

BELIZE:

**INTERNATIONAL BUSINESS COMPANIES (AMENDMENT)
ACT, 2018**

ARRANGEMENT OF SECTIONS

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No. 24 of 2018

I assent,

(SIR COLVILLE N. YOUNG)

Governor-General

20th December, 2018.

AN ACT to amend the International Business Companies Act, Chapter 270 of the Substantive Laws of Belize, Revised Edition 2011; to eliminate ring-fencing by extending the regime to Belizean residents, removing the restrictions from international business companies; to carry on business with Belizean residents, removing the prohibitions in relation to owning of real property, and removing the exemptions from taxes and duties; to provide for physical presence by international business companies; and to provide for matters connected therewith or incidental thereto.

(Gazetted 22nd December, 2018.)

BE IT ENACTED, by and with the advice and consent of the House of Representatives and the Senate of Belize and by the authority of the same, as follows:

1. This Act may be cited as the

INTERNATIONAL BUSINESS COMPANIES
(AMENDMENT) ACT, 2018,

Short title.
CAP.270
S.I. 11/2016
S.I. 39/2016
Act No. 36/
2017.

and shall be read and construed as one with the **International Business Companies Act**, which as amended, is hereinafter referred to as the principal Act.

Interpretation.

2. The principal Act is amended in section 2(1), as follows –

(a) by deleting the definition of “dollar” or “\$” and substituting the following-

““dollar” or “\$” means -

(a) subject to paragraph (b) means a dollar in the currency of the United States of America;

(b) where a company is physically present in Belize, the provisions of section 21 of the Central Bank of Belize Act, Cap. 262 continues to apply in respect of operational activities undertaken in Belize;”

(b) in the definition of “person resident in Belize” by inserting after the word, “Act” the words, “unless the company -

(i) meet the requirement set out in section 82B;

(ii) has its business centrally managed and controlled within Belize; and

(iii) is resident for tax purposes in Belize;”

(c) by inserting the following new defined terms -

“distribution and service centre business” means the business of either or both of the following –

- (a) purchasing from foreign connected persons –
 - (i) component parts or materials for goods, or
 - (ii) goods ready for sale; andreselling such component parts, materials or goods;
- (b) providing services to foreign connected persons in connection with the business,

but does not include any other activity specified in section 5 except holding company business;

“finance and leasing business” means the business of providing credit facilities of any kind for consideration and may include -

- (a) consideration by way of interest;
- (b) the provision of credit by way of instalments for which a separate charge is made and disclosed to the customer in connection with –
 - (i) the supply of goods by hire purchase,
 - (ii) leasing other than any lease granting an exclusive right to occupy land, or

- (iii) conditional sale or credit sale;
- (c) where an advance or credit repayable by a customer to a person is assigned to another person, that other person is deemed to be providing the credit facility for the purposes of this definition;
- (d) any activity falling within the definition of “banking business”, “fund management business” or “insurance business” is excluded from the definition;

“fund management business” means a collective investment scheme or other business regulated under the Mutual Funds Act, Cap. 268;

“headquarters business” means the business of providing any of the following services to one or more foreign connected persons of the resident company –

- (a) the provision of senior management;
- (b) the assumption or control of material risk for activities carried out by, or assets owned by, any of those connected persons;
- (c) the provision of substantive advice in connection with the assumption or control of risk referred to in paragraph (b),

but does not include anything falling within the definition of financing and leasing business, intellectual property holding business, insurance business, or banking business;

“holding company” means a company which –

- (a) is a holding body;
- (b) has as its primary function the acquisition and holding of shares or equitable interests in other companies;
- (c) provides a benefit to other entities that holds a variety of assets and earn income such as interest, rent or royalties;
- (d) hold equity participation and earn only dividends and capital gains; or
- (e) does not carry on any commercial activity;

“holding company business” means the business of being a holding company;

“insurance business” means the business regulated under the International Insurance Act, Cap. 269;

“intellectual property holding business” means the business of holding intellectual property assets;

“intellectual property asset” means any intellectual property right in intangible assets, including but not limited to copyright, patents, trademarks, brand, and technical know-how, from which identifiable income accrues to the business (such income being separately identifiable from any income generated from any tangible asset in which the right subsists);

“shipping business” means any of the following activities involving the operation of a ship anywhere in the world—

- (a) the business of transporting, by sea, persons, animals, goods or mail;
- (b) the renting or chartering of ships for the purpose described in paragraph (a);
- (c) the sale of travel tickets or equivalent, and ancillary services connected with the operation of a ship;
- (d) the use, maintenance or rental of containers, including trailers and other vehicles or equipment for the transport of containers, used for the transport of anything by sea;
- (e) the management of the crew of a ship.

Amendment of section 5.

3. The principal Act is amended in section 5, as follows -

- (a) by deleting subsection (1) and substituting the following:

“(1) For the purposes of this Act, an International Business Company is a company that conducts any activity that is not prohibited under a law in Belize and includes -

- (a) providing services such as managing, co-ordinating or controlling business activities for a group as a whole or for group members in a geographical area;

- (b) carrying on the business of purchasing raw materials or finished product from other group members for re-sale;
- (c) carrying on banking business provided that it is licensed under an enactment authorising it to carry on such business;
- (d) carrying on business as an insurance or a reinsurance company, insurance agent, or insurance broker provided that it is licensed under an enactment authorising it to carry on such business;
- (e) carrying on the business of providing the registered office for companies provided that it is licensed under an enactment authorising it to carry on such business;
- (f) carrying on trust business provided that it is licensed under an enactment authorising it to carry on such business;
- (g) carrying on collective investment schemes provided that it is licensed under an enactment authorising it to carry on such schemes;
- (h) carrying on the business of managing or administering of funds provided that it is licensed under an enactment authorising it to carry on such business;

- (i) carrying on the business of financing or leasing of assets;
 - (j) carrying on the business of shipping, such as, managing or crew, hauling and maintaining ships, overseeing and tracking of deliveries, ordering and delivery of goods, or organising and overseeing of voyages;
 - (k) operating a holding company business;
 - (l) carrying on the business of research and development, creating, or owning intellectual property;
 - (m) carrying on international business, management or professional services, technical services or consultancy services; or
 - (n) carrying on distribution and service center business;
 - (o) carrying on any other business which the Minister by Order publish in the *Gazette* in his own discretion determines.
- (b) in subsection (2) by:
- (i) deleting from the chapeau, the words “For purposes of subsection (1)(a) of this section, an” and substituting the word “An”; and
 - (ii) deleting subparagraph (d).

- (c) by deleting subsection (3) and substituting the following-

“(3) The provisions of the enactments authorising the carrying on of the businesses specified in subsection (1) (c) to (h) shall override any contrary provisions contained in this Act.”

- (d) by repealing subsection (4).

4. The principal Act is amended in section 54, as follows-

Amendment of section 54.

- (a) in subsection (1) by deleting the words “necessary or desirable” and substituting the words “necessary, desirable or as may be required pursuant to Part VI A.”; and
- (b) in subsection (2)(a) by inserting a comma after the word “telephone” and by inserting the word “teleconference”.

5. The principal Act is amended in section 65, as follows-

Amendment of section 65.

- (a) in subsection (1) by deleting the words “necessary or desirable” and substituting the words “necessary, desirable or as may be required pursuant to Part VI A.”;
- (b) in subsection (3)(a) by inserting a comma after the word “telephone” and by inserting the word “teleconference”.

6. The principal Act is amended by inserting after section 82, the following new Part VI A-

Insertion of new PART VI A.

“

PART VI A

Physical Presence

Interpretation
in this Part.

82A. In this Part -

“relevant activities” means the activities that are licensed under the International Financial Services Commission Act, Cap. 272;

Physical
presence
requirement.

82B. (1) Where a company engages in a relevant activity, that company shall be physically present in Belize.

(2) A company that engages in any other activity pursuant to section 5(1) may decide to be physically present in Belize and once the company has taken steps to comply with the physical presence requirement, that company shall not change its position of fulfilling physical presence for a period of at least five years.

(3) For the purposes of subsections (1) and (2), physically present includes the following -

- (a) the employment, whether directly or indirectly, of a sufficient and adequate amount of suitably qualified persons to carry out its core income generating activities;
- (b) expenditures consistent with the size of the business relative relation to the nature and complexities of its relevant activity; and
- (c) the control and management activities are conducted from Belize either directly or through a management agency.

(4) For the purposes of subsection (3)(a), core income generating activities of a company may include the activities of sectors specified, as follows -

- (a)** in respect of banking business –
 - (i)** raising funds, managing risk including credit, currency and interest risk,
 - (ii)** taking hedging positions,
 - (iii)** providing loans, credit or other financial services to customers,
 - (iv)** managing capital and preparing reports and returns to the International Financial Services Commission or other appropriate authority with equivalent functions relating to the supervision or regulation of such business;

- (b)** in respect of insurance business –
 - (i)** predicting and calculating risk,
 - (ii)** insuring or re-insuring against risk and providing insurance business services to clients;

- (c)** in respect of fund management business –
 - (i)** taking decisions on the holding and selling of investments,
 - (ii)** calculating risk and reserves,
 - (iii)** taking decisions on currency or interest fluctuations and hedging positions,
 - (iv)** preparing reports and returns to investors and the International Financial Services Commission or other appropriate

authority with equivalent functions relating to the supervision or regulation of such business;

- (d) in respect of finance and leasing business –
 - (i) agreeing funding terms,
 - (ii) identifying and acquiring assets to be leased (in the case of leasing),
 - (iii) setting the terms and duration of any financing or leasing,
 - (iv) monitoring and revising any agreements,
 - (v) managing any risks;
- (e) in respect of headquarters business –
 - (i) taking relevant management decisions,
 - (ii) incurring expenditures on behalf of group entities,
 - (iii) co-ordinating group activities;
- (f) in respect of shipping business –
 - (i) managing crew (including hiring, paying and overseeing crew members),
 - (ii) overhauling and maintaining ships,
 - (iii) overseeing and tracking deliveries,
 - (iv) determining what goods to order and when to deliver them, organising and overseeing voyages;

- (g) in respect of holding company business, all activities related to that business;
- (h) in respect of intellectual property holding business –
 - (i) taking strategic decisions and managing (as well as bearing) the principal risks related to development and subsequent exploitation of the intangible asset generating income,
 - (ii) taking the strategic decisions and managing (as well as bearing) the principal risks relating to acquisition by third parties and subsequent exploitation and protection of the intangible asset,
 - (iii) carrying on the underlying trading activities through which the intangible assets are exploited leading to the generation of revenue from third parties,
 - (iv) research and development, branding or distribution;
- (i) in respect of distribution and service centre business –
 - (i) transporting and storing goods, components and materials,
 - (ii) managing stocks,
 - (iii) taking orders,
 - (iv) providing consulting or other administrative services.

(5) For the purposes of subsection (3)(c), controlled and managed may be fulfilled where the company -

- (a) engages at least two directors resident in Belize for the purpose of -
 - (i) holding assets that are required to be managed;
 - (ii) acquiring and disposing of assets;
 - (iii) managing of the business;
 - (iv) making banking and financial arrangements;
 - (v) instructing lawyers, accountants and other advisors;
 - (vi) distributing of income and dividends;
- (b) convene its meetings of directors pursuant to section 54, in Belize;
- (c) includes in its Memorandum under section 12, a statement that disputes arising out of or in connection with a relevant activity shall be settled pursuant the Arbitration Act, Cap. 125; and
- (d) upon prescribing regulations for the company for the purpose of its Articles under section 13, shall include the prescription for disputes arising out of or in connection with a relevant activity to be settled pursuant the Arbitration Act, Cap. 125.

(6) A person who contravenes subsection (1) commits an offence.

(7) Every director and other person concerned in the management of the company commits the offence unless that person proves that -

- (a) the offence was committed without his consent or connivance;
- (b) the person exercised all such diligence to prevent the commission of the offence as ought to have been exercised by that person having regard to the nature of his functions in that capacity and to all the circumstances.

82C. (1) For the purpose of section 82B, the company may fulfil the requirement for physical presence if it is in compliance with the requirement for managing agents in Belize.

Minimum physical presence.

(2) No person shall provide, carry on, transact or hold himself out as providing, carrying on, or transacting managing service in or from within Belize unless that person holds a valid licence granted by the International Financial Services Commission under the International Financial Services Commission Act, Cap. 272, and every person who contravenes this provision commits an offence and shall be liable to the penalties prescribed under that Act.

82D. If the Registrar receives a report from the [International Financial Services Commission], that a company has not met the physical presence requirement within the meaning of the International Financial Services Commission Act, Cap. 272 the Registrar may take the actions relating to a strike-off specified in section 107.”

Power of Registrar to take action for non-compliance with physical presence.

7. The principal Act is amended in section 96, as follows-

Amendment of section 96.

- (a)** in the marginal note by inserting after the word “Continuation” the words “under another law in Belize or”;
- (b)** in subsection (1) by inserting after the words “company incorporated under” the words “the Companies Act, Cap. 250, the International Limited Liability Companies Act, (Act No. 13 of 2011) or”;
- (c)** by inserting a new subsection (3A) as follows -

(3A) A company incorporated under this Act that continues under the Companies Act, Cap. 250 or the International Limited Liability Companies Act, (Act No. 13 of 2011) -

- (a)** does not cease to be a company incorporated under this Act unless those Acts permit the continuation and the company has complied with those laws, and in addition the company has notified the Registrar that it no longer requires itself to be treated as a company incorporated under this Act; and
- (b)** may within 30 days of the continuation of the company under those laws submit to the Registrar an affidavit to the effect that the company has continued its incorporation under those Acts and the Registrar shall retain and register the affidavit.

- (d) in subsection (4) by inserting after the words “subsection (3)” the words “and subsection (3A)(b)” ; and
- (e) by inserting a new subsection (5A) as follows -
- (5A) Where a company is incorporated under this Act is continued under the Companies Act, Cap. 250 or the International Limited Liability Companies Act, (Act No. 13 of 2011),
- (a) the company continues to be liable for all of its claims, debts, liabilities and obligations that existed prior to its continuation as a company under those Acts;
- (b) no conviction, judgment, ruling, order, claim, debt, liability or obligation due or to become due, and no cause existing, against the company or against any member, director, officer or agent thereof, is released or impaired by its continuation as a company under those Acts; and
- (c) no proceedings, whether civil or criminal, pending by or against the company, or against any member, director, officer or agent thereof, are abated or discontinued by its continuation as a company under those Acts, but the proceedings may be enforced, prosecuted, settled or compromised by or against the

company or against the member, director, officer or agent thereof, as the case may be.”

Amendment of section 107.

8. The principal Act is amended in section 107 by inserting after the words “section 5 of the Act,” the phrase or for the purposes of section 82D,”.

Repeal and replacement of Part XII.

9. The principal Act is amended by deleting Part XII and substituting the following as new Part XII –

“PART XII

Income Tax And Other Taxes and Duties

Income tax and other taxes payable.

130. (1) Subject to this Part, there shall be levied and paid to the Commissioner of Income Tax the relevant taxes at the rate specified in the Income and Business Tax Act, Cap. 55.

(2) The international business company that is a person resident in Belize shall –

(a) be liable to pay the levy pursuant to subsection (1);

(b) file an annual tax return based on the requirements of the Income and Business Tax Act, Cap. 55;

CAP. 64.

(c) be subject to the Stamp Duties Act including the payment of stamp duty in relation to an instrument –

(i) to transfer property to or by such company;

(ii) on transactions in respect of the shares, debt obligations or other securities of such company; and

(iii) relating to the assets or activities of a company.”

10. The principal Act is amended by deleting section 134 and substituting the following—

Amendment of section 134.

“134. (1) A company that is physically present in Belize shall be eligible to maintain a dollar account in a domestic, branch of a foreign or international bank that is located in Belize.

(2) A company under subsection (1) shall submit monthly report to the Central Bank of Belize, established under the Central Bank Act, Cap. 262, of all -

(a) transactions in the dollar accounts held by the company; and

(b) sales and purchases of the company.

(3) A company incorporated under this Act that is physically present shall be subject to the Exchange Control Regulations Act, Cap. 52.

(4) A company incorporated under this Act that is not physically present in Belize shall be deemed to be not resident in Belize for the purposes of the Exchange Control Regulations Act, Cap 52.”

11. The principal Act is amended in section 136, as follows—

Amendment of section 136.

(a) in paragraph (a) by deleting the word “and”;

- (b) in paragraph (b) by deleting the full stop and inserting a “;” and the word “and”; and
- (c) by inserting a new paragraph (c) as follows –
 - “(c) the company has paid its taxes due under the Income and Business Tax Act, Cap. 55.”

Amendment of section 139.

12. The principal Act is amended in section 139 by inserting after the words “Cap. 55” the words “if the company is able to supply satisfactory evidence to the Minister responsible for Finance that -

- (a) it is not physically present in Belize;
- (b) its core income generating activities are conducted in a country where taxes under the Income and Business Tax Act would become applicable had it been located in Belize; and
- (c) it is paying the rate of taxes payable in that country.”

Insertion of new section 145A.

13. The principal Act is amended by inserting after section 145, the following new section 145A:

“Application of the Income and Business Tax Act and the International Financial Services Commission Act.

145A. (1) All the provisions of the Income and Business Tax Act, Cap. 55 and any Regulations made thereunder that apply with respect to administering of taxes, review, appeals, rights, obligations, penalties required under this Act for the purposes of compliance with the aim of eliminating harmful tax practices (including the penalty for an offence under the provisions of such law) shall extend and apply in all respects as if the requirement were made under those Acts.

(2) The International Financial Services Commission shall regulate company in respect of all other

matters required in order to effectively administer the provisions of this Act .”

14. (1) A company under the Act which has been in existence at 30 June 2018 and was conducting any business in relation to research and development or owns intellectual property assets may apply to [the International Financial Services Commission] for determination of whether it may continue operating within the regime of International Business Companies Act that would have been required if this Act had not come into force, in which case the application is to be dealt with in all respects as if this Act had not come into force.

Transitional.

(2) The following conditions apply to the provisions of subsection (1) -

- (a) in respect of an application, in the opinion of [the International Financial Services Commission] reasonable progress is not made for a period of 12 months, that subsection ceases to apply and the requirement of this Act shall be required;
- (b) no new IP assets owned by the existing company are allowed to benefit from the regime existing prior to 16th October 2017;
- (c) the application for protection of an IP assets which was made prior to 30 June 2018 but has not yet been approved may qualify for benefit from the regime existing prior to the commencement of this Act;
- (d) that the transition in respect of subsection (1) expires on 30 June 2021.

(3) An exemption granted under the Act prior to the commencement of this Act -

- (a) in respect of a provision of an enactment repealed by this Act continues to have effect according to its substance as if it has not been repealed;
- (b) in respect of an international business company whose business activities consists of the core income generating activities in relation to a relevant activity shall have a period up until 30 June 2021 in order comply with the requirement of this Act and in this respect shall report to the [International Financial Services Commission] the existence of a relevant activity with core income generating activities.

(4) If an international business company was incorporated -

- (a) on or before 16 October 2017, a relevant activity or new asset acquired after 16 October 2017 shall not be eligible to benefit from the tax exemption saved up to 30 June 2021;
- (b) on or after 17 October 2017, that company shall not be eligible to benefit from the tax exemption existing prior to the commencement of this Act which was saved up to 30 June 2021,

and for the purposes of paragraphs (a) and (b), that regime shall stand abolished at 31 December 2018.

- (5) At the expiration of the period 30 June 2021,

- (a) all savings under this section shall stand abolished; and
- (b) the regime in respect of public investment companies saved by section 19 of the International Business Companies Act, 1995 shall stand abolished.

(6) Subject to subsection (7), a company that is licensed by the International Financial Services Commission at the date of commencement of this Act shall comply with the physical presence requirement within one year of that date.

(7) If a company decides to comply with physical presence requirements through a managing agent, and the regulations relating to physical presence does not come into force on or before [30 June 2019], subsection (6) does not apply and the provisions for physical presence requirements comes into force on a day to be fixed by the Minister by Order published in the *Gazette*.