (a) on the delivery to him of the instrument of transfer signed by the transferor and approved by the Registrar and of the transferor’s share certificate or debenture, as the case may be; or
 - (b) on the delivery to him of the instrument of transfer signed by the transferor and approved by the Registrar that has been certified by or on behalf of the Company, or by or on behalf of a recognised Stock Exchange”.

Amendment of Section 199

- 7. Section 199 of the Principal Act is amended by replacing subsection (1) as follows:
 - “199 (1) Notwithstanding anything in the articles or bye-laws of a company or in any debenture, trust deed or other contract or instrument, the company shall not register a transfer of any share or debenture of the company unless a transfer in proper form and duly signed by the transferor and approved by the Registrar has been delivered to the company; but nothing in this section affects any duty of the company to register as a member or debenture holder of the company any person to whom the ownership of any share or debenture of the company has been transmitted by operation of law.”

Amendment of section 250

8. Section 250 of the Principal Act is amended by replacing subsection (1) as follows:

“250 (1) Subject to this Division, where a charge to which this section applies is created by a company, the company shall within 28 days of the registration of the charge at the Land Registry or the Registry of Deeds and Mortgages, or both as the case may be, lodge with the Registrar a statement of the charge and -

- (a) any instrument by which the charge is created or evidenced; or
- (b) a copy of the instrument together with a statutory declaration verifying the execution of the charge and also verifying the copy as being a true copy of the instrument.

Amendment of section 261

9. Section 261 of the Principal Act is replaced as follows:

“261 On being satisfied that the omission to register a charge within the time required, or that the omission or mis-statement of any particular with respect to any such charge or in a memorandum -

- (a) was accidental or due to inadvertence or to some other sufficient cause;
- (b) is not of a nature to affect adversely the position of creditors or shareholders;
- (c) that, on other grounds, it is just and equitable to grant relief,

the Registrar may, on the application of the company or any person interested, and on such terms and conditions as seem to the Registrar to be just and expedient, extend the time for registration of the charge or order that the omission or mis-statement be rectified.

Amendment of Section 355

10. Section 355 of the Principal Act is amended by replacing subsection (3) as follows:

“355 (3) (a) The registration of an external company under this Act ceases

to be valid 60 days after a change described in subsection (1) is made or ordered unless within that period the change is filed with the Registrar pursuant to subsection (1) or an application is made in writing to the Registrar for an extension of time to file instruments by which the change has been made.

- (b) An application to extend the time must detail the reasons for not complying with subsection (1).
- (c) Where the Registrar is satisfied that the failure to comply with subsection (1) was unintentional, the Registrar shall grant an extension on such terms and for such period as he thinks fit.
- (d) If the changes have not been filed within the extended time granted by the Registrar, the registration of the external company ceases to be valid and no further extensions shall be granted.”

Amendment to section 515

11. Section 515 is amended by adding the following sub-paragraph

“(g) shall not be the same as or similar to any trade or service mark registered under the laws of Saint Lucia.”

Amendment of Section 543

12. (a) Section 543 of the Principal Act is amended by replacing the definition of Minister as follows:

“Minister” means the Minister with responsibility for companies incorporated or registered under this Act.”

(b) Section 543 of the Principal Act is amended by replacing the definition of Registrar as follows.

“Registrar” means the Registrar of Companies and Intellectual Property.”

(c) Section 543 of the Principal Act is amended by inserting the definition of Registry as follows.

“Registry” means the Registry of Companies and Intellectual Property.”

Passed in the House of Assembly this day of ,2004.

Speaker of the House of Assembly.

Passed in the Senate this day of ,2004.

President of the Senate.