

BELIZE:

BELIZE COMPANIES (AMENDMENT) BILL, 2023

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BELIZE:

BILL

for

AN ACT to amend the Belize Companies Act, No. 11 of 2022, of the **Substantive Laws of Belize, Revised Edition 2020**; to further facilitate compliance with the Financial Action **Task** Force (FATF) Recommendation 24; and to provide for matters connected therewith or incidental thereto.

(Gazetted2023).

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

1. This Act may be cited as the

Short title.

BELIZE COMPANIES (AMENDMENT) ACT, 2023,

and shall be read and construed as one with the Belize Companies Act, which is hereinafter referred to as the principal Act.

Act No. 11 of 2022.

2. Section 2 of the principal Act is amended by:

Amendment of section 2.

(a) inserting the following terms and their corresponding definitions in their proper alphabetical sequence—

““bearer share” means a share represented by a certificate which states that the bearer of the certificate is the owner of the share and includes a share warrant to bearer;

“nominee director” means an individual appointed to a Board of Directors by another individual or entity to act on their behalf; and

“reserve director” means an individual who has been appointed to a Board of Directors, usually on a temporary basis, as a result of the death of the sole director of a company;” and

(b) repealing and replacing the term “ordinary resolution” and its corresponding definition with the following—

““ordinary resolution” means a resolution that has been passed-

- (a) on a show of hands, by a simple majority of members who, being entitled to do so, vote in person, or, where proxies are allowed, by proxy,
- (b) on a poll, by a simple majority of the total voting rights of members who, being entitled to do so, vote in person, or, where proxies are allowed, by proxy,

at a duly convened general meeting of which notice specifying the intention to propose the resolution has been duly given;”

Amendment of section 9.

3. Section 9 of the principal Act is amended by repealing sub-section (2) and substituting the following—

“(2) No company shall issue or exchange bearer shares, bearer share warrants or bearer share certificates.”.

Amendment of section 18.

4. Section 18 of the principal Act is amended by inserting the following new sub-section immediately after sub-section (1)—

“(1A) The name of a company whether on incorporation, continuation, merger or consolidation—

- (a) shall not be the same as or similar to the name or business name of any other person or of any association, partnership or firm, any registered trademark or any well-known trademark as determined under trademark legislation, if the use of that name would be likely to confuse or mislead;
- (b) shall not be primarily a geographic name used alone unless the applicant establishes to the satisfaction of the Registrar that the name has, through use, acquired and continues to have a secondary meaning;
- (c) shall not be one that is likely to be confusing with that of a company that was dissolved;
- (d) shall not contain the word or words “credit union”, “co-operative”, or “co-op” when it connotes a co-operative venture; and
- (e) shall not suggest or imply a connection with a university or a professional association recognised by the laws of Belize unless the university or professional association concerned consents in writing to the use of the proposed name.”.

Amendment of section 42.

5. Section 42 of the principal Act is amended—

- (a) in sub-section (1)(b), by inserting the words “or nominee shareholder” immediately after the word “shareholder”; and

- (b) in sub-section (6), by inserting the words “or nominee shareholder” immediately after the word “shareholder”.

6. Section 82 of the principal Act is amended by repealing sub-section (2) and substituting the following—

Amendment of section 82.

“(2) A company that wishes to change its registered office, including the address of the registered office of a foreign company carrying on business in Belize, or a Registered Agent shall file a notice in the approved form.”.

7. Section 86 of the principal Act is amended—

Amendment of section 86.

- (a) in sub-section (1), by inserting the following new paragraph immediately after paragraph (a)—

“(aa) certificate of incorporation;”;

- (b) by inserting the following new sub-section immediately after sub-section (3)—

“(3A) Any register required to be kept by a company shall include the number and category of shares beneficially owned.”; and

- (c) in sub-section (5), by deleting the words “sub-section (1) (2) or (3)” and substituting the words “sub-section (1), (2), (3) or (3A).”.

8. The principal Act is amended by inserting the following new section immediately after section 86—

Insertion of section 86A.

“Documents to be kept by an agent of the Company.

86A. In circumstances where a company is not required to have a Registered Agent, it shall be the responsibility of a director appointed under section 104 or an agent of the company, appointed under section 123 (1), to provide or produce any records, documents or information listed under this section.”.

9. The principal Act is amended by inserting the following new section immediately after section 87—

Insertion of section 87A.

“Company to retain records and provide information that is accurate and up-to-date.

87A.—(1) A company shall—

- (a) update company records and other relevant information required under this Act and Regulations to ensure that they are accurate, up to date and updated; and

- (b) retain company records and provide the Registrar with information that is accurate and up-to-date.”.

Amendment of section 88.

10. Section 88 of the principal Act is amended by repealing sub-section (8) and substituting the following—

“(8) Whenever required to do so by the Commission and further to Regulations made under the Financial Services Commission Act, the Registered Agent shall request and obtain from the company and provide to the Director General within a period of seven days or an earlier period if the Commission so directs, the records and underlying documents in respect of the company, including any records, documents or information referred to in sections 86 and 87.”.

Amendment of section 93.

11. Section 93 of the principal Act is amended—

(a) in sub-section (1)(b), by deleting“.” and substituting “; and”; and

(b) by inserting the following new paragraph immediately after paragraph (b)—

“(c) its register of beneficial owners.”.

Repeal and replacement of section 103.

12. The principal Act is amended by repealing section 103 and replacing it with the following—

“Consent to act as director

103.—(1) A person shall not be appointed as the director of a company, or nominated as an alternate director, nominee director, or reserve director, unless he has consented in writing to be a director or to be nominated as a reserve director, nominee director or an alternate director.

(2) Once consent referred to in sub-section (1) has been granted, alternate directors, reserve directors and nominee directors shall be subject to the same obligations and duties as substantive directors.”.

Amendment of section 109.

13. Section 109 of the principal Act is amended by repealing in sub-section (1) and substituting the following—

“(1) A company shall keep a register to be known as a register of directors containing—

(a) the names and addresses of the persons who are directors or alternate directors of the company or who have been nominated as reserve directors of the company;

(b) the date on which each person whose name is entered in the register was appointed as a director, alternate director or nominated as a reserve director of the company;

- (c) the date on which each person named as a director or alternate director ceased to be a director or alternate director of the company;
- (d) the names and addresses of any person deemed to be a director under section 100(6), the date on which such person was appointed as a director, and where relevant, the date on which such person ceased being a director;
- (e) an appropriate notation; and
- (f) such other information as may be prescribed.”.

14. Section 146 of the principal Act is amended by repealing paragraph (a) and substituting the following— Amendment of section 146.

“(a) shall be bound to deal with the company’s assets in accordance with the requirements set out in section 141(1) and (2); and”.

15. Section 191 of the principal Act is amended— Amendment of section 191.

(a) in subsection (2), by inserting the following new paragraph immediately after paragraph (d)—

“(da) the address of the proposed registered office of the foreign company carrying on business in Belize;”;

(b) by inserting the following new sub-section immediately after sub-section (2)—

“(2A) A foreign company shall not own real estate in Belize unless it is registered under this Part.”.

16. The principal Act is amended by repealing section 201 and replacing it with the following— Repeal and replacement of section 201.

“Re-registration of Foreign Companies

201. A foreign company registered under any of the repealed Acts at the effective date is required to re-register under this Act and shall adhere to the registration requirements and related conditions as stipulated under this Part.”.

17. Section 218 of the principal Act is amended by repealing sub-section (4) and substituting the following— Amendment of section 218.

“(4) The Registrar shall publish a notice of the striking off of a company from the Register in the *Gazette* or such other publication as the Registrar may determine.”.

Amendment of section 230.

18. Section 230 of the principal Act is amended by inserting the following new sub-sections immediately after sub-section (6)–

“(7) When the affairs of a company have been completely wound-up, the court shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.

(8) An order made under sub-section (7) shall be reported by the liquidator to the Registrar, who shall record the dissolution of the company in the Register”.

Amendment of Part XIV.

19. Part XIV of the principal Act is amended by inserting the following new Sub-Part immediately after section 272–

*“Sub-Part 6
Supplemental Provisions*

“Preferential payments.

272A.–(1) In a winding-up, the following shall be paid in priority to all other debts–

- (a) all rates and taxes, including land and property tax, GST, PAYE reconciliations, business tax, and income tax (where applicable) due from the company at the date hereinafter mentioned, and having become due and payable within twelve months next before that date, and all assessed taxes, land tax, property, GST, PAYE reconciliations, business tax, or income tax (where applicable) assessed on the company up to 5th April next before that date, and not exceeding in the whole one year’s assessment;
- (b) all wages and salary of any clerk or servant in respect of services rendered to the company due in respect of the whole or any part of the period of six months immediately prior to the relevant date.

(2) The debts listed in sub-section (1) shall–

- (a) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and
- (b) so far as the assets of the company available for payment of general creditors are insufficient to meet

them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

(3) Subject to the retention of such sums as may be necessary for costs and expenses of the winding-up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them.

(4) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next before the date of a winding-up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof, provided that in respect of any money paid under any such charge, the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

(5) The date referred to in this section is—

- (a) in the case of a company ordered to be wound-up compulsorily which had not previously commenced a voluntary winding up, the date of the winding-up order; and
- (b) in any other case, the date of the commencement of the winding-up.”.

20. Section 295(1)(b) of the principal Act is amended by deleting the phrase “Part XII” and substituting it with “Part XIII”.

Amendment of Section 295.

21. Section 309 of the principal Act is amended by—

Amendment of Section 309.

(a) repealing sub-sections (1) and (2) and replacing them with the following—

“(1) Subject to sub-section (2) where a company is struck off under this Act, its Registered Agent, manager, member, liquidator or other persons involved in the dissolution of the company shall retain accounting records and records and documents referred to in Sections 86 and 87 for a period of at least 5 years from the date on which the company was struck, dissolved or wound up.

(2) Where a company is wound up and dissolved under this Act, the liquidator who has been appointed shall retain the accounting records and records and documents referred to in Sections 86 and 87 for a period of at least 5 years from the date on which the company was dissolved.”; and

- (b) inserting the following new sub-section immediately after sub-section (3)–

“(4) The Registrar shall retain records for a period of at least 5 years from the date on which a company was struck, dissolved or wound up.”.

22. Section 313 of the principal Act is amended by–

Amendment of
Section 313.

- (a) repealing sub-section (10) and substituting the following–

“(10) A company that immediately prior to the commencement of this Act was registered under the Companies Act or the International Business Companies Act, shall have 12 months from the commencement of this Act within which to comply with the requirements of this Act.”; and

- (b) inserting the following new sub-sections immediately after sub-section (10)–

“(11) At the coming into force of this Act–

- (a) every person who immediately before was appointed a nominee director or nominee shareholder shall, within 30 days, file with the Registrar a declaration of his status as a nominee director or shareholder and disclosing the identity of his nominator, including his name and address and other particulars sufficient to identify the nominator; and

- (b) every person who immediately before was appointed as a nominee director or nominee shareholder and whose appointment as such ceased, shall, within 30 days, file with the Registrar a declaration that his nomination has ceased.

(12) Any person who contravenes sub-section (11) is guilty of an offence and liable to an administrative fine imposed by the Commission as set out in Regulations.”.