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I ASSENT

[L.S.]

PEARLETTE LOUISY,  
*Governor-General.*

*August 13, 2015.*

## SAINT LUCIA

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No.13 of 2015

**AN ACT** to amend the Companies Act, Cap.13.01.

[ 24th August, 2015 ]

**BE IT ENACTED** by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly and the 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, 2015.

**Interpretation**

2. In this Act, ‘principal Act’ means the Companies Act, Cap.13.01.

**Amendment of section 4**

3. Section 4 of the principal Act is amended-

(a) by deleting subsection (1) and by inserting the following –

“(1) Subject to subsection (2), one or more persons may incorporate a company by signing and submitting in electronic, typed or printed form, articles of incorporation to the Registrar and the name of every incorporator shall be entered in the company’s register of members.”; and

(b) by inserting immediately after subsection (3) the following subsection -

“(4) Where articles of incorporation submitted to the Registrar as required under subsection (3) are not accompanied by a statutory declaration, the Registrar may request additional evidence that a signatory to the articles of incorporation is not an individual described under subsection (2).”.

**Amendment of section 11**

4. Section 11 of the principal Act is amended by inserting the words “registered or” before the word “incorporated”.

**Amendment of section 12**

5. Section 12 of the principal Act is amended by deleting paragraph (b) and by substituting the following–

“(b) is, upon an application to change its name, granted a name that contravenes section 11, 523, 524 or regulation 4 of the Companies Regulations, Cap.13.01,”.

#### **Amendment of section 18**

6. Section 18 of the principal Act is amended by deleting subsection (2) and by substituting the following—

“(2) A company shall not commence business before it has made an allotment of shares and has filed with the Registrar the return of allotment of shares in the prescribed form, bearing the seal or stamp of the company.”.

#### **Amendment of section 64**

7. Section 64 of the principal Act is amended—

(a) by deleting the section heading and by substituting the following -

“**BYE-LAWS AND BYE-LAW POWERS**”; and

(b) by inserting immediately after subsection (5) the following subsection—

“(6) Within sixty days after the incorporation of a company, the directors of that company shall file with the Registrar the bye-laws of that company.”.

#### **Amendment of section 69**

8. Section 69 of the principal Act is amended by deleting subsection (1) and by substituting the following—

“(1) At the time of sending articles of incorporation of a company to the Registrar, the incorporators shall send him or her, in the prescribed form, a notice of the names of the directors of the company and a consent to act as director by each of the named directors; and the Registrar shall file the notice.”.

**Amendment of section 77**

**9.** Section 77 of the principal Act is amended by deleting subsection (1) and by substituting the following subsection–

“(1) Within fifteen days after a change is made amongst its directors, a company shall send to the Registrar a notice in the prescribed form setting out the change of the names of the directors of the company and a consent to act as director by each of the named directors; and the Registrar shall file the notice.”.

**Amendment of section 178**

**10.** Section 178 of the principal Act is amended in subsection (4) by deleting the word ‘return’ wherever it appears in paragraphs (a), (b) and (c) and by substituting the word ‘notice’.

**Amendment of section 194**

**11.** Section 194 of the principal Act is amended–

(a) by deleting subsection (1) and by substituting the following–

“(1) A company having share capital shall, not later than 1 April in each year after its incorporation or continuance under this Act, submit to the Registrar a return in the prescribed form containing the prescribed information made up to the preceding 31 December and accompanied with the prescribed fees.”; and

(b) by deleting subsection (3) and by substituting the following–

“(3) If default is made in complying with this section, the company and every director and officer who is in default is liable to a penalty for every month or part thereof, during which the default continues, as prescribed by Regulations.”.

**Amendment of section 250**

**12.** Section 250 of the principal Act is amended by deleting subsection (1) and by substituting the following—

“(1) Subject to this Division, where a charge to which this section applies is created by a company, the company shall, within twenty eight days after the registration of the charge with the Registrar of Lands or the Registrar of Deeds and Mortgages, 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 376**

**13.** Section 376 of the principal Act is amended by deleting section 376 and by substituting the following –

**“376. CONTINUANCE NOT APPLIED FOR WITHIN  
PRESCRIBED TIME**

(1) Where a former-Act company fails to apply to the Registrar for or a certificate of continuance before 1 January, 2001—

- (a) it shall be struck off the Companies Register and may only be restored upon application for incorporation as a new company; and
- (b) it shall not, without leave of the Court, sue or counterclaim in any Court but may be a defendant to a suit.

(2) Where, within three years of the striking off of a company, the company fails to apply to be restored in accordance with subparagraph (1)(a), the Registrar may, upon request by a person, assign to that

person the name, or a name that the Registrar considers to be similar to that of the company struck off.”.

**Insertion of sections 377A to 377O**

**14.** The principal Act is amended by inserting sections 377A to 377O immediately after section 377 as follows -

**“Division E – Member State Company****377A. APPLICATION**

- (1) This Division applies to a company incorporated in a member state that seeks registration as a member state company under this Act.
- (2) Where applicable, the provisions of this Act that are applicable to local companies shall also be applicable to member state companies.

**377B. REGISTRATION REQUIREMENTS**

A company may be registered as a member state company and carry on business in Saint Lucia by–

- (a) making an application for registration in the prescribed form; and
- (b) paying the prescribed fee.

**377C. REGISTRATION OF A MEMBER STATE COMPANY**

(1) Upon making an application for registration, a member state company, shall file with the Registrar an application which includes the following information–

- (a) the name of the company;
- (b) the member state within which the company was incorporated;
- (c) the date of incorporation of the company;
- (d) the Act under which the company was incorporated;



- (e) the period, if any, fixed by the corporate instruments of the company for the duration of the company;
  - (f) the extent, if any, to which the liability of the shareholders or members of the company is limited;
  - (g) the nature of the business that the company will carry on in Saint Lucia;
  - (h) the date on which the company intends to commence business in Saint Lucia;
  - (i) the authorised, subscribed, paid up capital or stated capital of the company and the shares that the company is authorised to issue and their nominal or par value, if any;
  - (j) the full address of the registered or head office of the company outside Saint Lucia;
  - (k) the full address of the principal office of the company in Saint Lucia;
  - (l) the member state in which the amalgamation took place, if applicable; and
  - (m) the full names, addresses and occupation of the directors of the company.
- (2) An application under subsection (1) must be accompanied by—
- (a) a Certificate of Good Standing or its equivalent;
  - (b) an original or certified copy of the corporate instruments of the company;
  - (c) proof of nationality or citizenship of more than fifty per cent of the company's shareholders; and
  - (d) the subsidiary or branch status.
- (3) Where a document that is required to be filed under this section is not filed in the English language, a notarised and duly certified English translation of that document shall be provided by the company, unless the Registrar otherwise directs.

**377D. CERTIFICATE OF REGISTRATION**

(1) When the Registrar has received, in respect of a member state company, the application and other documents required under the Act together with the prescribed fee, the Registrar shall issue a certificate of registration showing that the company has been registered as a member state company under this Act, subject to his or her discretionary powers under this Division.

(2) A certificate issued under this section to a member state company is conclusive proof of the registration of that company on the date shown on the certificate and of any other facts stated in the certificate.

**377E. EFFECT OF REGISTRATION**

Subject to this Division and any other laws of Saint Lucia, a member state company that is registered under this Act may carry on its business in Saint Lucia in accordance with its certificate of registration and may exercise its corporate powers within Saint Lucia.

**377F. REFUSAL OF REGISTRATION**

The Registrar may refuse to accept articles of incorporation or continuation for a company or to register articles amending the name of a company if—

(a) the name is not distinctive because—

- (i) it is too general,
- (ii) it is descriptive only of the quality, function or other characteristic of the goods or services in which the company deals or intends to deal, or
- (iii) primarily it is only a geographic name used alone, unless the applicant establishes that the name has, through use, acquired and continues to have a secondary meaning;

(b) the name is inaccurate in describing—

- (i) the business, goods or services in association with which it is proposed to be used;

- (ii) the conditions under which the goods or services will be produced or supplied;
  - (iii) the persons to be employed in the production or supply of those goods or services; or
  - (iv) the place of origin of those goods and services;
- (c) it is likely to be confused with that of a company that was dissolved;
- (d) it contains the word or words “credit union”, “co-operative”, or “co-op” when it is not a co-operative venture; or
- (e) it is, in the opinion of the Registrar, for any reason, objectionable.

#### **377G. SUSPENSION OR REVOCATION OF REGISTRATION**

(1) Subject to such regulations as the Minister may make, the Registrar may suspend or revoke the registration of a member state company for failing to comply with any requirements of this Division or for any other prescribed cause; and the Registrar may, subject to those regulations, remove a suspension or cancel a revocation.

(2) The rights of the creditors of a member state company are not affected by the suspension or revocation of its registration under this Act.

#### **377H. CANCELLATION OF REGISTRATION**

(1) When a member state company ceases to carry on its business in Saint Lucia, the company shall file a notice in the prescribed form to that effect with the Registrar, who shall upon receiving that notice, cancel the registration of the company under this Act.

(2) If a member state company ceases to exist and the Registrar is made aware of that circumstance by evidence satisfactory to him or her, the Registrar may cancel the registration of the company under this Act.

(3) Where the registration of a member state company has been cancelled, that company shall submit its certificate of registration to the Registrar.

### **377I. REVIVAL OF REGISTRATION**

(1) Where the registration of a member state company has been cancelled under section 377H, the Registrar may revive the registration of that company if the company files such documents as the Registrar may require and pays the prescribed fee.

(2) Registration of a member state company is revived when the Registrar issues a new certificate of registration to that company.

### **377J. PREVIOUS ACTIVITIES**

Registration or revival of registration under this Act of a member state company retroactively authorises all previous acts of the company as though the company had been registered at the time of those acts, except for the purpose of a prosecution for any offence under this Division.

### **377K. FUNDAMENTAL CHANGES**

(1) Where, in the case of a member state company registered under this Act—

- (a) the name of the company has been changed;
- (b) the corporate instruments of the company have been altered to reflect a fundamental change within the meaning of Division K of Part 1;
- (c) the objects of the company have been altered or its business has been restricted; or
- (d) any change is made among its directors,

the company shall, within thirty days after the change has been made, file with the Registrar duly certified copies of the instruments by which the change has been made or ordered to be made.

(2) Upon receipt of the duly certified copies referred to in subsection (1) and the prescribed fee, the Registrar shall enter the change of name in the register and enter a record of such other changes in the register as he or she considers to be in the public interest.

(3) The registration of a member state company under this Act ceases to be valid sixty days after a change described in subsection (1) is made or ordered, unless within that period the change is filed with the Registrar under subsection (1).

(4) Upon the registration under this section of a change in respect of a member state company, the Registrar shall issue to the company a certificate of the change under his or her hand in a form adapted to the circumstances.

(5) A certificate issued under subsection (4) is admissible in evidence as conclusive proof of the change.

#### **377L. ANNUAL RETURN**

(1) A member state company shall, not later than 1 April in each year after the date of its registration, submit to the Registrar a return in the prescribed form containing the prescribed information made up to the preceding 31 December and accompanied with such documents as may be prescribed and the prescribed fees.

(2) A director or officer of a member state company shall certify the contents of an annual return made under this section.

(3) The Registrar may strike off the Register a member state company that neglects or refuses to file an annual return as required under this section.

#### **377M. EXEMPTION ORDER**

The Minister may, by Order published in the Gazette, exempt a member state company from the provisions of this Division.

**377N. OBLIGATION TO FILE DEBENTURE**

A member state company shall register with the Registrar a certified or notarised copy of its debentures or any other document that evidences such an obligation on the member state company.

**377O. NOTICE OF APPOINTMENT OF RECEIVER**

Where a receiver is appointed in a member state other than Saint Lucia, the member state company shall, within 14 days, give notice of such appointment to the Registrar.”.

**Amendment of section 518**

**15.** Section 518 of the principal Act is amended by deleting section 518 and by substituting the following—

**“518. FILING FORM**

- (1) A document shall be submitted to the Registrar for filing in typed, printed or electronic form.
- (2) A document submitted under subsection (1), must be submitted in duplicate.”.

**Amendment of section 519**

**16.** Section 519 of the principal Act is amended by deleting subsection (1) and by substituting the following—

- “(1) The Registrar may strike off the register a company or other corporate body, if—
- (a) the company or other body corporate fails to send any return, notice, document, statement or prescribed fee to the Registrar as required under this Act;
  - (b) the company is dissolved;
  - (c) the company or other body corporate is amalgamated with one or more other companies or bodies corporate;

- (d) the company does not carry out an undertaking given under section 523(a)(i); or
- (e) the registration of the body corporate is revoked under this Act.”.

**Amendment of section 522**

17. Section 522 of the principal Act is amended by deleting section 522 and by substituting the following–

**“522. RESERVATION OF NAME**

- (1) Prior to incorporation of a company, a person shall request a name search and pay the prescribed fee, and thereafter a name reservation shall be submitted to the Registrar for approval in the prescribed form.
- (2) The Registrar may, upon request and upon payment of the prescribed fee and provided that such name is available for use, reserve for ninety days a name for an intended company or for a company that is about to change its name.”.

**Amendment of section 523**

18. Section 523 of the principal Act is amended by inserting immediately after paragraph ‘(f)’ the following paragraphs–

- “(g) shall not be the same as or similar to a registered trademark in Saint Lucia unless consent is given by whom consent is to be given in writing for the use of that name in whole or in part.
- (h) shall not be the same as or similar to any statutory entity established in Saint Lucia; and
- (i) shall not suggest or imply a connection with a registered insurer, a registered insurance agent, a registered insurance salesperson or a registered insurance broker unless the Registrar of Insurance consents in writing to the use of the proposed name;”.

**Amendment of section 524**

**19.** Section 524 of the principal Act is amended by deleting in paragraph (b) “defectively” before “inaccurate”.

**Amendment of section 551**

**20.** Section 551 is, amended by–

- (a) deleting the definition for “corporate instruments” and by substituting the following –

““corporate instruments” includes any statute, letters patent, memorandum of association, articles of association, articles of incorporation, certificate of incorporation, certificate of continuance, by-laws, regulations or other instrument by which a body corporate is incorporated or continued or that governs or regulates the affairs of a body corporate;”;

- (b) deleting the definition for “member state” and by substituting the following–

““member state” means a state, other than Saint Lucia, of the Caribbean Community or the Organisation of Eastern Caribbean States as listed in Schedule 1;”;  
and

- (c) inserting the following definitions in the correct alphabetical sequence–

““member state company” –means any firm or other body of persons, incorporated under the laws of a member state;

“person” includes an individual, a corporation, company, firm, partnership, society or an association;”.



Passed in the House of Assembly this 7th day of July, 2015.

PETER I. FOSTER,

*Speaker of the House of Assembly.*

Passed in the Senate this 24th day of July, 2015.

CLAUDIUS J. FRANCIS,

*President of the Senate.*