

I assent,



CUTHBERT M SEBASTIAN

Governor-General.

2nd April 2004.

SAINT CHRISTOPHER AND NEVIS

No. 2 of 2004

AN ACT to amend the Companies Act, No. 22 of 1996 in order to make provision for segregated portfolio companies; and to provide for incidental or related matters..

BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the National Assembly of Saint Christopher and Nevis, and by the authority of the same as follows:

1. This Act may be cited as the Companies (Amendment) Act, 2004. Short title.
2. In this Act, unless the context otherwise requires, “Act” means the Companies Act, No. 22 of 1996. Interpretation.
3. The Companies Act, No. 22 of 1996 is amended by inserting immediately after PART XXV the following new part: Addition of new Part.

“PART XXVA - SEGREGATED PORTFOLIO COMPANIES

Interpretation.

195A. In this Part,

“segregated portfolio company”
means an exempted company
which is registered under section
195B(1);

“segregated portfolio shares”
means shares issued under
section 195E(1);

“segregated portfolio share capital”
means the proceeds of the issue
of segregated portfolio shares;

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“segregated portfolio share dividend” means a dividend paid under section 195E(3);

“receivership order” means an order made under section 195L(1); and

“receiver” means the person specified in a receivership order for the purposes specified in section 195L(3).

Applications
for registration.

195B. (1) Subject to section 195C, any exempted company may apply to the Registrar to be registered as an exempted segregated portfolio company.

(2) An application may also be made under subsection (1) at the same time as application is made

- (a) to re-register an ordinary non-resident company as an exempted company;
- (b) to register a company by way of continuation as an exempted company; or
- (c) to register as an exempted limited duration company.

(3) An application made under subsection (1) shall, in addition to any other fee that may be payable, be accompanied by a fee of one thousand three hundred and fifty dollars.

(4) A segregated portfolio company shall, on paying the annual fee payable under section 201, pay an additional fee of two thousand dollars together with an additional annual fee of three hundred dollars in respect of each segregated portfolio up to a maximum of four thousand and fifty dollars, both of which shall be tendered in accordance with section 201.(1) of the Act.

(5) A segregated portfolio company shall furnish to the Registrar a notice containing the names of each segregated portfolio it has created at the same time as it tenders the fee in accordance with subsection (4).

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(6) A segregated portfolio company which fails to furnish the notice in accordance with subsection (6) shall incur a penalty of twenty seven dollars for every day after the 31st March of each year during which the notice is not filed.

Conversions of
existing
Company.

195C. (1) Where an exempted company is registered prior to an application under section 195B (1), the company shall file with the Registrar a declaration made by at least two directors containing the information specified in subsection (2) and a statement of compliance with subsection (3).

(2) The declaration referred to in subsection (1) shall

- (a) set out an accurate statement of the assets and liabilities of the company as at a date within three months prior to the date of the declaration;
- (b) set out an accurate statement of any transaction or event which, as at the date of the declaration, has occurred or is expected to occur between the date of the statement of assets and liabilities prepared pursuant to subparagraph (i) and the date of registration of the company as a segregated portfolio company which, if it had occurred before the date of the declaration, would have caused material changes to the assets and liabilities disclosed in the declaration;
- (c) state how the segregated portfolio company intends to operate, and the assets and liabilities which the

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company proposes to transfer to each of those segregated portfolios;

- (d) state that, on registration as a segregated portfolio company, the company and each segregated portfolio will be solvent; and
- (e) state that each creditor of the company has consented in writing to transfer of assets and liabilities into segregated portfolios, or alternatively, that adequate notice has been given in accordance with subsection (4) to all creditors of the company and that ninety-five percent by value of the creditors have consented to that transfer of assets and liabilities into segregated portfolio.

(3) The company referred to in subsection (1) shall pass a special resolution authorising the transfer of assets and liabilities into a segregated portfolio and attach a copy of the resolution to the declaration referred to in subsection (1).

(4) For the purposes of subsection (2) (e), adequate notice is given if notice in writing is sent to each creditor having a claim against the company exceeding two thousand seven hundred dollars.

(5) A director who makes a declaration under this section without reasonable grounds, or who knowingly makes a false declaration, commits an offence and is liable, on summary conviction, to a fine of thirteen thousand five hundred dollars or to imprisonment for a term of one year.

Designation.

195D. A segregated portfolio company shall include in its name the letters “SPC” or the words

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“Segregated Portfolio Company”.

Segregated
portfolio.

195E. (1) A segregated portfolio company may create one or more segregated portfolios in order to segregate the assets and liabilities of the company held within or on behalf of any other segregated portfolio from

- (a) the assets and liabilities of the company held within or on behalf of any other segregated portfolio of the company; or
- (b) the assets and liabilities of the company which are not held within or on behalf of any segregated portfolio of the company.

(2) A segregated portfolio company shall be a single legal entity and any segregated portfolio of or within a segregated portfolio company shall not constitute a legal entity separate from the company

(3) Each segregated portfolio shall be separately identified or designated with the words “Segregated Portfolio”.

Shares and
dividends.

195F. (1) A segregated portfolio company may create and issue shares in one or more classes or series (including different classes or series relating to the same segregated portfolio) the proceeds of the issue of which shall be included in the segregated portfolio assets of and accounted for in the segregated portfolio in respect of which the segregated portfolio shares are issued.

(2) The proceeds of the issue of shares, other than segregated portfolio shares, shall be included in the segregated portfolio company's general assets.

(3) A segregated portfolio company may pay a dividend or other distribution in respect of segregated portfolio shares or any class or series and whether or not a dividend is declared on any other class or series of segregated portfolio shares or any other shares.

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(4) Segregated portfolio dividends or other distributions shall be paid on segregated portfolio shares by reference only to the accounts of and to and out of the segregated portfolio assets and liabilities of the segregated portfolio in respect of which the segregated portfolio shares were issued and otherwise in accordance with the rights of such shares.

Company to act on behalf of portfolio.

195G. (1) Any act, matter, deed, agreement, contract, instrument under seal or other instrument or arrangement which is to be binding on or to enure to the benefit of a segregated portfolio or portfolios shall be executed by or on behalf of the directors and on behalf of such segregated portfolio or portfolios as shall be identified or specified, and where, in writing, it shall be indicated that such execution is in the name of, or by, or for the account of, such segregated portfolio or portfolios.

(2) If a segregated portfolio company is in breach of subsection (1), the directors shall (notwithstanding any provisions to the contrary in the company's articles or in any contract with such company or otherwise) incur personal liability for the liabilities of the company and the segregated portfolio under the act, matter, deed, agreement, contract, instrument or arrangement that was executed.

(3) Notwithstanding subsection (2), the Court may relieve a director of all or part of his personal liability under subsection (2) if he or she satisfies the Court that he ought fairly to be so relieved on the ground that

- (a) he or she was not aware of the circumstances giving rise to his liability and that he was not fraudulent, reckless or negligent, and did not act in bad faith; or
- (b) he or she expressly objected, and exercised such rights as he or she has

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as a director, whether by way of voting power or otherwise, so as to try to prevent the circumstances giving rise to his or her liability.

(4) Any indemnity given by a segregated portfolio company in favour of a director in respect of a liability incurred by such director on behalf of a segregated portfolio, shall only be enforceable against the assets of the segregated portfolio in respect of which such liability arose.

(5) Any provision in the articles of a segregated portfolio company, and any other contractual provision under which the segregated portfolio company may be liable, which purports to indemnify directors in respect of conduct which would otherwise disentitle them to an indemnity by virtue of subsection (3)(b), shall be void.

Assets.

195H. (1) The assets of a segregated portfolio company shall be either segregated portfolio assets or general assets

(2) The segregated portfolio assets shall comprise of the assets of the segregated portfolio company held within or on behalf of the segregated portfolio of the company.

(3) The general assets of a segregated portfolio company shall comprise the assets of the company which are not segregated portfolio assets.

(4) The assets of a segregated portfolio shall comprise of

- (a) assets representing the share capital and reserves attributable to the segregated portfolio; and
- (b) all other assets attributable to or held within the segregated portfolio.

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(5) For the purposes of subsection (4), “reserves” includes profits, retained earnings, capital reserves and share premiums.

(6) It shall be the duty of the directors of a segregated portfolio company to establish and maintain (or cause to be established and maintained) procedures to

(a) segregate, and keep segregated

(i) portfolio assets separate and separately identifiable from general assets; and

(ii) portfolio assets of each segregated portfolio, separate and separately identifiable from segregated portfolio assets of any other segregated portfolio; and

(b) ensure that assets and liabilities are not transferred between segregated portfolio otherwise than at full value.

Segregation of assets.

195I. Segregated portfolio assets shall

(a) only be available and used to meet liabilities to the creditors of the segregated portfolio company who are creditors in respect of that segregated portfolio, and who shall thereby be entitled to have recourse to the segregated portfolio assets attributable to that segregated portfolio for such purposes; and

(b) not be available or used to meet liabilities to the creditors of the segregated portfolio company who are not creditors in respect

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of that segregated portfolio, and who accordingly, shall not be entitled to have recourse to the segregated portfolio assets attributable to that segregated portfolio.

Segregation of liabilities.

195J. (1) Where a liability of a segregated portfolio company to a person arises from a matter, or is otherwise imposed, in respect of or attributable to a particular segregated portfolio

- (a) such liability shall extend only to, and that person shall, in respect of that liability, be entitled to have recourse only to
 - (i) the segregated portfolio assets attributable to such segregated portfolio; and
 - (ii) unless specifically prohibited by the Articles of Association, the segregated portfolio company's general assets to the extent that the segregated portfolio assets are insufficient to satisfy the liability, and to the extent that the segregated portfolio company's general assets exceed any minimum capital amounts lawfully required by a regulatory body in the Federation; and
- (b) such liability shall not extend to, and that person shall not, in respect of that liability, be entitled to have recourse to the segregated portfolio assets attributable to any other segregated portfolio.

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(2) Where a liability of a segregated portfolio company to a person arises or is imposed otherwise than from a matter in respect of a particular segregated portfolio or portfolios, such liability shall extend only to, and that person shall, in respect of that liability, be entitled to have recourse only to the company's general assets.

General liabilities and assets.

195K. (1) Liabilities of a segregated portfolio company not attributable to any of its segregated portfolios shall be discharged from the company's general assets.

(2) Income, receipts and other property or rights of or acquired by a segregated portfolio company not otherwise attributable to any segregated portfolio shall be applied to and comprised in the company's general assets.

Winding-up of company.

195L. (1) Notwithstanding any statutory provision to the contrary, in the winding-up of a segregated portfolio company, the liquidator

- (a) shall deal with the company's assets only in accordance with the procedures set out in section 195H(6); and
- (b) in the discharge of the claims of creditors of the segregated portfolio company, shall apply the company's assets to those entitled to have recourse thereto under this Part.

Receivership Orders.

195M. (1) Subject to subsections (2), (3), (4) and (5) of this section, if in relation to a segregated portfolio company, a court is satisfied.

- (a) that the segregated portfolio assets attributable to a particular segregated portfolio of the company (when account is taken of the company's general assets, unless there are no creditors in respect of that

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segregated portfolio entitled to have recourse to the company's general assets) are or are likely to be insufficient to discharge the claims of creditors in respect of that segregated portfolio; and

- (b) that the making of an order under this section would achieve the purposes set out in subsection (3),

the court may make a Receivership Order under this section in respect of that segregated portfolio.

(2) A Receivership Order may be made in respect of one or more segregated portfolios.

(3) A Receivership Order shall direct that the business and segregated portfolio assets of or attributable to a segregated portfolio shall be managed by a Receiver specified in the order for the purposes of

- (a) the orderly closing down of the business of or attributable to the segregated portfolio; and
- (b) the distribution of the segregated portfolio assets attributable to the segregated portfolio to those entitled to have recourse to them.

(4) A Receivership Order

- (a) shall not be made if the segregated portfolio company is winding-up; and
- (b) shall cease to be of effect upon commencement of the winding-up of the segregated portfolio company, but without prejudice to prior

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acts of the Receiver or his or her agents.

(5) A resolution for the voluntary winding up of a segregated portfolio company of which any segregated portfolio is subject to a receivership order shall not be effective without leave of the court.

Applications
for
Receivership
Orders.

195N. (1) An application for a Receivership Order in respect of a segregated portfolio of a segregated portfolio company may be made by

- (a) the company;
- (b) the directors of the company;
- (c) any creditor of the company in respect of the segregated portfolio; or
- (d) any holder of segregated portfolio shares in respect of that segregated portfolio.

(2) A Court, upon hearing an application

- (a) for a Receivership Order; or
- (b) for leave, pursuant to section 195L(5), for a resolution for voluntary winding up,

may make an interim order or adjourn the hearing with or without conditions.

(3) Notice of an application to a court for a receivership order in respect of a segregated portfolio of a segregated portfolio company shall be served upon

- (a) the company; and
- (b) such other persons, if any, as the court may direct,

each of whom shall be given an opportunity to be heard before the order is made.

Powers and
functions of
receiver.

195O. (1) The Receiver of a segregated portfolio

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- (a) may do all such things as may be necessary for the purposes set out in section 195N(3); and
- (b) shall have all the functions and powers of the directors in respect of the business and segregated portfolio assets of or attributable to the segregated portfolio.

(2) The Receiver may, at any time, apply to the court

- (a) for directions as to the extent or exercise of any function or power;
- (b) for the Receivership Order to be discharged or varied; or
- (c) for an order as to any matter arising in the course of his or her receivership.

(3) In exercising his or her functions and powers, the Receiver shall be deemed to act as the agent of the segregated portfolio company, and shall not incur personal liability except to the extent that he or she is fraudulent, reckless, negligent, or acts in bad faith.

(4) Any person dealing with the Receiver in good faith shall not be concerned to enquire whether the Receiver is acting within his or her powers.

(5) When an application is made when a Receivership Order is still in operation, no suit, action or other proceedings shall be instituted against the segregated portfolio company in relation to the segregated portfolio in respect of which the Receivership Order was made except by leave of the court, which may be conditional or unconditional.

(6) During the period of the operation of a Receivership Order

- (a) the functions and powers of the directors shall cease in respect of the business of or attributable to, segregated portfolio assets of or attributable to, the segregated portfolio in respect of which the order was made; and
- (b) the Receiver of the segregated portfolio shall be entitled to be present at all meetings of the segregated portfolio company and to vote at such meetings of the segregated portfolio company, in respect of the general assets of the company, unless there are no creditors in respect of that segregated portfolio entitled to have recourse to the company's general assets.

Discharge of receivership orders.

195P. (1) A court shall not discharge a Receivership Order unless it appears to the court that the purpose for which the order was made has been achieved, substantially achieved or is incapable of achievement.

(2) A court, on hearing an application for the discharge or variation of a Receivership Order, may make any interim order or adjourn the hearing, conditionally or unconditionally.

(3) Upon a Court discharging a Receivership Order in respect of a segregated portfolio of a segregated portfolio company on the ground that the purpose for which the order was made has been achieved or substantially achieved, the court may direct

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that any payment made by the receiver to any creditor of the company in respect of that segregated portfolio shall be deemed full satisfaction of the liabilities of the company to that creditor in respect of that segregated portfolio, and the creditor's claims against the company in respect of that segregated portfolio shall be deemed extinguished.

Remuneration
of receiver.

195Q. The remuneration of a Receiver and any expenses properly incurred by him or her shall be payable, in priority to all other claims, from the segregated portfolio assets attributable to the segregated portfolio in respect of which the Receiver was appointed and not from any other assets of the segregated portfolio company.”

4. The Act is amended by inserting immediately after section 206 the following new section:

Amendment to
section 206 of the
Act.

“Exempt
company may
elect to pay
income tax.

206A. (1) Notwithstanding the provisions of section 206, an exempted segregated portfolio company which raises or generates from outside the Federation not less than $\frac{2}{3}$ of its own aggregate funds (including debt and equity and not less than $\frac{2}{3}$ of the aggregate funds held by it on behalf of investors may elect to pay income tax at the rate of 1% of its net profit.

(2) Notwithstanding anything to the contrary in subsection (2)(a) of section 206, any investment by the segregated portfolio company in debt instruments of the Government of Saint Christopher and Nevis or in the equity or debt of companies or other entities listed on the Eastern Caribbean Securities Exchange or any combination thereof shall not cause the segregated portfolio company to lose its exempt status or in any way affect the election of the company to pay income tax at the rate of 1% of its net profits.

(3) Once an exempted segregated portfolio company elects to pay income tax in

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accordance with the provisions of this section,
the election shall not be reversed.”.

WALFORD V GUMBS
Speaker

Passed by the National Assembly this 11th day of March, 2004.

JOSÉ LLOYD
Clerk of the National Assembly