

ANTIGUA AND BARBUDA
THE INTERNATIONAL BUSINESS CORPORATION (AMENDMENT) ACT, 2004

ARRANGEMENT OF SECTIONS

Section

1. Short title.
2. section 2 (Interpretation) amended.
3. section 65 (Disqualified directors) amended.
4. Section 316 amended.
5. Section 317 amended.
6. Section 359 A (Imposition and assessment of administrative penalty) amended.

ANTIGUA AND BARBUDA
NO. OF 2004
BILL FOR

AN ACT to amend the International Business Corporation Act, Cap. 222.

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ENACTED by the Parliament of Antigua and Barbuda as follows:

Short title. **1.** This Act may be cited as the International Business Corporation (Amendment) Act, 2004.

Section 2 **2.** The International Business Corporations Act Cap. 222, referred to in this (Interpretation) Act as the principal Act, is amended in section 2 as follows –
amended.

(a) by the insertion in its appropriate alphabetical order the following –

“Minister” means the Minister responsible for the portfolio of Finance.

(b) by the repeal of subsection 2(5).

Section 65 **3.** Section 65 of the principal Act is amended by the deletion of subsections (Disqualified (1) and (2) and by the substitution of the following –
directors)

amended.

“(1) The Board may, on the recommendation of the appropriate official, direct a corporation to effect changes in the composition of the corporation’s board of directors and

management if the Board considers that such a change is required to ensure that directors and officers of the corporation are fit and proper persons and have the skills commensurate with the size and nature of the activities of the corporation.

- (2) Any corporation that fails to comply with the directions of the Board under paragraph (1) commits an offence and on conviction is liable to a fine not exceeding twenty thousand dollars.”

Section 316 4. Section 316 of the principal Act is amended as follows –
amended.

- (a) by the repeal of subsections (4) and (5) and the substitution of the following –

“(4) The Commission shall, in performing its functions under this Act, take any necessary action, including but not limited to issuing any guidelines or directions required to ensure the integrity of the business corporations sector and failure to comply with such guidelines or directions shall be dealt with under section 359 A (1) (c) of this Act.

(5) The Commission shall be managed by a Board of Directors comprised of four persons appointed by the Minister after approval by the Cabinet.”

- (b) by the repeal of subsection 7 and the substitution of the following –

“(7) There shall be a secretary to the Board who shall be appointed by the Board, after consultation with the Minister. The secretary shall attend all meetings of the Board, record all the minutes of each meeting and perform any function which is necessary for the implementation of the work of the Board.”

- (c) by the addition immediately after subsection (13) of the following –

“(14) The officers and employees of the Commission shall be immune from legal process with respect to acts performed by them in their official capacity, except when the Commission waives this immunity.”

Section 317 5. Section 317 of the principal Act is amended as follows –
amended.

- (a) by the repeal of subsection (2) and the substitution of the following –

(2) The Minister may, on the recommendation of the Board, amend any regulations prescribing fees and any amendment which increases or introduces new fees shall be effective six months after publication in the Gazette.

(b) by the repeal of subsection (6) and the substitution of the following –

(6) The Commission shall pay forty percent of all revenue received from fees into the Consolidated Fund.

Section 359A 6. Section 359A of the principal Act is amended in subsection (1) by the insertion after the word “institution” the following –

(Imposition and assessment of administrative penalty) amended.

“or a director or officer of a corporation or a non-bank financial institution.”

Passed the House of Representatives

this day of 2004

Speaker

Clerk to the House of Representatives

Passed the Senate

this day of 2004

President

Clerk to the Senate

EXPLANATORY MEMORANDUM

This Bill seeks to amend the International Business Corporations Act to incorporate the Basel Core Principles 1(5), 14 and 22, which appear to be missing from the IBC Act.

The Basel Core Principles were established by the Basel Committee on Banking Supervision and has become the most important global standard for prudential regulation and supervision. A large majority of countries have endorsed these Principles.

Supervision of banks and other financial institutions will not be considered effective by the IMF and the World Bank unless the entire Basel Core Principles are endorsed and adopted.

The formation of a new Government as a result of the General Election on March 23 and the assignment of Ministerial portfolios by the Prime Minister has necessitated a change in the assignment of Ministerial responsibility of the Financial Services Regulatory Commission (FSRC) and consequently the Act which establishes the Commission. The Ministry of Foreign Affairs no longer has responsibility for the administration of the Act. Under the new arrangement the portfolio of the Financial Services Regulatory Commission (FSRC) now becomes the responsibility of Ministry of Finance.

Clause 2 proposes to remove from the Ministry of Foreign Affairs the functions which that Minister performs under the Act and transfer that responsibility to the Minister of Finance.

The Basel Core Principle 14 requires the Banking Supervisor to determine that Banks have in place internal controls that are adequate for the nature and scale of their business. To achieve a strong control environment, the Supervisor requires that the Board of Directors and senior management of banks understand the underlying risks in their business and are both committed to and legally responsible for the control of the environment.

For effective implementation of the Core Principle the Basel Committee on Banking Supervision recommended that the supervisor should have the legal authority to require changes in the composition of the board and management of financial institutions. The amendment in clause 3 is designed to give effect to Basel Core Principle No. 14.

The amendment in clause 4 is to give effect to the Basel Core Principle 1(5) which provides, among other matters, suitable legal framework for banking supervision, including legal protection for supervisors. In this regard, clause 4 would repeal subsection (4) of section 316 and provide the legal framework which will ensure protection to officers and employees of the Commission against anything done in the performance of duties assigned to them under the Act.

In subsection (5) of section 316, the Administrator is not only an ex-officio member of the Board but also exercises voting rights. It is proposed and recommended as a matter of policy that an employee of the board should not serve in the dual capacity as an employee and a policy maker. The Administrator's role as a technical and professional adviser to the Commission would be retained.

The Bill would propose in clause 4 that subsections (2) and (6) of section 317 be repealed and substituted with a different provisions. The objective is to change the existing policy with respect to the procedure of prescribing fees and the application of the revenues of the Commission. The new subsection (2) would authorize the Minister, after recommendation by the Board, to amend any regulation which prescribes fees. Under the existing provision, any amendment increasing fees should be published in the Gazette on or before the 30th June and should take effect on 1st January. The amendment would provide for any increases in or introduction of new fees to take effect six months after publication in the Gazette.

Section 317(6) authorizes the Commission to retain all revenues received from fees until expenses of effective regulations have been met before transferring the surplus to the Consolidated Fund.

While the Government recognizes the importance of effective regulation, it maintains that the purpose of promoting offshore business is to maximize the revenue base of the Government. The existing provision would appear to undermine the revenue maximization objective of the offshore business in Antigua and Barbuda. The amendment would therefore require the Commission to retain sixty percent of its revenues and pass on the remaining forty percent to the Consolidated Fund.

Clause 6 of the Bill would amend section 359A. Section 359A partially satisfies the Basel Core Principle 22, which recommends that supervisors should have adequate supervisory measures to enforce corrective action in a timely manner when banks fail to meet prudential requirements, such as minimum capital adequacy ratios, or regulatory violations, or where depositors are threatened in any other way.

The essential criteria of this principle is to compel compliance of prudential requirements by imposing administrative penalties on financial institutions which violate the requirements as well as on the management and/or the Board of Directors in appropriate cases. Clause 5 would give effect to the recommended Basel Core Principle.

Minister of Finance