

CHAPTER 77

INTERNATIONAL BUSINESS COMPANIES

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CHAPTER 77

INTERNATIONAL BUSINESS COMPANIES

An Act to revise the law governing international business companies. 1991-24.
1998-35.
2001-29.

[1st March, 1992] Commence-
ment.
1992/20.

1. This Act may be cited as the *International Business Companies Act*. Short title.

2. (1) The purposes of this Act are to revise the law governing international business companies carrying on the business of international manufacturing or international trade and commerce from within Barbados with a view to Purposes of Act.

(a) encouraging the development of Barbados as a responsible international financial centre;

(b) provision of incentives by way of tax reduction, exemptions and benefits for international manufacturing and international trade and commerce from within Barbados.

(2) This Act shall receive such fair, large and liberal construction and interpretation as best ensures the attainment of its purposes.

3. (1) In this Act

"business" means any business, trade, manufacture, concern or adventure in the nature of trade or business;

"Caricom region" means the region comprised within the jurisdictional areas of the Member States of the Caricom Community established by the Treaty signed on the 4th day of July, 1973 at Chaguaramas;

"company" means a body corporate however and wherever incorporated;

Interpreta-
tion.

"foreign currency" means a currency that is foreign in every Member State which constitutes the Caricom region;

"international business" means the business of international manufacturing or international trade and commerce;

"international business company" means a company that satisfies the conditions set out in section 8 and holds a valid licence under this Act;

"international manufacturing" shall be construed in accordance with section 4;

"international trade and commerce" shall be construed in accordance with section 6;

"Minister" means the Minister responsible for Finance;

2001-29. "resident outside Barbados" means unless the context otherwise requires

- (a) in relation to an individual, someone who is not ordinarily resident in Barbados; and
- (b) in relation to a company, a company where more than 50% of all its issued shares of all classes, if any, or other ownership, are beneficially owned or controlled, whether directly or indirectly, by persons who are not ordinarily resident in Barbados;
- (c) in relation to a trust, where
 - (i) it is established by a person under paragraph (a) or (b), or
 - (ii) the trust is one in which a person referred to in sub-paragraph (i) has more than 50% of beneficial ownership;

"securities" means any deposits evidenced by an instrument in writing, shares, stocks, bonds, notes (other than promissory notes issued by individuals), debentures, debenture stock, units under a unit trust scheme and any other securities prescribed under section 29.

(2) For the purposes of this Act, an international business company shall be deemed to be resident in Barbados where that company is incorporated or registered under the laws of Barbados.

4. For the purposes of this Act, international manufacturing is the business of making, processing, preparing or packaging within Barbados any product which is exclusively for export.

International manufacturing.
2001-29.

5. A company which has held a licence under this Act shall not be eligible to apply to become an approved enterprise under the *Fiscal Incentives Act*.

Ineligibility:
Fiscal Incentives Act.
Cap. 71A.

6. (1) For the purposes of this Act, but subject to subsection (2), international trade and commerce is

International trade and commerce.

(a) the business of being a broker, agent, dealer, seller, buyer or factor within Barbados of goods existing outside Barbados or of goods to be trans-shipped through or from Barbados;

(b) the business of the selling of services which, if originating in Barbados, are to or for, or on account of, persons resident outside Barbados;

2001-29.

(c) the business of providing from within Barbados a prescribed service for a company carrying on an international business or for a company carrying on business in Barbados under an enactment referred to in section 7(2), other than a licensed bank referred to in paragraph (e) of that subsection; or

(d) subject to this Act, any other business carried on from Barbados.

(2) None of the activities provided for under the enactments specified in paragraphs (a) to (e) of section 7(2) constitutes international trade and commerce for the purposes of this Act.

7. (1) Subject to subsection (2), a company may apply to the Minister for a licence to carry on the business of an international business company if

Application for licence.

(a) the company

(i) is, on 1st March, 1992 carrying on, or

(ii) intends to carry on

from within Barbados the business of international manufacturing or international trade and commerce; and

(b) satisfies all the conditions set out in section 8.

(2) Subsection (1) does not apply to a company that carries on business

Cap. 325. (a) as a licensee under the *Off-shore Banking Act*;

Cap. 93B. (b) as a licensee under the *Caribbean Financial Services Corporation Act*;

Cap. 308A. (c) as a licensee or as a management company under the *Exempt Insurance Act*;

Cap. 59C. (d) as a licensee under the *Foreign Sales Corporation Act*;

Cap. 322. (e) as a licensed bank under the *Banking Act*;

Cap. 90A. (f) under the *Shipping Incentives Act*; or

(g) under any other prescribed enactment.

Conditions
for making
applications.

8. (1) A company shall not be granted a licence under this Act unless

(a) it is resident in Barbados;

(b) to (d) *Deleted by 1998-35*;

(e) the company satisfies the Minister by furnishing the Minister with such information as he may require that it is financially capable of carrying on the business of international manufacturing or international trade and commerce and of complying with any prescribed conditions.

(2) For the purposes of this section, an individual who is ordinarily resident in Barbados by reason only of an employer and employee relationship with a company licensed under this Act or any of the legislation referred to in subsection (2) of section 7 hereof other

than a licensed bank referred to in paragraph (e) of that subsection, shall not be deemed to be resident in Barbados.

9. (1) Where an application is approved by the Minister, he may issue a licence, subject to such conditions as he may specify in the licence and upon payment of the prescribed fee. Licence.

(1A) The Minister may by instrument in writing delegate the power conferred on him by this section, except the power referred to under paragraph (b) of subsection (4), to the Director or, in the absence of the Director, the Deputy Director of International Business; but the delegation shall not preclude the Minister from exercising at any time the power so delegated. 2001-29.

(2) No company granted a licence under this Act shall engage in any business other than international business.

(3) Unless cancelled under subsection (4), a licence remains in force until the 31st December of the year in which it was issued, and may be renewed before the 1st day of January in each year on payment of the prescribed fee.

(3A) A company that fails to renew a licence within the time required by this section shall, in addition to the fee payable by it under this Act, pay a penalty equal to that fee. 2001-29.

(3B) Notwithstanding subsection (1), a company that fails to renew its licence after one month from the date on which the fee payable for renewal becomes payable shall be treated as not being licensed under this Act. 2001-29.

(4) Subject to subsection (5), the Minister may by notice in writing cancel or refuse to renew a licence 2001-29.

(a) where the company

- (i) contravenes subsection (2),
- (ii) fails to comply with a condition of its licence or a condition set out in section 8,
- (iii) fails to comply with any requirement of this Act or any regulations made thereunder; or

(b) on the grounds of public policy.

(5) Where the Minister intends not to renew, or to cancel, the licence of a company, he shall give to that company notice in writing of his intention and the reasons therefor.

(6) A notice given under subsection (5) shall state that the company may within 21 days of service of the notice make representation in writing to the Minister as to why the Minister should not take the action intended.

(7) A person who is aggrieved by the cancellation of a licence or the failure to renew a licence under subsection (4) may, within 30 days after it is notified of the Minister's decision pursuant to subsection (6), apply to the High Court for an order requiring the Minister to revoke the cancellation of its licence or to renew its licence, as the case may be, and the Court may make such order as it thinks fit in the circumstances.

Special tax
provisions.
Cap. 73.

10. (1) Subject to this section and section 11, in lieu of tax at the rate specified under the *Income Tax Act*, there shall be levied and paid to the Commissioner of Inland Revenue, in respect of the income year 1991 and in each subsequent income year of an international business company, a tax on the profits and gains of the company at the following rates

(a) 2.5 per cent on all profits and gains up to \$10 000 000;

(b) 2 per cent on all profits and gains exceeding \$10 000 000 but not exceeding \$20 000 000;

(c) 1.5 per cent on all profits and gains exceeding \$20 000 000 but not exceeding \$30 000 000;

(d) one per cent on all profits and gains in excess of \$30 000 000.

(2) An international business company may elect to take a credit in respect of taxes paid to a country other than Barbados provided that such an election does not reduce the tax payable in Barbados to a rate less than one per cent of the profits and gains of the company in any income year.

(3) An international business company all of whose shares form part of the assets of a trust described in section 105 of the *Off-shore Banking Act*, shall not be subject to tax under that section or under the *Income Tax Act* on the profits and gains of that company if it is managed by an off-shore bank and if its activities are restricted to engaging exclusively in the business of buying, selling, holding or managing securities.

(4) Deleted by 2001-29.

(5) Deleted by 1998-35.

(6) Deleted by 2001-29.

11. An international business company shall not be liable to pay any tax under the *Income Tax Act* except as is provided by section 10 hereof in respect of an income year, nor shall it be liable under this or any other enactment to pay any other direct tax on its profits and gains in respect of that income year.

Exemption under *Income Tax Act*.
Cap. 73.

12. (1) Where an international business company requires the services of specially qualified individuals in order to carry out its business effectively from within Barbados and

Tax concessions for specially qualified persons.

(a) it is unable to acquire those services from within the Caricom Region; and

2001-29.

(b) it is unable to retain those services from outside Barbados without special tax concessions,

the Minister may grant a tax concession in respect of those specially qualified individuals who are resident outside of Caricom.

2001-29.

(2) The tax concession referred to in subsection (1) is one that allows a prescribed percentage of an employee's or contractor's salary or fees

(a) to be exempt from income tax in Barbados;

(b) to be paid in a foreign currency in a trust account without being liable to income tax in Barbados as to the amount paid or any interest earned thereon; or

(c) to be paid in some other prescribed manner in another currency or otherwise without being liable to income tax in Barbados,

Cap. 73. notwithstanding any provision of the *Income Tax Act* or the
Cap. 71. *Exchange Control Act*.

Dividends and other payments.
Cap. 73. **13.** (1) All dividends, royalties, interest, fees, management fees, paid or deemed to be paid by an international business company to a company carrying on international business or to a person resident outside Barbados are exempt from tax under the *Income Tax Act*.

(2) Subject to subsection (1), tax at the appropriate rate under the *Income Tax Act* shall be levied and is payable to the Commissioner of Inland Revenue upon any dividends, royalties, interest, management fees, fees, salaries, emoluments or other income paid or deemed to be paid by an international business company to a person resident in Barbados who does not carry on an international business.

Withholding tax. **14.** Notwithstanding the *Income Tax Act*, an international business company need not withhold any portion of the dividends, royalties, interest, management fees, fees or other income paid or deemed to be paid by an international business company to a person who is not resident in Barbados or who, if so resident, carries on an international business.

Transfer of assets. **15.** (1) No tax, duty or other impost shall be levied on an international business company, its shareholders or transferees in respect of any transfer of any securities or assets of the company, other than a transfer of taxable assets, to a person who is not resident

in Barbados or who, if so resident, holds a licence under section 9 to carry on international business.

(2) For the purposes of subsection (1), the following assets are taxable assets in the hands of an international business company, namely

- (a) real property situated in Barbados and held by or on behalf of the company; and
- (b) all office equipment, supplies, furnishings and fixtures, machinery, vehicles and equipment used in Barbados in carrying on the business and affairs of the company.

16. (1) Except as provided by this Act, an international business company shall not in the course of its business accept loans from, or otherwise transact business with, a bank licensed under the *Banking Act*.

Prohibition against accepting loans from or otherwise dealing with local banks. Cap. 322.

(2) Subsection (1) does not extend to preclude an international business company from holding a bank account with a licensed bank within the meaning of the *Banking Act*.

Cap. 322.

(3) Notwithstanding anything contained in this Act, an international business company may place fixed term deposits with a company or foreign bank that carries on the business of off-shore banking (within the meaning of the *Off-shore Banking Act*) within Barbados, and income derived from such deposits is subject to income tax at the rate specified in section 10(1).

Cap. 325.

17. Notwithstanding any enactment to the contrary, an international business company may keep in a foreign currency such books, records and financial statements as it is required to keep under the *Companies Act* and the *Income Tax Act*.

Authority to keep books and records in foreign currency. Cap. 308. Cap. 73.

18. (1) Section 11(2) of the *Exchange Control Act* does not apply in respect of a person who incorporates or registers or intends to incorporate or register in Barbados a company to obtain a licence under this Act and become an international business company.

Exchange Control. Cap. 71.

Cap. 71. (2) The *Exchange Control Act* does not apply to international business companies in respect of their international trade and commerce, and international manufacturing.

Cap. 316 not applicable to international business companies. **19.** The *Rate of Interest Act* does not apply to international business companies in respect of their international trade and commerce, and international manufacturing.

Machinery, equipment exempt from certain taxes and duties. **20.** (1) An international business company may import free of customs duty, consumption tax, *ad valorem* stamp duty and other like duties, taxes and imposts, such plant, machinery, equipment, fixtures, appliances, apparatus, tools and spare parts, and such raw materials, goods, components and articles, as is necessary for the company to carry on its international business.

(2) The goods referred to in subsection (1) may only be imported free of the duties, taxes and imposts referred to in that subsection where the Secretary or Managing Director of the company certifies to the Comptroller of Customs, in this Act referred to as the "Comptroller", that the goods are imported for use exclusively in the international business of the company.

(3) When an international business company imports under this section any materials, goods or articles free of any duty, tax or impost, those materials, goods or articles shall not be sold or disposed of in Barbados otherwise than in the ordinary course of the company's international trade and commerce, and international manufacturing, until after the expiration of 5 years from the date of importation, unless

- (a) the sale or disposition is to another international business company; or
- (b) the amount of duty, tax or other impost that would have been payable had subsection (1) or (2) not applied is first paid to the Comptroller of Customs and a certificate of such payment is issued by the Comptroller.

(4) Nothing imported or purchased free of any duty, tax or impost under this section by an international business company shall, without

the prior written approval of the Minister, be used for any purpose other than the purpose stated for customs when it was so imported or purchased unless it is subsequently acquired by another person pursuant to subsection (3).

(5) A person who contravenes any provision of this section commits an offence and is liable on summary conviction to a fine not exceeding \$10,000 or imprisonment for a term of 2 years, or both.

21. (1) An international business company which

(a) imports into Barbados from a country outside the Caricom region; or

(b) purchases within the Caricom region,

any article in respect of which it has been granted relief from customs duty under section 20 shall comply with subsection (2).

(2) An international business company referred to in subsection (1) shall

(a) keep a record of the articles so imported or purchased in such form and containing such particulars as the Comptroller requires;

(b) cause the articles to be marked in such manner as the Comptroller requires;

(c) permit the Comptroller or a person authorised by him for the purpose, to inspect at reasonable times such record, and to have access to any factory or warehouse under its control for the purpose of examining any such article which the Comptroller has reason to believe to be therein, and of satisfying himself of the accuracy of the particulars contained in the record.

(3) An international business company which contravenes any of the provisions of this section is guilty of an offence and liable on summary conviction to a fine of \$10 000.

22. (1) Notwithstanding section 152 of the *Companies Act*, an international business company is not required to file the financial statement or balance sheet and documents required to be filed with the Registrar of Companies under section 147 of that Act.

Record and inspection of machinery and equipment.

Filing of financial statement not required. Cap. 308.

1998-35. (1A) Notwithstanding subsection (1), an international business company shall forward to the Minister of Finance annual audited financial statements in the same manner and for the same period as required by section 147 of the *Companies Act* now.

Cap. 308. (2) An international business company, within the meaning of the *International Business Companies (Exemption from Taxes) Act*, in force immediately before the 1st March, 1992 that did not comply with section 147 of the *Companies Act* shall not after that date be required to comply with that section.

Savings. 23. Exempt to the extent that this Act operates to exempt an international business company from tax under the *Income Tax Act*, all the provisions of that Act apply, with necessary modifications to an international business company.

Cap. 73.

Exemption from stamp duty. 24. An international business company is exempt from *ad valorem* stamp duty except in respect of real estate situate in Barbados and shall pay a fixed duty as specified in the Schedule to the *Stamp Duty Act*.

Cap. 91.

Prohibition against disclosure. 25. (1) No person shall disclose any information relating to any application of a prospective licensee or to the affairs of a licensee, other than so far as such information forms part of the public record in the possession of the Registrar of Corporate Affairs, except when authorised by the prospective licensee or licensee to do so or when lawfully required to do so by a court of competent jurisdiction.

(2) A person who contravenes this section commits an offence and is liable on summary conviction to a fine of \$10,000 or imprisonment for a term of 2 years, or both.

Cap. 73. (3) This section does not apply to any person carrying out any duty imposed on him by the *Income Tax Act* or otherwise acting in pursuance of any international agreement to which Barbados is a party.

Compliance with *Companies Act*. 26. (1) Subject to subsection (2), a licensee which is not incorporated under the *Companies Act* shall comply with sections 155 and 164 of the *Companies Act* as if it had in fact been incorporated under that Act.

Cap. 308.

(2) A licensee whose assets or gross income do not exceed \$1 000 000 shall not be required to comply with the provisions of subsection (1).

27. (1) The Minister may by agreement give assurances or guarantees to an applicant for a licence that all or any of the benefits and exemptions contained in this Act will apply to that company for a period of 15 years on that company becoming a licensee. Guarantees
by Minister.

(2) An assurance or a guarantee referred to in subsection (1) is subject to negative resolution.

28. (1) Where an international business company Notice to
Minister.
(a) ceases to operate as an international business company, or
(b) ceases to satisfy any requirement of this Act or the regulations,
that company, shall, by notice in writing, inform the Minister of that fact.

(2) Where an international business company complies with subsection (1) or the Minister is otherwise informed of any fact referred to in paragraph (a) or (b) of that subsection, the Minister shall revoke that company's licence.

29. The Minister may make regulations Regulations.
(a) to provide information to be furnished for the purpose of applying for a licence to carry on business as an international business company;
(b) to prescribe securities for the purposes of this Act;
(c) to prescribe any other matter or thing required by this Act to be prescribed; and
(d) generally for carrying out the purposes of this Act.

30. (1) Where immediately before the 1st March, 1992 a company was operating under the provisions of the *International Business Companies (Exemption from Taxes) Act*, that company shall Transi tional.
Cap. 77.

within 180 days after that date or such further period as the Minister allows, apply for a licence in accordance with the provisions of this Act.

Cap. 77. (2) Subject to subsection (3), a company referred to in subsection (1) shall continue to be entitled to the benefits conferred by the *International Business Companies (Exemption from Taxes) Act*, as if that Act had not been repealed.

(3) The entitlement to benefits referred to in subsection (2) shall not continue

(a) beyond 180 days after the 1st March, 1992 or such further period as the Minister allows if an application for a licence is not made within that period, or

(b) where an application for a licence is made in accordance with subsection (1), beyond the date on which that application is approved or rejected.

(4) Where an application made in accordance with this Act is approved the company shall be entitled to benefits conferred under this Act from the date of approval.