

ANTIGUA AND BARBUDA



**THE INTERNATIONAL LIMITED LIABILITY COMPANIES ACT, 2007**

No. of 2007

**THE INTERNATIONAL LIMITED LIABILITY COMPANIES ACT, 2007**

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ANTIGUA AND BARBUDA

THE INTERNATIONAL LIMITED LIABILITY COMPANIES ACT, 2007

No. of 2007

AN ACT to provide for the establishment of International Limited Liability Companies.

ENACTED by the Parliament of Antigua and Barbuda as follows:

PART I - GENERAL PROVISIONS

1. Short title

This Act may be cited as the Antigua and Barbuda International Limited Liability Companies Act, 2007.

2. Definitions

In this Act unless the context otherwise requires:

“articles of organisation” means the initial articles of organisation as amended or restated from time to time;

“assignee” means a person who requires in any manner the ownership of an interest in a limited liability company but who has not been admitted as a member;

“beneficial owner” means a person who enjoys all the rights and benefits associated with the ownership of property or an interest in property but who may not necessarily be registered or listed as the legal owner of the property or interest;

“capital account” means an account that a company keeps for each member, that consists of the difference between

- (a) the fair market value of the member’s original capital contribution, any additional capital contribution and the member’s share of company’s profits; and
- (b) any distribution to the member of cash or other property, and the member’s share of company losses;

“capital contribution” means any valuable consideration transferred to a limited liability company as consideration for issuing an interest in it;

“Commission” means the Financial Services Regulatory Commission;

“court” means a court of law or equity having jurisdiction in any country;

“distribution” means a transfer of money, property or other benefit from a limited liability company calculated and transferred in respect of an interest in that company

- (a) to, or for the benefit of a member in the capacity as a member, or
- (b) to, or for the benefit of, an assignee of the member’s interest in the company;

“entity” means a body corporate or unincorporated, whether foreign or domestic;

“event of duress” means the occurrence of any of the following:

- (a) war or civil disturbance that directly or indirectly endangers or may endanger the safety of any money, investments, or property that may be included in or form part of company property;
- (b) political action anywhere in the world which directly or indirectly will or may endanger the safety of any money, investments, or property that may be included in or form a part of the company property, regardless of whether
  - (i) instigated by any government, political organisation, or individual, or
  - (ii) constitutionally defensible;
- (c) the enactment anywhere in the world of any law or measure that directly or indirectly will or may expropriate, sequester, or in any way control or prevent the free disposal by the company of any of the company’s money, investments, or property;
- (d) action or threat of action anywhere in the world by any government, or official purporting to act on the instructions and with authority of a government, which directly or indirectly will or may expropriate, sequester, or in any way control or prevent the free disposal by the company of any of the company’s money, investments, or property;
- (e) a claim or court order, or a threat of a court order that directly or indirectly will or may expropriate, sequester or in any way control or prevent the free disposal by the company of any of the company’s money, investments or property;
- (f) litigation or a threat of litigation anywhere in the world that directly or indirectly may result in a court order that directly or indirectly will or may
  - (i) expropriate, sequester, or in any way control or prevent the free disposal by the company of any of the company’s money, investments, or property; or
  - (ii) violate this Act;

“foreign limited liability company” means a limited liability company formed or continued under the laws of a jurisdiction other than Antigua and Barbuda for any lawful purpose that is characterized as a limited liability company by those laws;

“High Court” means the High Court having jurisdiction in Antigua and Barbuda;

“initial articles of organisation” means the articles of organisation filed with the Commission at the time a limited liability company is formed, including articles of organisation that are corrected to conform to the filing provisions of this Act;

“insolvency” means the filing of a petition in bankruptcy in a court having subject matter jurisdiction over the petition and personal jurisdiction over the debtor;

“interest”, with respect to a member of a limited liability company, means a member’s, ownership or other equity share, or a member’s share of the profits and losses of the company and the right to receive distributions;

“judgment creditor” means a creditor of a member of a limited liability company who has obtained a judgment against the member from the High Court;

“licensee” means a company authorised to conduct corporate management services under The Corporate Management and Trust Services Providers Act;

“limited liability company” or “LLC” means an unincorporated entity or association to which this Act applies, other than a trust or partnership that has limited liability for the debts of the entity;

“manager”, with respect to a limited liability company, means

- (a) a person whether or not a member, authorised in the operating agreement or articles of organisation to manage the limited liability company, either to perform management duties generally or to perform certain management duties as specified in the operating agreement;
- (b) each of the members of the company, to the extent management duties are assigned to the members in the operating agreement;

“member” means

- (a) person who is admitted as a member of a limited liability company pursuant to this Act, until an event of withdrawal occurs with respect to the person; and
- (b) in the case of a foreign limited liability company, a member admitted in accordance with the laws of the foreign jurisdiction under which the limited liability company is organised;

“Minister” means the Minister of Finance;

“operating agreement” means

- (a) the written agreement among all members concerning the affairs of a limited liability company or the conduct of its business;
- (b) in the case of a limited liability company that has a single member, any written statement of the member in good faith purporting to govern the affairs of a limited liability company or the conduct of its business;

“person” means an individual or incorporated association;

“registered agent” with respect to a limited liability company, means a licensee that provides services to the company;

“registered mail” means any form of mail that enables a person to track the mail or be issued a receipt on delivery but it does not include electronic mail;

“succession committee” means a committee of one or more members of the limited liability company, appointed by the manager pursuant to Part VI;

“transfer” with respect to a member’s interest in a limited liability company, means voluntary transfer and does not involuntary transfer, transfer by inheritance other than by specific bequest, or transfer by operation of law.

### **3. Application**

This Act applies to limited liability companies formed under, subject to or continued under this Act.

### **4. Form and filing of documents**

(1) Subject to the laws of Antigua and Barbuda, a document that must be filed with the Commission under this Act must comply with this section.

(2) A document must be

- (a) in English, except that the company name may be in another language if written in English letters or characters; or
- (b) accompanied by an English translation, if the document is not in English.

(3) A document must be signed by the registered agent or a manager duly authorised by the limited liability company to sign it on behalf of the limited liability company, or by another person to whom that authority has been duly delegated by the manager in whom the authority resides.

(4) When this Act requires a document to be acknowledged,

- (a) the person signing it shall acknowledge that it is that person’s act and deed or that it is the company’s act and deed, as the case may be; and
- (b) the document shall be acknowledged before a notary public, commissioner for oaths or other person authorised to take acknowledgements, who shall attest that he or she knows the person making the acknowledgment to be the person who executed the document.

(5) When this Act requires a document to be filed with the Commission,

- (a) an original and a duplicate copy of the signed document together with the appropriate fee shall be delivered to the Commission;
- (b) upon delivery, together with the required fees, the Commission shall certify that the instrument has been filed in its office by endorsing the word “Filed” and affixing the date on the original document;
- (c) the Commission shall ensure that the document conforms to this Act and shall compare the duplicate copy with the original signed and acknowledged document, and if it finds that the text is identical shall affix on the duplicate copy the same endorsement of filing as affixed on the original;
- (d) the Commission shall retain the signed original in its files and return the duplicate copy to the Registered Agent;
- (e) the endorsement constitutes a certificate from the Commission that the document is a true copy of the document filed and that it was filed as of the date stated in the endorsement;
- (f) any document filed in accordance with this subsection shall be effective as of its filing date; and

- (g) no person is affected by or is presumed to have notice or knowledge of the contents of a document concerning a limited liability company by reason only that the document has been filed with the Commission and is available for inspection at an office of the limited liability company.

(6) If the Commission is unable to make a determination that a document conforms to this Act at the time it is delivered for filing, the document is deemed to have been filed at the time of delivery if the Commission subsequently determines that

- (a) the document as delivered conforms to this Act; or
- (b) within twenty days after the Commission gives notification of nonconformity to the person who delivered the document for filing, the documents are brought into conformity.

(7) If the document is not brought into conformity within the twenty days, it shall be deemed filed on the date of conformity without regard to when it was delivered for filing, and shall be so endorsed by the Commission.

(8) A document may specify a delayed effective time or date and is effective at that specified time and date. If the document specifies a delayed effective date but does not specify the time, the document is effective on the specified date at 12:01 a.m. A delayed effective date for a document may not be later than the ninetieth day after the date the document is delivered to the Commission for filing.

(9) A limited liability company may correct a document filed with the Commission under this Act with respect to an error apparent on its face or defect in its execution by filing with the Commission a certificate of correction, executed and acknowledged in the manner required for the original document. The certificate of correction shall specify the error or defect to be corrected and shall set forth the portion of the instrument in correct form. The corrected instrument when filed shall be effective as of the date the original instrument was filed.

## **5. Certificates or certified copies as evidence**

All certificates issued by the Commission in accordance with this Act and all copies of documents filed in its office in accordance with this Act shall, when certified, be taken and received in all courts, public offices and official bodies within Antigua and Barbuda as prima facie evidence of the facts stated in them and of their execution.

## **6. Annual registration fee**

Every limited liability company shall pay to the Commission an annual fee and any other fees prescribed in the regulations.

## **7. Notice to members**

Any notice or information required to be given to members shall be provided in the manner designated in the company's operating agreement or, if the notice can no longer be provided as required by the agreement, the notice shall be published in a publication of general circulation in Antigua and Barbuda and in the location of the office of its registered agent. A member may waive a notice or information required to be given to members by delivering a written waiver of notice to the manager.

## **8. Records and members' inspection rights**

(1) A limited liability company shall keep at the office of its registered agent, or at another place to which the registered agent has access:

- (a) a current list of the full name and last known business, residence or mailing address of each member and manager;
- (b) a copy of the initial articles of organisation and all amendments;
- (c) a historical and a current copy of its operating agreement and all amendments;
- (d) a copy of any agreements relating to capital contributions;
- (e) a copy of membership certificates issued;
- (f) an impression of any limited liability company seal; and
- (g) any other documents required by regulations to be kept by the registered agent.

(2) Each member and manager of a limited liability company has the right, subject to reasonable standards specified in the operating agreement or otherwise established by the manager, or if there is no manager, by the members, to

- (a) inspect and copy the limited liability company records required to be maintained by this section; and
- (b) inspect and copy other information regarding the affairs of the limited liability company for any purpose reasonably related to the member's interest.

## **9. Purposes**

A limited liability company may be organised under this Act for any lawful business or other purpose, including, without limitation, the rendering of professional services by or through its members, managers, officers or agents, subject to any licensing or registration requirements applicable in any jurisdiction in which the services are rendered or in which the persons are licensed or registered.

## **10. General powers**

Subject to this Act and any other law of Antigua and Barbuda, its articles of organisation and its operating agreement, every limited liability company shall have the same powers as a natural person to do all things necessary or convenient in furtherance of its purposes irrespective of company benefit and whether or not enumerated in its articles of organisation.

## **11. Disputes**

(1) Any disputes between or among parties to an operating agreement or between or among the members and managers of a limited liability company to which this Act applies shall be resolved by the High Court and any appellate court having jurisdiction over Antigua and Barbuda.

(2) Subject to this Act, a court shall resolve any dispute between the members or managers or the limited liability company and a third person or persons.

**PART II – FORMATION AND ARTICLES OF ORGANISATION****12. Formation**

(1) One or more persons domiciled in Antigua and Barbuda may form a limited liability company under this Act by signing and filing articles of organisation with the Commission. The person need not be a member of the limited liability company at the time of formation or after formation.

(2) No domiciliary of Antigua and Barbuda shall be a beneficial owner of a membership interest in a limited liability company formed, registered or continued under this Act.

**13. Duration**

A limited liability company formed under this Act continues perpetually, unless otherwise provided in its articles of organisation, or until the limited liability company is dissolved and terminated in accordance with this Act.

**14. Company name**

(1) Except as otherwise provided in this section, the name of a limited liability company

- (a) shall contain the words “limited liability company” or “limited company” or the abbreviation “LLC”, “L.L.C.”, “LC” or “L.C.”;
- (b) shall not be the same as or substantially similar to the name of a limited liability company or of any other company of any kind, as that name appears on the index of names of existing limited liability companies or on the reserved name list maintained by the Commission or a name so similar to any such name as to tend to confuse or deceive; and
- (c) shall not be a name prohibited by another Act or by a regulation.

(2) This section shall not prevent a limited liability company from having the same name as another limited liability company existing under the laws of Antigua and Barbuda if the company

- (a) merges with the other limited liability company;
- (b) and the other limited liability company form a company by the organisation or consolidation of one or more domestic or foreign limited liability companies, including the other limited liability company; or
- (c) acquires all or substantially all the assets of the other domestic limited liability company, including its name.

(3) The name of a limited liability company shall not imply a connection with any Antigua and Barbuda government department, agency, authority or branch, any political party or any university of professional association recognised by the laws of Antigua and Barbuda.

**15. Register of names**

The Commission shall keep an alphabetical index of all reserved names and the names of all limited liability companies subject to this Act together with those other names required to be kept by the Commission by another law.

**16. Reservation of name**

(1) A licensee may reserve a name with the Commission in accordance with this section if the reservation is made in good faith for subsequent use in formation of a limited liability company under this Act or for use in changing the name of a limited liability company already subject to this Act.

(2) A name may be reserved by a foreign limited liability company which has filed for a transfer of domicile but shall not be subject to the time limitation and fee requirements of this section.

(3) An application to reserve a name shall be delivered to the Commission together with the required fee, setting forth

- (a) the name or names to be reserved in order of preference;
- (b) the name and address of the licensee submitting the application;
- (c) whether the application is for a renewal of an already reserved name;
- (d) the type of business the limited liability company proposes to carry on, if any;
- (e) any derivation of the name to be reserved;
- (f) if the application is for a name change, the present name of the company; and
- (g) whether the application is for a foreign limited liability company that has filed for a transfer of domicile.

(4) Provided the name to be reserved is available for use, the Commission shall enter the name upon the reserved name list and issue a certificate of name reservation in the name of the applicant or in the name designated by the applicant, setting forth

- (a) the information contained in the application;
- (b) the date the name was entered on the reserved name list, and
- (c) a statement that the certificate is non-transferable.

(5) Beginning on the date the name was entered on the reserved name list, the name reserved is maintained on the list by the Commission and shall not be used except by the person in whose name the certificate of name reservation has been issued.

(6) The reservation shall terminate on the expiration of one hundred and twenty days after the date the name was entered on the list, unless sooner renewed.

(7) Upon payment of the required fees, the reservation shall be renewed with the Commission for no more than two periods of one hundred and twenty days each. An appropriate receipt for the required fees shall be presented along with the certificate of name reservation as proof of the extension of the reservation.

(8) The certificate of name reservation and any renewals shall be submitted to the Commission at the time the name reserved is used by the person in whose name the certificate has been issued.

**17. Contents of articles of organisation**

(1) The articles of organisation shall state

- (a) the name of the limited liability company;
- (b) the name, address and signature of the registered agent;
- (c) the name and address of the person who signed the articles of organisation;
- (d) the latest date, if any, on which the limited liability company must dissolve, or be terminated; and
- (e) any restrictions on the business that the limited liability company may carry on.

(2) The articles of organisation shall also make one of the following statements:

- (a) management of the limited liability company is vested in a manager or managers; and
- (b) management of the limited liability company is reserved to the members.

(3) The articles of organisation may include any other provision that is consistent with the law, including any provision that under this Act is required or permitted to be set out in an operating agreement of the limited liability company.

### **18. Execution and filing of articles of organisation**

Two copies of the articles of organisation shall be signed by the person or persons forming the limited liability company and filed with the Commission.

### **19. Date limited liability company comes into existence**

(1) A limited liability company is formed

- (a) when the articles of organisation are delivered to the Commission for filing, if all the provisions for filing are satisfied; or
- (b) at the time when all the documents are brought into conformity.

(2) When a company is formed under this Act, the Commission shall issue a certificate of organisation and the date on the certificate, or another date fixed in accordance with section 4, shall be the date of the articles of organisation.

(3) A copy of the certificate of organisation marked with the filing date is conclusive evidence that all conditions precedent required to be performed by the organisers have been complied with and that the limited liability company has been legally organised and formed under this Act.

### **20. Notice of existence of limited liability company**

Articles of organisation that are on file with the Commission constitute notice that the limited liability company is a limited liability company validly formed under this Act.

### **21. Amendment of articles of organisation**

(1) The registered agent of a limited liability company may file an original and one copy of articles of amendment with the Commission, signed on behalf of the limited liability company by the registered agent, setting forth

- (a) the name of the limited liability company, and if it has been changed, the name under which it was formed;
- (b) the date the initial articles of organisation were filed; and
- (c) the amendment to the articles of organisation.

(2) A limited liability company shall file articles of amendment within thirty days after any information in its articles of organisation has changed.

(3) A limited liability company may amend its articles of organisation if its articles of organisation as amended contain only provisions that may be lawfully contained in the articles of organisation at the time of making the amendment, including

- (a) to change the name of the limited liability company;
- (b) if management is vested in the members, to vest management of the limited liability company in one or more managers; or vice-versa; and
- (c) to make changes to its articles of organisation in respect of restrictions on the business it may conduct or to change the date on which it must dissolve or be terminated.

(4) No amendment shall affect any existing cause of action in favour of or against the limited liability company, or any pending suit to which it is a party, or the existing rights of members, or persons other than members.

(5) No suit brought by or against a limited liability company, or judgment obtained against it under its name before its name is amended shall abate by reason of the change of name.

### **22. Restated articles of organisation**

(1) At any time after its articles of organisation have been amended, a limited liability company may, by action of its managers, without necessity of a vote of the members, cause to be prepared restated articles of organisation consisting of the initial articles of organisation or articles of consolidation and all amendments, including those effected by articles of merger.

(2) The restated articles of organisation shall be executed and filed in the same manner as articles of amendment.

(3) Restated articles of organisation shall be specifically designated as such in the heading and shall state either in the heading or in an introductory paragraph the limited liability company's present name, and, if it has been changed, all of its former names and the date of the filing of its initial articles of organisation.

(4) The restated articles shall also state that they are merely restating and not changing the provisions of the initial articles of organisation as amended and that there is no discrepancy between the initial articles as amended and the restated articles.



**23. Registered agent for service of process**

(1) A limited liability company to which this Act applies shall at all times have a registered agent in Antigua and Barbuda, in default of which the company shall be dissolved and struck from the register.

(2) Service of process on a registered agent may be made as provided by the laws of Antigua and Barbuda for the service of process.

(3) A registered agent may resign upon filing a written notice, executed in duplicate, with the Commission, which shall cause a copy to be sent by registered mail to the limited liability company at the address of the office of the company, or if none, at the last known address of a manager or member.

(4) The designation of the registered agent shall terminate on the expiration of thirty days after the sending of the copy of the notice or sooner if a successor agent is designated.

(5) No designation of a new registered agent shall be accepted for filing unless all charges owing to the former agent and to the government of Antigua and Barbuda have been paid.

(6) A designation of a new registered agent may be made, revoked, or changed by the limited liability company by filing an appropriate notification with the Commission.

(7) A registered agent, when served with process, notice or demand for the limited liability company which he or she represents shall transmit it to the company by personal notification or in the following manner:

- (a) upon receipt of the process, notice or demand, the registered agent shall cause a copy of it to be mailed to the company at its last known address, and to a manager at his or her last known address, and if no manager, to a member at his or her last known address;
- (b) as soon after the mailing as possible, the registered agent shall file with the clerk of the court issuing the process the receipt for the mailing or an affidavit stating that the mailing has been made
  - (i) signed by the registered agent, or
  - (ii) if the agent is a corporation, by a properly designated officer of the agent.

(8) Compliance with this section relieves the registered agent from any further obligation to the limited liability company for service of the process, notice or demand, but the agent's failure to comply with the provisions of this section does not affect the validity of the process, notice or demand.

**PART III – RELATIONSHIP OF LIMITED LIABILITY COMPANY AND MEMBERS TO THIRD PERSONS****24. Liability to third parties**

(1) The limited liability company is solely liable for its own debts, obligations and liabilities.

(2) Notwithstanding any other law, unless liability for limited liability company debts, obligations or liabilities has been assumed by the person against whom liability is asserted pursuant to subsection (3), no manager, officer, member, employee or agent of a limited liability company, or other person, is liable for

- (a) the limited liability company's debts, obligations or liabilities, whether arising in contract, tort or otherwise, solely by reason of being a manager, officer, member, employee or agent of the limited liability company, or
- (b) the acts or omissions of any other manager, officer, member, employee or agent of the limited liability company.

(3) Any member or manager may assume, by written contract, liability for any or all debts and obligations of the limited liability company.

(4) All persons who act for a limited liability company under apparent authority to do so, but without actual authority to do so, including members who are not authorised to act as managers, are jointly and severally liable for all debts and liabilities arising from their actions.

(5) Notwithstanding any other law, unless liability for the debts of the members or managers of a limited liability company has been expressly assumed by the company, it is not liable for the debts of the members or managers whether arising in contract, tort or otherwise.

(6) A claim under this section must be brought before the expiration of two years from the date of the occurrence of the action forming the basis of the claim.

(7) Nothing in this section shall be interpreted as limiting the criminal liability of any person under any criminal statute.

**25. Limited liability company as a separate legal entity**

(1) No action or proceeding shall be entertained by the High Court which purports to disregard that a limited liability company is a valid, separate and distinct legal entity.

(2) Notwithstanding any other law, the fact that a limited liability company is or may be closely affiliated with other entities, whether foreign or domestic, is not grounds for disregarding the separate existence of the limited liability company.

**26. Limited liability company property**

Real property and personal property owned by a limited liability company is held, or owned and may be conveyed only in the name of the limited liability company. A member has no interest in the property of a limited liability company, and property of a limited liability company is not available to satisfy any claim or judgment against a member.

**27. Rights of judgment creditors of a member**

(1) The High Court has exclusive jurisdiction to resolve claims

- (a) by a judgment creditor against or to a member's interest in a limited liability company; and
- (b) for a charging order against a member's interest.

(2) On application to the High Court by a judgment creditor of a member of a limited liability company, the court may charge the member's interest with payment of the unsatisfied amount of the judgment with interest and the judgment creditor has only the rights of an assignee of the member's interest to the extent of the charge.

(3) Notwithstanding any other law, the remedy provided by subsection (2) is the only remedy available to a judgment creditor of a member with respect to the member's interest.

(4) If an application is brought to charge the interest of a member under this section, service of process must be made upon the registered agent of the limited liability company in accordance with the laws of Antigua and Barbuda.

## 28. Fraudulent conveyance

(1) Where it is proven beyond a reasonable doubt by a judgment creditor

- (a) that property transferred to the limited liability company by a member was so transferred by or on behalf of the member with the actual and specific intent to defraud that particular judgment creditor,
- (b) that the member has not presented any supervening legitimate purpose for such transfer, and
- (c) that the member was insolvent at the time of the transfer,

the transfer is not void or voidable, but the limited liability company is liable to satisfy the creditor's claim to the extent of the interest that the member had in the property prior to transfer including any accumulation to the property after the transfer.

(2) A transfer to a limited liability company is not fraudulent as against a particular creditor of a member if the transfer takes place after the earlier of

- (a) the expiration of one year from the date of the transfer to the limited liability company; and
- (b) two years after the earliest cause of action arose.

(3) Where a limited liability company is liable to satisfy a creditor's claim under subsection (1), the creditor's rights to recovery shall be limited to the property transferred to the limited liability company or to the proceeds of that property.

(4) For the purposes of this section, the burden of proof of the member's intent to defraud the creditor lies with the creditor.

(5) This section applies to all fraudulent conveyance actions and proceedings brought in any court in Antigua and Barbuda, however described, against any person relating to a limited liability company.

(6) The remedy set out in subsection (1) is the only remedy available in such a proceeding.

(7) A creditor who does not present all claims arising out of any controversy and join all parties with a material interest may not present those claims or bring an action against those parties in a subsequent proceeding.

(8) Every creditor shall, before bringing an action or proceeding against a limited liability company property governed by this Act, deposit with the court registry an amount equal to one-quarter of the amount claimed, in order to secure the payment of any costs that may become payable by the creditor.

(9) For the purposes of this section,

"creditor" means a person who has obtained a judgment from the High Court for specified monetary damages;

"entity" means an incorporated association owned by one or more persons that have limited liability for the debts of the business, including a trust or foundation, that is formed or continued under the laws of any jurisdiction;

"insolvent" means that immediately after the transfer of the property to the limited liability company, the member's liabilities exceeded his or her assets taking into consideration the fair market value of those assets and liabilities at that time;

"intent to defraud" means where an individual acts wilfully, and with the actual specific intent to deceive or cheat, for the purpose of causing financial loss to the creditor bringing the action, or to bring some financial gain to himself or herself, but the intent to defraud a creditor is not to be imputed by reason only that the transfer

- (a) was made to an insider or related party,
- (b) was made without consideration, or
- (c) made the member insolvent;

"transfer" means the conveyance or disposition of property from one person to another or the settlement or initial contribution to an entity, but does not include transfer in exchange for capital interest in a limited liability company.

## 29. Statute of Elizabeth

The enactment titled 13 Elizabeth 1 Ch 5 (1571) does not apply to a limited liability company to which this Act applies.

## 30. Foreign judgments not enforceable

(1) Notwithstanding any treaty, convention, statute, or rule of law or equity to the contrary, no proceedings for or in relation to the enforcement or recognition of a judgment obtained in a jurisdiction other than Antigua and Barbuda against a limited liability company to which this Act applies or any manager or member of such a limited liability company in relation to matters governed by this Act shall be entertained by any court in Antigua and Barbuda.

(2) For the purposes of this section, a judgment obtained in a jurisdiction other than Antigua and Barbuda does not include a judgment rendered in an appellate court not located in Antigua and Barbuda that relates to an action commenced in a court in Antigua and Barbuda.

## 31. Parties to actions

Except as otherwise provided in this Act, a member of a limited liability company, solely by reason of being a member, is not a proper party to proceedings by or against a limited liability company unless the object is to enforce a member's right against or liability to the limited liability company.

**32. Limited liability company as proper party to action**

(1) The limited liability company is a proper plaintiff in a suit to assert its legal rights and a proper defendant in a suit asserting a legal right against it.

(2) The naming of a member, manager, or employee of the limited liability company is subject to

- (a) a motion to dismiss, if the member, manager or employee is the sole party to sue or defend; or
- (b) A motion for misjoinder if he or she is joined with another party who is a proper party and has joined only to represent the limited liability company.

**PART IV – CONTRIBUTIONS AND DISTRIBUTIONS****33. Capital contributions**

(1) An interest in a limited liability company may be issued in exchange for a capital contribution, an enforceable promise to make a capital contribution in the future, or a promise to perform services.

(2) Unless otherwise provided in an operating agreement, the agreement or consent of all of the members is necessary to fix or modify the amount and character of the capital contribution that a member makes or promises to make in exchange for an interest in the limited liability company.

(3) The capital contributions of a member are to be credited to his or her capital account.

(4) The operating agreement may provide that a capital account be maintained in accordance with income tax principles.

**34. Liability for contributions**

(1) A promise by a member to make a capital contribution to the limited liability company is not enforceable unless set out in writing and signed by the member.

(2) Unless otherwise provided in an operating agreement, a member or his or her estate is obligated to the limited liability company to perform any enforceable promise to make a capital contribution, including a promise to perform services, even if the member is unable to perform because of death, disability or any other reason.

(3) If a member does not make a capital contribution when due, the member is obligated at the option of the limited liability company, in addition to and not in lieu of any other rights that the limited liability company has against the member under the articles of organisation or operating agreement, to

- (a) contribute cash equal to the value of that portion of the promised capital contribution that has not been made; or
- (b) forfeit his or her membership interest.

(4) Except as provided in an operating agreement, a member's obligation to make a capital contribution may be compromised or released only with the written consent of all members.

(5) The obligation to make a capital contribution is not assignable to or enforceable by a third party creditor of the limited liability company or any other party unless the member has specifically agreed or consented to the assignment or enforcement in writing.

(6) On the failure of a member to make a capital contribution when due, the limited liability company may enforce the member's obligation by appropriate legal action for damages for breach of contract or for specific performance, and the limited liability company may exercise and enforce additional rights and remedies provided under an operating agreement in the event of any such failure, including the termination of a member's interest, but subject to the applicable law regarding the enforcement of contracts.

**35. Interim distributions**

(1) A limited liability company may make distributions of cash or other property to its members before the dissolution and winding up of the limited liability company to the extent, and at the times, or on the occurrence of the events, specified in an operating agreement, or if an operating agreement does not so specify, pursuant to this Act.

(2) Distributions of cash or other property to members from a limited liability company before the dissolution and winding up of a limited liability company shall be shared among the members and among classes of members in the manner provided in an operating agreement and if an operating agreement does not so provide, distributions shall be shared among the members in the following order:

- (a) distributions shall be shared among the members in proportion to their respective capital accounts; and
- (b) other distributions shall be shared by the members in proportion to their respective membership interests.

(3) For the purposes of subsection (2), a capital contribution other than a cash contribution has the value determined in the manner set out in the operating agreement. If an operating agreement does not specify the value of any such capital contribution and does not prescribe a manner for determining its value:

- (a) the value of a capital contribution of a promise to perform services is zero;
- (b) the value of a capital contribution of real or personal property other than cash is the fair market value of the property at the time of its transfer to the limited liability company;
- (c) the value of a capital contribution of the use of property is the fair market value of the use of the property during the period that the limited liability company enjoys possession or use of the property;
- (d) the value of a promise to make a cash contribution at some time in the future is zero until the cash is actually contributed; and
- (e) the value of any other capital contribution is zero.

(4) For the purposes of this section, the term "distribution" does not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program.

**36. Distribution in kind**

- (1) Except as otherwise provided in an operating agreement,
  - (a) a member, regardless of the nature of the member's contribution, has no right to demand and receive a distribution from a limited liability company in any form other than cash; and
  - (b) a member may not be compelled to accept a distribution of any property other than cash from the limited liability company unless the member receives an undivided ownership interest in the property that is in the same percentage as he or she would have shared in a cash distribution equal to the value of the property at the time of distribution.

**37. Status as a creditor**

At the time a member becomes entitled to receive a distribution, the member has the status of and is entitled to all remedies available to a creditor of the limited liability company with respect to the distribution.

**38. Limitation on distributions**

(1) A limited liability company shall not make a distribution to a member to the extent that, at the time of the distribution, after giving effect to the distribution, the liabilities of the limited liability company would exceed the fair value of the assets of the limited liability company, except that

- (a) liabilities to members and former members shall be excluded;
  - (b) liabilities for which the recourse of creditors is limited to specified property shall be excluded, provided the fair value of the property is reduced by the recourse liability; and
  - (c) contingent liabilities shall be excluded.
- (2) The limited liability company may base a determination that a distribution is not prohibited under subsection (1) on
- (a) financial statements prepared on the basis of generally accepted accounting principles (GAAP) and principles that are reasonable in the circumstances;
  - (b) a fair valuation or other method that is reasonable in the circumstances; or
  - (c) an analysis of contingencies that is reasonable in the circumstances.
- (3) The effect of a distribution under subsection (1) is measured
- (a) as of the date the distribution is authorised, if the payment occurs within one hundred and twenty days after the date of authorisation; or
  - (b) as of the date the payment is made, if it occurs more than one hundred and twenty days after the date of authorisation.

(4) If a member receives a distribution with respect to his or her interest in a limited liability company in violation of this Act or an operating agreement, he or she is liable to the limited liability company for a period of two years for the amount of the wrongful distribution. An action to recover a wrongful distribution may be brought in any court of competent jurisdiction so long as it is commenced within this period.

**39. Distributions on withdrawal**

(1) Except as otherwise provided in an operating agreement, a member who withdraws and the withdrawn member's personal representatives, successors and assigns

- (a) have no right to receive any distribution by reason of the withdrawal; and
- (b) have the rights of an assignee of the withdrawn member's interest in the limited liability company to receive distributions with respect to the member's interest
  - (i) during any continuation of the business of the limited liability company, and
  - (ii) during and on completion of winding up.

(2) Any amounts given under paragraph (1)(b) shall be reduced by the amount of any damages recoverable against the withdrawn member if the event of withdrawal violated this Act or the operating agreement.

**40. Distribution on winding up**

- (1) On the winding up of a limited liability company, its assets shall be distributed in the following order:
- (a) to the government of Antigua and Barbuda for any outstanding taxes, fees or charges;
  - (b) to a registered agent or other corporate service provider in Antigua and Barbuda for outstanding fees and disbursements;
  - (c) to employees, including managers, for outstanding wages;
  - (d) to creditors, including members who are creditors, to the extent permitted by law, in satisfaction of liabilities of the limited liability company other than liabilities for distributions to members and former members but if the liabilities of the company exceed its assets, the manager may apply the assets of the company in whatever manner the manager deems most appropriate and the manager may prefer one or more creditors, including creditors who are members or managers, over other creditors;
  - (e) except as otherwise provided in an operating agreement, to members and former members in satisfaction of liabilities for distributions; and
  - (f) to the members in the manner provided in subsection 35(2).

**41. Sharing of profits and losses**

(1) The items of profits, losses, deductions and credits of a limited liability company shall be allocated among the members and among classes of members in the manner provided in an operating agreement.

- (2) If an operating agreement does not provide otherwise,
- (a) profits and credits shall be allocated among the members according to the manner in which they share in distributions that exceed the repayment of their capital contributions; and

- (b) losses and deductions shall be allocated among the members according to the relative capital contributions that they have made or promised to make in the future.

## **PART V - MEMBERS**

### **42. Admission of members**

(1) At the time a limited liability company is formed, a person becomes a member upon compliance with the operating agreement.

(2) A person may be admitted as an additional member as follows:

- (a) if the person is acquiring an interest in the limited liability company directly from the limited liability company, on the manager's written acknowledgment or acceptance of the person's admission under the applicable provisions of the operating agreement, or if the operating agreement does not contain such a provision, on the consent of all members;
- (b) if the person is an assignee of all or part of a member's interest in a limited liability company, on the terms provided in an operating agreement or, if the operating agreement does not contain such a provision, on the approval or consent of all members;
- (c) if the person is an assignee of an interest in the limited liability company of a member who has the power under an operating agreement to grant the assignee the right to become a member, on the exercise of the power in compliance with the conditions governing the member's exercise of the power; and
- (d) if there are no members and all of the assignees consent in writing to the admission of one or more persons as a member or members, unless otherwise provided in the operating agreement.

(3) A limited liability company need not have more than one member.

### **43. Classes and series of members' interests**

(1) Members' interests in a limited liability company may be

- (a) of one or more classes or one or more series within any class;
- (b) with voting powers, full or limited, or without voting powers; and
- (c) with designations, preferences, rights, qualifications, limitations or restrictions as stated in the operating agreement.

(2) A limited liability company may provide in its operating agreement for one or more classes or series of members' interests which are redeemable, in whole or in part, at the option of the limited liability company at the price, within the period and under the conditions stated in the operating agreement.

(3) Unless otherwise provided in an operating agreement, all members' interests in a limited liability company shall be one class or series with the same rights and responsibilities.

### **44. Operating agreement**

(1) The members of a limited liability company may adopt an operating agreement in writing.

(2) Unless otherwise provided by the operating agreement, all or part of an operating agreement may be subsequently repealed or amended by agreement or consent of all of the members or by all of the managers or by a specified portion of the members or managers.

(3) An operating agreement governs relations among and between the members, the managers and the limited liability company, and may contain any provision that is not contrary to law and that relates to any business of the limited liability company, the conduct of its affairs, its rights, duties or powers and the rights, duties or powers of its members, managers, officers, employees or agents, including

- (a) whether the management of the limited liability company is vested in one or more managers and, if so, the powers to be exercised by them;
- (b) creating classes or groups of members with various rights, powers and duties and providing for the future creation of additional classes or groups of members with relative rights, powers and duties superior, equal to, or inferior to existing classes and groups of members;
- (c) respecting the exercise or division of management or voting rights among different classes or groups of members or managers on a per capita or other basis;
- (d) relating to notice of the time, place and purpose of any meeting at which a matter requiring a vote, approval or consent of members or managers is required is to be voted on, waiver of notice, action by consent without a meeting, the establishment of a record date, quorum requirements, authorisations by proxy or any other matter concerning the exercise of voting or approval rights; and
- (e) restrictions on the transfer of and option rights to acquire or sell any member's interest in the limited liability company.

(4) The High Court may enforce an operating agreement by injunction or by any other relief that the High Court in its discretion determines to be fair and appropriate in the circumstances.

### **45. Action by written consent and proxies**

(1) Unless otherwise specified in an operating agreement, any action to be taken by the members or managers may be taken by a consent in writing, stating the action so taken and signed by all the members or managers.

(2) Unless otherwise provided in an operating agreement, a member, but not a manager, may designate in writing another person who may act as his or her proxy on any matter or business of the company.

(3) Neither a manager nor the company shall honour any proxy executed as a result of an event of duress.

**46. Transferability of interest**

(1) Except as otherwise provided by the operating agreement, no member of a limited liability company shall voluntarily transfer all or any part of their member interest at any time without the prior written consent of all the managers, and, if there are no managers, all the non-transferring members.

(2) Unless otherwise provided in the operating agreement, any transfer by a member of all or any part of their interest in the company shall be subject to the option set out in section 48 subject to the exception set out in subsection (3).

(3) A transfer of a membership interest by gift or bequest is not subject to the option described in section 48 but is subject to the other provisions of this Part if the transfer is

- (a) to a member's immediate family;
- (b) to a trust established by the member for his or her benefit or the benefit of the member's spouse or lineal descendants; or
- (c) to another entity owned or controlled by the member or his or her family.

**47. Substituted member**

(1) Unless otherwise provided in the operating agreement, if a member transfers all or any part of his or her interest in the company in compliance with subsection 46(1) or the interest is transferred because of an act or event described in section 51, the transferee shall not have the right to become a substituted member of the limited liability company unless

- (a) a duly executed and acknowledged written instrument of transfer is delivered to the company, setting forth the intention of the transferor that the transferee become a substituted member in his or her place;
- (b) the transferee pays all reasonable expenses connected with the substitution;
- (c) the non-transferring members unanimously consent, in writing, to the substitution of the transferee as a substituted member; and
- (d) a written instrument is executed by the transferee in which the transferee agrees to be bound by the terms of the limited liability company's operating agreement.

(2) Upon admission to the limited liability company as a substituted member, the transferee shall have the same member interest, the same rights in and to all distributions made by the company in liquidation or otherwise, the same duties and the same share of the company's capital, profits, losses and other distributive items, as the transferring member had, prior to the transfer, with respect to the transferred interest in the company.

(3) Unless otherwise agreed in the operating agreement, upon the transfer and substitution of the transferring member's interest in a limited liability company during any fiscal year, each item of net profits and net losses attributable to the transferred member interest for the period shall be allocated between the transferring member and the transferee by taking into account their varying member interests during the period. All distributions on or before the date of the transfer shall be made to the transferring member and all distributions after that date shall be made to the transferee.

(4) Solely for purposes of making the allocations and distributions, a limited liability company shall, subject to subsection (5), recognise the transfer not later than the end of the calendar month during which the members consented to the transfer.

(5) If the company does not receive a notice stating the date of transfer and any other information the members may require, within thirty days after the end of the accounting period during which the transfer occurs, all such items shall be allocated, and all distributions shall be made, to the person who, according to the books and records of the company, was the owner of the member interest on the last day of the accounting period during which the transfer occurred.

(6) Neither the company nor any other member shall incur any liability for making allocations and distributions in accordance with this section, whether or not any member or the company has knowledge of any transfer of ownership of any member interest.

(7) Upon substitution of a member in compliance with this section,

- (a) the substituted member shall have all the rights, duties and responsibilities that the transferor had prior to the substitution; and
- (b) the transferor shall have none of the rights of a member, but shall continue to have the duty to maintain the confidentiality of confidential information.

(8) Unless otherwise provided in the operating agreement, in the event a member voluntarily or involuntarily transfers all or part of the member's interest in the limited liability company in violation of this Part or an operating agreement,

- (a) the transferor shall remain a member for all purposes other than in relation to distribution rights; and
- (b) the transferee shall have only the status of an assignee.

**48. Option to purchase company interest**

(1) Unless otherwise provided in the operating agreement, if a member wishes to dispose of all or part of the member's interest in a limited liability company to a third party,

- (a) the transferring member shall give written notice to each non-transferring member of the intention to dispose of the interest and the terms and conditions upon which it is proposed to be disposed; and
- (b) the member shall sell the member's interest in accordance with this section.

(2) The non-transferring members then have the option to purchase all, but not less than all, of the transferring member's interest offered for sale.

(3) A group of non-transferring members representing a majority of the members' interests may elect to have the company, in lieu of the non-transferring members, exercise the option to purchase all of the transferring member's interest offered for sale. If this occurs, the company shall purchase the member interest in accordance with this section and references to the purchasing members shall be deemed to be references to the company.

(4) Exercise of the option must be made by notice to the transferring member within ninety days of the receipt of the transferring member's notice.

(5) Unless otherwise provided in the operating agreement, the purchase shall be made on the same terms and conditions and be for the same price as that offered to the third party.

(6) If the option is not exercised pursuant to this section, the transferring member may transfer the interest to the person to whom it was originally offered for sale. The purchaser shall not become a member of the company until he or she complies with the operating agreement or, in the absence of an operating agreement, this Act.

#### **49. Rights of assignees**

(1) An assignee of a member's interest shall not have a right to interfere or inquire into the management or the administration of a limited liability company or its business or affairs, or to act as a manager or to become a substituted member except in accordance with this Act.

(2) An assignee shall only have the right to receive distributions attributable to the member's interest in the limited liability company and any allocations of profits and losses attributable to the member's interest in accordance with the allocation provisions set out in this Act or an operating agreement.

(3) An assignee may not maintain any action against the limited liability company, its manager or its members except in the High Court and for the sole purpose of determining whether the assignee has received the proper share of distributions.

### **PART VI – TERMINATION OF MEMBERSHIP**

#### **50. Withdrawal of members**

(1) Unless otherwise provided in an operating agreement, a member may not withdraw without the consent of all members.

(2) If a member attempts to withdraw, the limited liability company may purchase the member's interest and the member shall sell his or her interest to the company at a price equal to the lesser of

- (a) the sum of the withdrawing member's capital contributions; and
- (b) the value of the withdrawing member's capital account.

(3) The price shall be paid in cash to the withdrawing member within one hundred and eighty days of withdrawal and constitutes full liquidation of the member's capital account and membership interest.

(4) Unless the operating agreement provides otherwise, if the withdrawing member has not received full payment for his or her interest within one hundred and eighty days, he or she shall have the right to enter into a buy-sell agreement with a third party for the sale of his or her member interest, provided the agreement is approved by the unanimous consent of the remaining members.

(5) An attempt at withdrawal that does not comply with this section has no effect other than that the member attempting to withdraw shall lose his or her right to vote.

#### **51. Involuntary transfers**

(1) A member whose interest is disturbed by any of the events set out in subsection (2) shall remain a member of the limited liability company for all purposes and the trustee, creditor or other person acquiring an order or writ shall be treated as an assignee and nothing more.

(2) The events referred to in subsection (1) are:

- (a) an assignment for the benefit of creditors;
- (b) adjudication as bankrupt or insolvent;
- (c) the appointment of a trustee, receiver or liquidator of the member or of all or any substantial part of his or her property;
- (d) levy, execution, garnishment, attachment, charging order or any other similar remedy; and
- (e) Mareva injunction or order or another similar writ or order.

(3) Unless otherwise provided in an operating agreement, a member ceases to be a member

- (a) if the member is an individual, on the death of the member;
- (b) if the member is acting as a member by virtue of being a trustee of a trust, on the termination of the trust but, not merely on the substitution of a new trustee;
- (c) if the member is a general or limited partnership, on the dissolution and commencement of winding up of the partnership, unless the operating agreement permits a partnership to remain a member until it ceases to exist as a legal entity;
- (d) if the member is an entity, on the filing of a certificate or articles of dissolution or its equivalent for the entity or revocation of its charter, unless the operating agreement permits an entity to remain a member until it ceases to exist as a legal entity; and
- (e) if the member is an estate, on the distribution by the fiduciary of the estate's entire interest in the limited liability company, unless the operating agreement permits the estate to remain a member until all persons receiving a distribution of the member's interest have been admitted as members.

(4) Unless otherwise provided in an operating agreement, the person to whom a membership interest is transferred or devolves by operation of law after an event described in subsection (3) shall have only the rights of an assignee unless substituted as a member under section 47.

#### **52. Expulsion of a member**

(1) A member may be expelled from membership in a limited liability company by vote of the other members if

- (a) the member materially breaches an operating agreement and fails to cure the breach within a reasonable time after receiving notice of the breach;
- (b) the member is convicted of a crime for which the penalty on conviction is at least two years imprisonment;
- (c) the member engages in fraudulent or illegal actions in relation to the business or internal affairs of the limited liability company; or
- (d) the member defaults in performance or fails to comply with any agreements, obligations or undertakings of a member as set forth in an operating agreement.

(2) Immediately upon expulsion, an expelled member ceases to be a member, ceases to have any right, duty or liability as a member and

- (a) in a dissolution, is entitled to the return of his or her capital account in the limited liability company only after all the other members have received a full distribution of the amount in their capital accounts;
- (b) on termination, the member's interests in the profits and losses of the limited liability company and the affiliated voting rights and rights to distributions are reallocated to the non-defaulting members in proportion to the balance of their capital accounts on the date of termination; and
- (c) continues to have the duty to maintain the confidentiality of confidential information.

(3) A member may be expelled from membership in the limited liability company by the affirmative vote of a majority in interest of the members as provided in Section 56. The requirements for a quorum and a majority of the members with respect to such a vote shall be calculated disregarding the majority interest of the member whose expulsion is the subject of the vote.

### 53. Sale of interest by former members

The company may, at its sole discretion, purchase the interest of an expelled member for its fair market value, after taking into account section 52, and on other reasonable purchase terms.

## PART VII – MANAGEMENT

### 54. Member or manager as agent

(1) Unless the articles of organisation of a limited liability company provide that management is vested in one or more members,

- (a) each manager is an agent of the limited liability company for the purpose of carrying on the ordinary course of company business; and
- (b) a member is not an agent of the limited liability company for the purpose of its business solely by reason of being a member except to the extent that authority has been delegated to the member by the manager or by the operating agreement.

(2) If the articles of organisation of a limited liability company provide that management is vested in one or more designated members,

- (a) each designated member is an agent of the limited liability company for the purpose of carrying on the ordinary course of company business; and
- (b) the act of each designated member, including the execution in the name of the limited liability company of any instrument, in the ordinary course of business of the limited liability company, binds the limited liability company, unless
  - (i) the acting member has in fact no authority to act for the limited liability company in the particular matter; and
  - (ii) the person with whom he or she is dealing has actual or constructive knowledge of the fact that the member has no such authority.

(3) An act of a member or manager that is not apparently in the ordinary course of business practices or operations of the limited liability company does not bind the limited liability company unless authorised in fact by the limited liability company.

(4) An act of any member, manager, employee, officer or other agent of a limited liability company in violation of a restriction on authority does not bind the limited liability company to persons who knew or should have known of the restriction.

(5) Each member, whether acting as a member or as a manager,

- (a) shall maintain the confidentiality of confidential information;
- (b) except as required in conducting the business and internal affairs of a limited liability company, shall not disclose confidential information to a third party without the authorisation of the manager;
- (c) shall make copies of documents containing confidential information only for the benefit of the limited liability company;
- (d) shall use confidential information only for the benefit of the limited liability company; and
- (e) on ceasing to be a member or manager, shall return to the limited liability company all documents containing confidential information.

(6) “Confidential information” of a limited liability company means

- (a) the terms of an operating agreement of the limited liability company;
- (b) information that the limited liability company maintains in confidence and that has actual or potential economic value to the limited liability company because it is not generally known to others and is not readily ascertainable by them, including
  - (i) financial information relating to the limited liability company;
  - (ii) information relating to the limited liability company's marketing and business plans and strategies;
  - (iii) information concerning the design and manufacture of the products of the company and the method of providing company services;
  - (iv) information in limited liability company personnel files and similar files concerning limited liability company members;
  - (v) information entrusted to the limited liability company in confidence by third parties; and
  - (vi) information reasonably designated by the manager orally or in writing as confidential information.

(7) Subsection (6) does not apply to information

- (a) which enters the public domain through no fault of a member;
- (b) whose disclosure is required by final order of a court of competent jurisdiction; and
- (c) in the case of information referred to in paragraph (6)(a), which is disclosed by a member or manager on a confidential basis to his or her spouse or professional advisers.



**55. Management of limited liability company**

- (1) Management of a limited liability company is vested in one or more managers except
  - (a) the articles of organisation may provide that management is vested in one or more members; and
  - (b) the operating agreement may restrict or enlarge the management rights or responsibilities of one or more managers.
- (2) A manager need not be a member of the limited liability company unless otherwise required by an operating agreement.
- (3) A manager shall be designated or elected and may be removed or replaced
  - (a) in the manner provided in an operating agreement, or,
  - (b) if the agreement does not contain such a provision, in accordance with this section.
- (4) A manager holds the office and has the responsibilities that are accorded to the manager by the members in an operating agreement or management agreement
- (5) If an operating agreement does not provide a manner for designating or electing additional or replacement managers, on the withdrawal or resignation of a manager, management of the limited liability company
  - (a) continues to be vested in the remaining managers; or
  - (b) if there are no remaining managers, is vested in one or more new managers appointed, designated or elected in accordance with section 57.

**56. Voting**

- (1) Except as provided in an operating agreement, the affirmative vote, approval or consent of all members is required to
  - (a) adopt, amend, restate or revoke an operating agreement;
  - (b) authorise a transaction, agreement or action on behalf of the limited liability company that violates an operating agreement;
  - (c) issue an interest in the limited liability company to any person;
  - (d) approve a plan of merger or consolidation of the limited liability company with or into one or more entities;
  - (e) authorise an amendment to the articles of organisation that changes the status of the limited liability company from one in which management is vested in a manager or managers to one in which management is reserved to the members or vice versa;
  - (f) reorganise or reform the limited liability company into a different form of entity; or
  - (g) change the tax status of the limited liability company in any jurisdiction.
- (2) Except as provided in an operating agreement, the affirmative vote, approval or consent of a majority of the members, or if management of the limited liability company is vested in one or more managers, the affirmative vote, approval or consent of a majority of the managers, is required to
  - (a) resolve any difference concerning matters connected with the business of the limited liability company;
  - (b) authorise the distribution of company property to the members;
  - (c) authorise the limited liability company to repurchase all or part of a member's interest; or
  - (d) authorise an amendment to the articles of organisation.
- (3) For purposes of this Act, a majority of managers consists of more than one-half of the managers voting of their own free will and without duress or compulsion.
- (4) For the purposes of this Act, a majority of the members consists of more than fifty percent of the member interests voting their interests of their own free will and without duress or compulsion.
- (5) The rights of the manager shall be specific to the persons named as managers and no right of any kind, including the right to act by or for the company, shall accrue to any voluntary or involuntary transferee.
- (6) Unless an operating agreement provides otherwise, a manager shall serve as manager until his or her death, legal incapacity, dissolution, termination or liquidation.
- (7) A manager may resign at any time upon giving ten days written notice to the members and to the registered agent.

**57. Emergency manager**

- (1) On notice being given of an event of duress or any of the events listed below, the manager or managers who reside in or are domiciled in a jurisdiction shall be automatically and immediately removed from office with no powers held by them.
- (2) The events are as follows:
  - (a) the mandatory liquidation or dissolution of existing managers;
  - (b) the mandatory replacement of existing managers or the placing of limitations on the powers of managers other than in accordance with this Act or a management agreement or operating agreement;
  - (c) the devaluation or inconvertibility of the currency in which company assets are held;
  - (d) the threat of or the actual suspension or abrogation in whole or in part of the operating agreement of the limited liability company; and
  - (e) the compulsory conversion of the company assets into the currency of the jurisdiction.
- (3) If, just before a manager ceases to be a manager, there was more than one manager, the remaining manager or managers may carry on the business of the company without replacement or the remaining manager or managers may ask the members to elect a successor. If at any time there is no manager, the members shall promptly elect a successor.
- (4) A successor manager shall be appointed by a vote of a majority of the members as soon as practicable. If all the members are unable or unwilling to vote or acting under an event of duress or not of their own free will, the registered agent shall become the manager.
- (5) Notwithstanding any other provision of this Act or of an operating agreement or management agreement, no manager, member or other person having authority, dominion or control over the limited liability company property shall honour or carry out any instruction, order or request, including a revocation, termination, modification or amendment of the operating agreement or

management agreement, if the instruction is made, or appears to be made, under pressure, force, duress or compulsion, including any instrument, order, injunction, decree, or request made by, or pursuant to, any judgment, order or instruction of a court, tribunal, government office or agency outside the jurisdiction of Antigua and Barbuda.

(6) A registered agent who becomes a manager by operation of this section may be paid a reasonable fee for services as manager.

(7) A registered agent who becomes a manager by operation of this section may appoint a successor or manager at the time and on the terms and conditions he or she chooses, after conferring with the members. If the company has a succession committee, the registered agent shall appoint as the successor manager or managers one or more of the members of succession committee unless to do so would expose the company to an event of duress.

#### **58. Qualification of managers**

Unless otherwise provided in an operating agreement, managers may be natural persons, corporations, limited liability companies, partnerships, trusts, foundations or other business entities of any nationality and need not be residents of Antigua and Barbuda or members of the limited liability company.

#### **59. Standard of care for managers**

(1) Managers shall discharge the duties of their positions in good faith and with the degree of diligence, care and skill which ordinarily prudent persons would exercise under similar circumstances in similar positions.

(2) In discharging their duties, duly authorised members or managers, or officers, when acting in good faith, may rely upon financial statements of the limited liability company

- (a) represented to them to be correct by the manager of the limited liability company having charge of its books or accounts; or
- (b) stated in a written report by an independent public or certified public accountant or firm of accountants fairly to reflect the financial condition of the company.

#### **60. Appointment to succession committee**

(1) Subject an operating agreement, a manager may, in an exercise of exclusive discretion, appoint one or more members of the limited liability company to a succession committee for the purpose of preparing members who are not managers of the company to succeed the manager at some date in the future upon the occurrence of certain events.

(2) The rights of and obligations imposed upon a member of the succession committee are personal to that member. Unless otherwise provided in the operating agreement, the transferee or assignee of an interest held by a member acquires no rights in the member's status as a member of the succession committee.

(3) Unless otherwise provided in the operating agreement or any rules promulgated by the committee, the obligation of a member to serve on the succession committee shall survive the voluntary or involuntary transfer of the member's interest.

(4) A member shall decline or accept to serve on a succession committee in writing.

(5) Once a member accepts, in writing, the obligation to serve on a membership committee, the member may not withdraw from the succession committee except as provided in the operating agreement.

#### **61. Succession committee rules**

Subject to an operating agreement, prior to, or contemporaneously with the creation of the succession committee, the manager shall adopt written rules governing the business of the succession committee, which may include any matter necessary or incidental to the conduct of the business of the succession committee.

#### **62. Authority and liability not affected**

Neither the authority of a member to act by or on behalf of the company nor the liability of a member for the acts of the company shall be affected in any manner by acceptance of an appointment to the succession committee.

### **PART VIII – DISSOLUTION**

#### **63. Dissolution**

(1) A limited liability company is dissolved and its affairs wound up upon the happening of the first to occur of the following:

- (a) when an event specified in the operating agreement occurs;
- (b) when all of the members entitled to vote consent to dissolution in writing;
- (c) when judicial dissolution is decreed under section 65; and
- (d) when administrative dissolution is determined by the Commission under section 64.

(2) Unless otherwise provided in the operating agreement, an assignment of an interest in a limited liability company does not of itself dissolve the limited liability company.

(3) Within one hundred and twenty days after any of the events specified in paragraphs (1) subsections (a) to (c) effecting the dissolution of the limited liability company occurs, the limited liability company shall file a written notice of dissolution and winding up with the Commission signed on behalf of the limited liability company by

- (a) a manager, if management of the limited liability company is vested in one or more managers; or
- (b) a member, if management of the limited liability company is reserved to the members.

(4) The notice of dissolution and winding up shall state

- (a) the name of the limited liability company;
- (b) the date of filing the initial articles of organisation;
- (c) the date of dissolution;

- (d) that the notice constitutes a notice of the dissolution of the limited liability company and the commencement of winding up of its business and affairs;
- (e) the reason for dissolution; and
- (f) a statement that the records and documents of the company shall be kept for a period of six years from the date of the notice, the location at which they will be kept and the person who shall have custody or access to such location.

#### **64. Administrative dissolution**

(1) On the failure of a limited liability company to pay the annual registration fee or maintain a registered agent for a period of one hundred and eighty days, the Commission shall remove the limited liability company from the register.

(2) If the Commission determines that grounds exist under this section for dissolving a limited liability company, it shall give written notice of its determination by mail addressed to the registered agent of the company or to the principal place of business of the company, if the registered agent has resigned or otherwise ceased to act for the limited liability company.

(3) If the limited liability company does not correct each ground for dissolution within one hundred and eighty days after the notice is given, the Commission shall administratively dissolve the limited liability company by issuing a certificate of dissolution that recites the grounds for dissolution and its effective date and the Commission shall remove the limited liability company from the register.

(4) A limited liability company that is removed from the register pursuant to subsection (1) may apply to the Commission to be restored to the register within three years of the date of removal and dissolution. The application for reinstatement shall

- (a) recite the name of the limited liability company and the effective date of its administrative dissolution; and
- (b) show either that the grounds for dissolution did not exist or that they have been eliminated.

(5) If the Commission determines that the application contains the information required by subsection (4) and that the information is correct, it may issue a certificate of reinstatement that recites this determination and the effective date of reinstatement, file the original of the certificate and mail a copy to the limited liability company addressed to its registered agent and restore the company to the register.

(6) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the limited liability company resumes carrying on its business as if the administrative dissolution had never occurred.

(7) A limited liability company shall pay the fee set out in the regulations for reinstatement to the register.

(8) A limited liability company which is not reinstated within three years of the date of removal is deemed to have dissolved in accordance with this Part.

#### **65. Judicial dissolution**

(1) On application by or for a member, the High Court may decree dissolution of a limited liability company

- (a) if it is not reasonably practicable to carry on the business of the limited liability company in conformity with the operating agreement;
- (b) if the members or managers are deadlocked in the management of the limited liability company and irreparable injury to the limited liability company is threatened or being suffered or the business of the limited liability company cannot be conducted to the advantage of the members generally because of the deadlock, unless the operating agreement provides otherwise; or
- (c) if the members or managers of the company have acted or are acting in a manner that is illegal or fraudulent with respect to the business of the limited liability company or is against public policy.

(2) The High Court has full power to wind up and liquidate the assets and business of a limited liability company and to appoint a receiver over the limited liability company's property.

#### **66. Effect of dissolution**

After its dissolution, the limited liability company shall, subject to subsection 65(2), proceed to wind up its affairs.

#### **67. Winding up affairs of company**

(1) A limited liability company, whether it expires by its own limitation or is otherwise dissolved, shall nevertheless be continued for a reasonable time required for

- (a) prosecuting and defending suits by or against the company; and
- (b) enabling it gradually to settle and close its business, dispose of and convey its property, discharge its liabilities, and distribute to the members any remaining assets.

(2) The company shall not be continued for the purpose of continuing the business for which it was organised.

(3) The limited liability company shall be continued beyond three years after the date of its expiration or dissolution, only for the purpose of concluding an action, suit or proceeding begun by or against it either prior to or within the three year period and not concluded, and until any judgment, order, or decree is fully executed.

(4) On the dissolution of a limited liability company, the managers shall be trustees, with full powers to

- (a) settle the affairs of the company;
- (b) collect the outstanding debts of the company;
- (c) sell and convey the company's property;
- (d) prosecute and defend all suits that may be necessary or proper;
- (e) distribute the money and other property among the members after paying or adequately providing for payment of liabilities and obligations; and
- (f) do all other acts which might be done by the limited liability company, before dissolution, that may be necessary for the final settlement of the unfinished business of the limited liability company.

(5) At any time within three years after the filing of the articles of dissolution, the High Court, in a special proceeding instituted under this section, upon the petition of the limited liability company, or of a creditor, claimant, manager, member, or organiser or any other person with an interest, may continue the liquidation of the limited liability company under its supervision and may make the orders it deems proper in all matters in connection with the dissolution or in winding up the affairs of the limited liability company, including the appointment or removal of a receiver, who may be a manager or member of the limited liability company.

(6) At the end of the period of dissolution as provided in this section, articles of termination shall be filed with the Commission as provided in section 70.

#### **68. Agency power of managers after dissolution**

(1) Except as provided in this section, after dissolution of the limited liability company each of the managers having authority to wind up the limited liability company's business and affairs can bind the limited liability company

- (a) by any act appropriate for winding up the limited liability company's affairs or completing transactions unfinished at dissolution; and
- (b) by any transaction that would have bound the limited liability company if it had not been dissolved, but only if the other party to the transaction has notice of the dissolution.

(2) An act of a manager which is not binding on the limited liability company pursuant to subsection (1) is binding if it is otherwise authorised by the limited liability company.

(3) An act which would be binding under subsection (1) or would be otherwise authorised but which is in contravention of a restriction on authority shall not bind the limited liability company to persons having knowledge of the restriction.

#### **69. Settlement of claims against limited liability company**

(1) Any time within sixty days prior to re-domiciliation, a limited liability company shall give notice in accordance with subsections (2) and (3), requiring all creditors and claimants, including any with unliquidated or contingent claims and any with whom the limited liability company has unfulfilled contracts, to present their claims in writing and in detail at a specified place and within one year after the last publication of the notice.

(2) Notice shall also be published at least once a week for four successive weeks in a newspaper of general circulation in Antigua and Barbuda.

(3) On or before the date of the first publication of notice, the limited liability company shall send a copy of the notice by registered mail to each person known to be a creditor of or claimant against the limited liability company at the person's last known address.

(4) Any claim not filed within one year of date of last publication is barred.

(5) For the purposes of this section, filing a claim means

- (a) complying with the provisions of the notice published; or
- (b) commencing a lawsuit in the High Court.

(6) The giving of notice shall not constitute a recognition that any person is a proper creditor or claimant, and shall not revive or make valid or operate as a recognition of the validity of, or a waiver of, any defense or counterclaim in respect of any claim against the limited liability company, its assets, managers or members, which has been barred by any statute of limitations or which has become invalid by any cause, or in respect of which the limited liability company, or its members or managers, have any defense or counterclaim.

(7) Any person whose claim is, at the date of the first publication of the notice, barred by any statute of limitations is not a creditor or claimant entitled to any notice under this section.

(8) The following types of claims are barred as against the company, its assets and its members or managers:

- (a) claims of persons referred to in subsection (7);
- (b) claims which are not filed as provided in the notice, other than claims which are the subject of litigation on the date of the first publication of the notice; and
- (c) claims which are disallowed by the High Court.

(9) Notwithstanding anything in this section, claims by the Government of Antigua and Barbuda are not required to be filed under this Act, and such claims shall not be barred if not filed, and distribution of any of the assets of the limited liability company may be deferred until determination of any such claims.

#### **70. Articles of termination**

After dissolution and completion of winding up of a limited liability company pursuant to this Part, the limited liability company shall file articles of termination with the Commission in accordance with section 4, setting forth

- (a) the name of the limited liability company;
- (b) the date its articles of organisation, and all amendments, were filed with the Commission; and
- (c) the name and address of each of its managers and other persons having authority to wind up the limited liability company's business and affairs.

### **PART IX – MERGER AND CONSOLIDATION**

#### **71. Merger or consolidation**

(1) In this Part,

“consolidated limited liability company” means a new limited liability company that is formed by the consolidation of one or more entities and one or more limited liability companies;

“entity” means a foreign or domestic corporation, association, real estate investment trust or unincorporated business;

“surviving limited liability company” means a new limited liability company that is formed by the merger of one or more entities or one or more limited liability companies into an existing limited liability company.

(2) When this Act is to apply to a surviving entity, at least one of the parties to the merger must be a limited liability company to which this Act applies at the time of the merger.

(3) Pursuant to a plan of consolidation, a limited liability company to which this Act applies may be consolidated with one or more other limited liability companies or other entities.

(4) Pursuant to a plan of merger, a limited liability company to which this Act applies may be merged with one or more other limited liability companies or other entities into a limited liability company.

(5) If one or more parties to the merger or consolidation are other entities formed in a foreign jurisdiction, they may be merged or consolidated with one or more limited liability companies organised or registered under this Act if the merger or consolidation is permitted by the laws of the jurisdiction under which the other entity is incorporated or registered.

(6) The plan of merger or consolidation must set forth

- (a) the name and jurisdiction of formation of each limited liability company or entity that is a party to the merger;
- (b) the name and address of the surviving or consolidated limited liability company;
- (c) the registered office and principal place of business of the surviving limited liability company;
- (d) the nature of the business activity that will be conducted, if any; and
- (e) the terms and conditions of the proposed merger or consolidation, including the manner and basis of converting the interests of each party to the merger or consolidation into interests of the surviving or consolidated limited liability company, or the cash or other consideration to be paid or delivered in exchange for such interests, or both.

(7) The consent of a majority of the members of a limited liability company to which this Act applies who are entitled to vote is required for the authorisation of a merger or consolidation, unless the operating agreement requires authorisation by a greater portion of the members.

(8) The authorisation of another party must be made pursuant to applicable law.

(9) After approval of the plan of merger or consolidation, but before it takes effect, the plan may be terminated or amended if the plan contains a provision for termination or amendment.

(10) After approval of the plan of merger or consolidation, articles of merger or consolidation shall be executed in duplicate on behalf of each party to the merger or consolidation that set forth

- (a) the plan of merger or consolidation duly approved, and, if a limited liability to which this Act applies is the surviving or consolidated limited liability company, a statement in the articles of merger or consolidation to that effect;
- (b) for each limited liability company to which this Act applies that is a party to the merger or consolidation, the date on which its articles of organisation were filed with the Commission;
- (c) the effective date of the merger or consolidation, subject to subsection 72(1), if not effective upon filing; and
- (d) the manner in which the merger or consolidation was authorised with respect to each party.

(11) The articles of merger or articles of consolidation shall be filed with the Commission in accordance with section 4.

(12) If the surviving or consolidated limited liability company is to be governed by the laws of a jurisdiction other than Antigua and Barbuda,

- (a) it shall file with the Commission articles of merger or consolidation together with a certificate of merger or consolidation issued by the appropriate official of the foreign jurisdiction;
- (b) the effect of the merger or consolidation shall be the same as in the case of the merger or consolidation of limited liability companies to which this Act applies except to the extent that the laws of the other jurisdiction provide otherwise;
- (c) the effective date of the merger or consolidation shall be determined by the law of the other jurisdiction;
- (d) the effective date of the merger or consolidation shall be the date of termination of the company in Antigua and Barbuda; and
- (e) the limited liability company shall provide its registered agent with information required for the purposes of ascertaining the identity of persons owning a beneficial ownership interest in it of at least 20% as provided in the Corporate Management and Trust Service Providers Act.

## **72. Effect of merger or consolidation**

(1) A merger or consolidation is effective upon the filing of the articles of merger or consolidation with the Commission or on a subsequent date that does not exceed thirty days set forth in the articles.

(2) When a merger or consolidation has been effected and the surviving or consolidated limited liability company is one to which this Act applies,

- (a) the surviving or consolidated limited liability company has all the rights, privileges, immunities, powers and purposes of each of the parties to the merger or consolidation that are consistent with its articles of organisation as altered or established by the merger or consolidation;
- (b) all the property, real and personal, including causes of action and every other asset of all of the parties to the merger or consolidation vest in the surviving or consolidated limited liability company;
- (c) the surviving or consolidated limited liability company shall assume and be liable for all the liabilities, obligations and penalties of each of the parties to the merger or consolidation;
- (d) in the case of a merger, the articles of organisation of the surviving limited liability company are amended to the extent that changes in its articles of organisation are set forth in the plan of merger;
- (e) in the case of consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of organisation of a limited liability company to which this Act applies shall be its articles of organisation; and
- (f) unless otherwise provided in the articles of merger or consolidation, each party to the merger or consolidation which is not a surviving limited liability company or consolidated limited liability company to which this Act applies is dissolved.

## PART X – TRANSFER OF DOMICILE TO ANTIGUA AND BARBUDA

### 73. Definitions

For the purposes of this Part, unless the context otherwise requires,

“articles of organisation” means the document filed in a foreign domicile that serves the same purposes as do articles of organisation in Antigua and Barbuda;

“foreign domicile” means a jurisdiction other than Antigua and Barbuda in which a limited liability company has been registered under applicable law and maintains a registered office.

### 74. When transfer of domicile is permitted

(1) Any foreign limited liability company may, subject to and upon compliance with this Part, transfer its domicile into Antigua and Barbuda, and may perform the acts described in this Part, so long as the law of the foreign domicile does not expressly prohibit the transfer.

(2) Nothing in this Act shall be regarded as permitting a foreign limited liability company which transfers its domicile to Antigua and Barbuda to conduct business in Antigua and Barbuda.

### 75. Application to transfer domicile

A foreign limited liability company may apply to transfer its domicile to Antigua and Barbuda by filing with the Commission an application to transfer domicile which shall be executed in accordance with sections 77 and filed in accordance with section 4, together with

- (a) a certificate evidencing its existence issued by an authorised officer of the government of the foreign jurisdiction in which the foreign limited liability company was registered; and
- (b) a certified copy of the articles of organisation and any amendments.

### 76. Contents of application to transfer domicile

(1) An application to transfer domicile must contain

- (a) a statement of the date on which, and the jurisdiction where, the foreign limited liability company was formed, registered, organised, created or otherwise came into legal existence;
- (b) the name of the foreign limited liability company;
- (c) the name the foreign limited liability company will be adopting upon re-domiciliation in Antigua and Barbuda;
- (d) a declaration that the transfer of domicile has been approved by all necessary action of the company;
- (e) the name and address of the limited liability company's registered agent in Antigua and Barbuda;
- (f) any other pertinent information required to be set forth in articles of organisation under Section 17; and
- (g) the amendments of its articles of organisation that are to be effective upon filing the application to transfer domicile.

(2) The limited liability company shall provide its registered agent with the information required for the purposes of ascertaining the identity of persons owning a beneficial ownership interest in it of at least 20% as provided in the Corporate Management and Trust Service Providers Act.

### 77. Execution of the application to transfer domicile

The application to transfer domicile shall be in English and may be signed by the registered agent of the limited liability company or any other person performing functions equivalent to those of a manager, however named or described, and who is authorised to sign the application on behalf of the limited liability company.

### 78. Certificate of transfer of domicile

(1) The Commission shall deliver to the limited liability company a certificate of transfer of domicile if

- (a) the application to transfer domicile and the documents referred to in sections 76 and 77 and together with the fees prescribed are filed;
- (b) the Commission finds that the documents are in proper form and satisfy the requirements of this Part; and
- (c) the name of the limited liability company meets the requirements of section 14.

(2) On the delivery of the certificate

- (a) the limited liability company shall become domiciled and registered in Antigua and Barbuda as a limited liability company of Antigua and Barbuda;
- (b) the company shall be subject to this Act; and
- (c) the company shall be deemed to have commenced its existence on the date the limited liability company was first formed, registered, organised, created or otherwise came into existence and shall be deemed to have continued its existence in Antigua and Barbuda.

(3) The limited liability company shall promptly modify or amend its operating agreement, registration, management and records to comply with the laws of Antigua and Barbuda.

### 79. Prior obligations and liabilities

(1) A foreign limited liability company that has been re-domiciled pursuant to this Part is for all purposes the same entity that existed before the re-domiciliation.

(2) When a re-domiciliation takes effect

- (a) all property owned by the foreign limited liability company is vested in the Antigua and Barbuda limited liability company without further act or deed, and documents evidencing ownership or title which must be filed in a jurisdiction shall be filed to give notice that the name and domicile of the owner of the property has been changed, and not to evidence or record a transfer or conveyance of title;

- (b) all debts, liabilities and other obligations of the foreign limited liability company continue as obligations of the Antigua and Barbuda limited liability company;
- (c) an action or proceeding pending by or against the foreign limited liability company may be continued as if the re-domiciliation had not occurred, except that, if appropriate in the jurisdiction in which the proceeding is pending, the style of cause of the action may be changed to reflect the re-domiciliation;
- (d) except as prohibited by other laws, all the rights, privileges, immunities, powers and purposes of the foreign limited liability company are vested in the Antigua and Barbuda limited liability company; and
- (e) all of the members of the re-domiciliating foreign limited liability company continue as members of the Antigua and Barbuda limited liability company.

(3) The transfer of domicile of a foreign limited liability company to Antigua and Barbuda shall not be deemed to affect any obligations or liabilities of the foreign limited liability company incurred prior to the transfer.

#### **80. Applicable law**

The filing of an application to transfer domicile shall not affect the choice of law applicable to obligations and rights of the limited liability company prior to its re-domiciliation, except that from the date of issuance of a certificate of transfer by the Commission, the laws of Antigua and Barbuda, shall apply to the limited liability company to the same extent as if the limited liability company had been originally organised as a limited liability company of Antigua and Barbuda.

### **PART XI – TRANSFER OF DOMICILE FROM ANTIGUA AND BARBUDA**

#### **81. Departure**

A limited liability company to which this Act applies may become re-domiciled in a foreign jurisdiction upon compliance with this Act and the laws of the jurisdiction into which the limited liability company seeks to become re-domiciled.

#### **82. Application to transfer domicile out of Antigua and Barbuda**

(1) A limited liability company referred to in section 81 shall file with the Commission an application to transfer domicile out of Antigua and Barbuda, accompanied by the fees prescribed by regulation.

(2) The application must set forth

- (a) the names and addresses of the limited liability company's creditors, actual and contingent, and the total amount of its indebtedness to the creditors;
- (b) the names and addresses of all persons or entities which have notified the limited liability company in writing of a claim in excess of one thousand dollars and the total amount of such claims;
- (c) that the intended departure from Antigua and Barbuda and transfer of domicile to a foreign jurisdiction is unlikely to be detrimental to the rights or property interests of any creditor of or claimant against the limited liability company or any member;
- (d) that the limited liability company at the time of application is not in breach of any obligation imposed on it by this Act or any other law of Antigua and Barbuda;
- (e) that the transfer of domicile to the foreign jurisdiction is made in good faith and will not serve to hinder, delay or defraud existing creditors, members or other parties in interest;
- (f) consent and agreement by the limited liability company that it may be served with process in Antigua and Barbuda in any proceeding arising out of acts or omissions occurring prior to its departure from Antigua and Barbuda, appointing the Commission as its agent to accept service of process and specifying the address to which a copy of process shall be forwarded by mail; and
- (g) the effective date of the transfer of domicile out of Antigua and Barbuda.

#### **83. Effective date of departure**

(1) The Commission shall issue a certificate of departure to a limited liability company that applies for one if it is satisfied that

- (a) the company has complied with this Act and other applicable laws; and
- (b) the company has paid any fees outstanding in Antigua and Barbuda.

(2) As of the date of the certificate, the limited liability company shall be deemed to have ceased to be a limited liability company domiciled in Antigua and Barbuda.

#### **84. Jurisdiction of courts after departure**

(1) Nothing in this Part shall affect the jurisdiction of any court in Antigua and Barbuda to hear and determine any proceeding commenced by or against the limited liability company arising out of acts or omissions which occurred before the limited liability company ceased to be domiciled in Antigua and Barbuda.

(2) There shall be no equitable tolling of any statute of limitations based on the departure of a limited liability company from Antigua and Barbuda.

### **PART XII – EMERGENCY TRANSFER OF DOMICILE INTO ANTIGUA AND BARBUDA**

#### **85. Emergency conditions**

For the purposes of this Part, unless the context requires otherwise, “emergency condition” includes

- (a) war or other armed conflict;
- (b) revolution or insurrection;
- (c) invasion or occupation by foreign military forces;
- (d) rioting or civil commotion of an extended nature;

- (e) domination by a foreign power;
- (f) expropriation, nationalization or confiscation of a material part of the assets or property of the limited liability company;
- (g) impairment of the institution of private property (including private property held abroad);
- (h) the taking of any action under the laws of Antigua and Barbuda whereby persons resident in the foreign domicile might be treated as enemies or otherwise restricted under the law of Antigua and Barbuda relating to trading with enemies of Antigua and Barbuda;
- (i) the immediate threat of an event referred to in any of paragraphs (a) to (h) or any other threat or claim against foreign entity or its assets, including any judgment or order restraining assets; and
- (j) another event which, under the laws of the foreign domicile, permits the limited liability company to transfer its domicile.

#### **86. When emergency transfer of domicile is permitted**

During the existence of an emergency condition in the jurisdiction of its domicile, a foreign limited liability company may, subject to and upon compliance with the provisions of this Part, apply for an emergency transfer of its domicile to Antigua and Barbuda.

#### **87. Application for emergency transfer of domicile**

(1) A foreign limited liability company may apply for emergency transfer of domicile to Antigua and Barbuda by filing with the Commission

- (a) documents and certificates similar to those required by Sections 75, 76 and 78, except that the documents shall refer to an emergency transfer of domicile pursuant to this Part; and
- (b) a certificate of an authorised officer, director or agent of the foreign limited liability company specifying the emergency condition which exists in the foreign domicile.

(2) The Commission, in its discretion, may waive any of the requirements mentioned in subsection (1) on request by a limited liability company supported by facts justifying the waiver.

(3) If emergency conditions have affected ordinary means of communication, any of the documents required by this Part may be submitted in electronic form, so long as the duly executed original documents and supporting documentation are received by the Commission within thirty days or as soon as the emergency conditions cease to exist.

(4) If the Commission finds the required documents and certificates to be in proper form, upon payment of the prescribed fee, the Commission shall certify that the limited liability company has filed all documents and paid all fees required by this Part, and shall deliver to the foreign limited liability company a certificate of transfer of domicile.

(5) The certificate of the Commission shall be prima facie evidence of the transfer by the limited liability company of its domicile into Antigua and Barbuda.

#### **88. Governing law after emergency transfer**

Except to the extent expressly prohibited by the laws of Antigua and Barbuda, after a foreign limited liability company transfers its domicile to Antigua and Barbuda pursuant to this Part, it shall have all of the powers which it had immediately prior to such transfer and sections 79 and 80 shall apply.

#### **89. Return to foreign jurisdiction**

(1) A limited liability company which has transferred its domicile into Antigua and Barbuda pursuant to this Part may return to its former domicile by filing with the Commission an application to transfer domicile out of Antigua and Barbuda pursuant to sections 81 and 82.

(2) The application shall be accompanied by a certified resolution of the managers of the limited liability company authorising the transfer of domicile.

### **PART XIII – EXEMPTION FROM TAXES AND DUTIES**

#### **90. Exemption from taxes and duties**

(1) A limited liability company to which this Act applies is exempt from

- (a) all income tax, including all tax based upon appreciation of limited liability company property;
- (b) all estate, estate, inheritance, bequest or gift tax payable with respect to limited liability company property by reason of any death, or any transfer of property to or from the limited liability company, provided the transfer is without consideration;
- (c) all stamp duty with respect to all instruments relating to limited liability company property or to transactions carried out by a trustee on behalf of the trust, or by any entity owned by the limited liability company; and
- (d) all exchange controls, including controls on the maintenance, investment, transfer or exchange of currencies in Antigua and Barbuda or in any other location.

(2) For the purposes of paragraph (1)(b), a transfer of property to an entity as capital contribution in return for an equity interest in the entity shall be deemed without consideration.

(3) Notwithstanding subsection (1), and subject to any other law of Antigua and Barbuda, a limited liability company registered under this Act shall not be exempt from

- (a) tax on income derived from the sale or rental of property in Antigua and Barbuda unless the tax is paid by another person;
- (b) tax on income derived from the sale of equity or other interests in an entity incorporated or otherwise registered in Antigua and Barbuda and doing business in Antigua and Barbuda unless the tax is paid by another person; or
- (c) tax arising from or relating to the conduct of business or ownership of property in Antigua and Barbuda unless the tax is paid by another person.



**PART XIV - MISCELLANEOUS****91. Confidentiality**

(1) Except where this Act otherwise provides or pursuant to an order of a court in Antigua and Barbuda, no person shall disclose any of the documents referred to in subsection (2), their contents or the information contained in them relating to the establishment, administration, maintenance, business undertaking, affairs or property of the limited liability company to any other person.

(2) The documents referred to in subsection (1) are

- (a) a limited liability company operating agreement or management agreement, and a document relating to such an agreement;
- (b) a document relating to the exercise or proposed exercise of any function or duty conferred upon a manager or member, or disclosing any deliberations of a manager or member, or any of a manager or member's directors, officers or employees, as to the manner in which a manager or member may exercise any function or duty, or disclosing the reasons for any particular exercise of any function or duty or the material upon which those reasons were, or might have been based;
- (c) a document relating in any way, directly or indirectly, to the finances, investments, assets, income, expenses, profits, losses, appreciation, depreciation, value, net worth or business activity of a limited liability company, its members or manager; and
- (d) a document relating in any way, directly or indirectly, to the rights, benefits or interests of any member of a limited liability company.

(3) A person who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine of fifty thousand Eastern Caribbean dollars or imprisonment for a term of two years or to both.

(4) For the purposes of this section, "document" and "information" include any papers, deeds, declarations, appointments, minutes, notes, memoranda, records, correspondence, telexes, telegrams, tape recordings, facsimile transmissions, computer data, e-mail, files, discs, and videotapes, of all kinds, whether in printed, electronic or holographic form, or any other form.

**92. Permissible disclosure of confidential information**

(1) Nothing in this Act or an operating agreement or management agreement prohibits a manager or member, or any of the manager's or member's directors, officers or employees, from disclosing confidential information under the following circumstances:

- (a) upon an order of a court in Antigua and Barbuda, in connection with the presentation of evidence for the purpose of, or in the course of, the trial of a person in respect of a serious criminal offence recognised within Antigua and Barbuda, to the extent that the confidential information is required to prove the alleged offence;
- (b) upon an order of a court in Antigua and Barbuda, based upon the written request of the Government of Antigua and Barbuda, pursuant to a valid treaty or convention in force between the Government of Antigua and Barbuda and any other jurisdiction, pertaining to the exchange of information or legal assistance in connection with the investigation, prosecution or prevention of a serious criminal offence, if
  - (i) the request for the information or legal assistance identifies with specificity the offence, as well as the person or entity charged with, or under investigation for, the offence,
  - (ii) the offence is also a serious criminal offence under the laws of Antigua and Barbuda,
  - (iii) the request for exchange of information or legal assistance does not conflict with any existing laws, rules or regulations of Antigua and Barbuda, and
  - (iv) the Court has determined that the confidential information is required to prove the offence;
- (c) upon an order of a court in Antigua and Barbuda, based upon the written request of the Government of Antigua and Barbuda, pursuant to a valid treaty or convention in force between the Government of Antigua and Barbuda and any other jurisdiction pertaining to the exchange of information for purposes of determining, assessing and collecting tax, the recovery and enforcement of tax claims or the investigation or prosecution of criminal tax matters, if
  - (i) the request for information or legal assistance identifies with specificity the offence as well as the person or entity charged with, or under investigation for, the offence, and
  - (ii) the offence is also a serious criminal offence under the laws of Antigua and Barbuda;
- (d) upon an order of a court in Antigua and Barbuda, based upon written request of the Government of Antigua and Barbuda, for information regarding the identification of a manager or member, property or any transaction of a limited liability company, for the purpose of complying with the Antigua and Barbuda Money Laundering (Prevention) Act, 1996, or the Antigua and Barbuda Prevention of Terrorism Act, 2001;
- (e) upon written request, by the Government of Antigua and Barbuda or by a financial institution for information regarding the identification of a manager or member, of a limited liability company, the purpose of the limited liability company or the identification of limited liability company property or transactions, if
  - (i) the request is for the purpose of complying with customer due diligence guidelines as set by the Financial Services Regulatory Commission of Antigua and Barbuda, and
  - (ii) the requesting institution provides assurance satisfactory to the manager or member that the information shall be maintained as confidential by the requesting institution and shall not be disclosed to any third party;
- (f) to any person that a manager or member reasonably believes requires the information to carry out the management and administration of the limited liability company and its property in the ordinary course of business; or
- (g) to a legal practitioner in connection with a request for, or the receipt of, legal advice relating to the establishment, administration, maintenance, business undertaking, affairs, taxation or property of the limited liability company or for the prosecution or defense of any litigation relating to the establishment, administration, maintenance, business undertaking, affairs, taxation or property of the limited liability company.

**93. Maintenance of confidential nature of information**

Disclosure of confidential documents or information specified in section 92 shall not constitute a violation of section 91 and shall not defeat the confidential nature of the documents or information with regards to any other person, series of members, managers or limited liability company interests.

**94. Series of members, managers or limited liability company interests**

(1) An operating agreement may establish or provide for the establishment of one or more designated series of members, managers or limited liability company interests having separate rights, powers or duties with respect to specified property or obligations of the limited liability company or profits and losses associated with specified property or obligations, and any such series may have a separate objective.

(2) The debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to a particular series shall be enforceable against the assets of that series only, and not against the assets of the limited liability company generally or any other series, and vice-versa, if separate and distinct records are maintained for each such series, and

- (a) the assets associated with each series are
  - (i) held in those separate records directly or indirectly, including through a nominee or otherwise; and
  - (ii) accounted for separately from the other assets of the limited liability company, or any other series;
- (b) the operating agreement so provides;
- (c) notice of the limitation on liabilities of a series is set forth in the articles of organisation of the limited liability company; and
- (d) subsections (6) to (10) are complied with.

(3) A general notice in a certificate of organisation of the limitation on liabilities of a series that does not reference any specific series shall be sufficient for all purposes, whether or not the limited liability company has established any series when the notice is included in the certificate of organisation.

(4) The fact that a certificate of organisation that contains the notice of the limitation on liabilities of a series is on file in the office of the Commission shall be presumed to constitute notice of the limitation on liabilities of a series.

(5) A limited liability company which creates a series shall be known as a series limited liability company or series LLC and the term "Series Limited Liability Company" or "Series LLC" or "SLLC" must be part of its name. A series limited liability company shall be a single legal entity and each series of a series limited liability company does not constitute a separate legal entity from the series limited liability company.

(6) The limited liability company must segregate each series on its firm statements, books and records, or present separate financials for each series limited liability company, and the limited liability company may not imply or represent that general limited liability company assets are the assets of other series within the limited liability company.

(7) The limited liability company must segregate each series on its firm profits and loss statements, or present separate profit and loss statements for each series in the limited liability company.

(8) Title to property held by a series in a series limited liability company shall be designated, "\_\_\_\_\_ SLLC for and on behalf of \_\_\_\_\_, a series of \_\_\_\_\_ SLLC."

(9) An asset held by a series in the series limited liability company shall not be used in connection with the business activities or purposes of two or more series within the series limited liability company.

(10) Assets not designated as provided in this subsection, or not kept separate from the assets of other series of the series limited liability company shall be deemed to be the assets of the limited liability company and not of the series.

(11) Notwithstanding any other provision of this Act, an operating agreement or any other agreement, a member or manager may agree in writing to be obligated personally for any or all of the debts, obligations and liabilities of one or more series.

(12) Classes or groups of members or managers associated with a series may have the relative rights, powers and duties set out in the operating agreement.

(13) The operating agreement may make provision for the future creation in the manner provided in the operating agreement of additional classes or groups of members or managers associated with a series having the relative rights, powers and duties that may from time to time be established, including rights, powers and duties senior to existing classes and groups of members or managers associated with the series.

(14) An operating agreement may provide for the taking of an action, including the amendment of the operating agreement, without the vote or approval of any member or manager or class or group of members or managers, including an action to create under the provisions of the operating agreement a new class or group of the series of limited liability company interests.

(15) An operating agreement may provide that any member or class or group of members associated with a series shall have no voting rights.

(16) An operating agreement may grant to all or certain identified members or managers or a specified class or group of the members or managers associated with a series the right to vote separately or with all or any class or group of the members or managers associated with the series, on any matter. Voting by members or managers associated with a series may be on a per capita, number, financial interest, class, group or other basis.

(17) Unless otherwise provided in an operating agreement, the management decisions with respect to a series shall be by majority vote of the members associated with the series in proportion to the percentage or other interest of members in the profits of the series owned by all of the members associated with the series.

(18) If an operating agreement provides for the management of a series, in whole or in part, by a manager, the management shall then be vested in the manager in accordance with the operating agreement.

(19) The manager of a series shall hold the offices and have the responsibilities accorded to the manager set forth in the operating agreement. A series may have more than one manager.

(20) A manager shall cease to be a manager with respect to a series as provided in an operating agreement.

(21) An operating agreement that causes a manager to cease to be a manager with respect to a series shall not, in itself, cause the manager to cease to be a manager of the limited liability company or with respect to any other series.

(22) Notwithstanding any other provision of this Act, but subject to subsections (24) and (31), and unless otherwise provided in an operating agreement, at the time a member associated with a series becomes entitled to receive a distribution with respect to the series, the member is a creditor of the series with respect to the distribution.

(23) An operating agreement may provide for the establishment of a record date with respect to allocations and distributions with respect to a series.

(24) Notwithstanding any other provision of this Act, a limited liability company may make a distribution with respect to a series, so long as, after giving effect to the distribution,

- (a) all liabilities of the series, other than liabilities to members on account of their limited liability company interests with respect to the series and liabilities for which the recourse of creditors is limited to specified property of such series, exceed
- (b) the fair value of the assets associated with the series, including the value of property that is subject to a liability associated with particular assets to the extent that the fair value of that property exceeds that liability.

(25) For purposes of subsection (24), the term "distribution" does not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program.

(26) A member who receives a distribution in violation of subsection (24) shall be liable to a series for the amount of the distribution only if the member knew at the time of the distribution that it violated this section.

(27) Unless otherwise provided in the operating agreement, a member shall cease to be associated with a series and to have the power to exercise any rights or powers of a member with respect to the series upon the assignment of all of the member's limited liability company interest with respect to the series.

(28) An operating agreement that causes a member to cease to be associated with a series, including a member who was the last remaining member associated with the series, shall not

- (a) cause the member to cease to be associated with any other series;
- (b) terminate the continued membership of the member in the limited liability company; or
- (c) cause the termination of the series.

(29) Subject to this Act, except to the extent otherwise provided in the operating agreement, a series may be terminated and its affairs wound up without causing the dissolution of the limited liability company.

(30) The termination of a series shall not affect the limitation on liabilities of the series.

(31) A series is terminated and its affairs shall be wound up upon the dissolution of the limited liability company under this Act or otherwise upon the first to occur of the following:

- (a) the time specified in the operating agreement;
- (b) the happening of events specified in the operating agreement;
- (c) unless otherwise provided in the operating agreement, the affirmative vote or written consent of the members who own more than two-thirds of the interest in the profits of the series or, if there is more than one class or group of members associated with the series, then of each class or group of members associated with the series; and
- (d) the termination of the series under subsections (32) to (36).

(32) Unless otherwise provided in the operating agreement, the persons referred to in subsection (33) may wind up the affairs of the series and, where paragraph (33)(b), (c) or (d) applies, the decision to wind up must be taken by more than fifty percent of the interest in the profit of the series associated with the series, class or group.

(33) The persons referred to in subsection (32) are

- (a) a manager associated with a series who has not wrongfully terminated the series;
- (b) if there is no manager associated with the series, the members associated with the series;
- (c) a person approved by the members associated with the series; and
- (d) if there is more than one class or group of members associated with the series, the classes or groups of members associated with the series.

(34) If the series has been established in accordance with this section, the court in Antigua and Barbuda, upon cause shown, may

- (a) wind up the affairs of the series upon application of any member associated with the series, or the member's personal representative or assignee; and
- (b) appoint a liquidating trustee.

(35) The persons winding up the affairs of a series

- (a) may, in the name of the limited liability company and for and on behalf of the limited liability company and the series, take all actions with respect to the series that are permitted under this Act; and
- (b) shall provide for the claims and obligations of the series and distribute the assets of the series as provided in this Act.

(36) Actions taken in accordance with this subsection shall not affect the liability of members and shall not impose liability on a liquidating trustee.

(37) On application by or for a member or manager associated with a series established in accordance with this section, the court may terminate the series whenever it is not reasonably practicable to carry on the business of the series in conformity with an operating agreement.

## **95. Savings provisions**

This Act shall not affect any cause of action, liability, penalty, or action or special proceeding which, on the effective date of this Act, is accrued, existing, incurred or pending, and it may be asserted, enforced, prosecuted, or defended as if this Act had not been enacted.

**96. Translations**

Every document filed with the Commission that is not in English shall be accompanied by an English translation certified as true and correct by the translator, to the satisfaction of the Commission.

**97. Regulations**

The Minister may make regulations respecting

- (a) the duties to be performed by the Commission under this Act;
- (b) names that are not to be used for companies to which this Act applies;
- (c) fees for the purposes of this Act; and
- (d) any other thing that may be prescribed for the better functioning of this Act.

**98. Certificate of good standing**

The Commission shall, upon request by a registered agent, issue a certificate of good standing certifying that a limited liability company to which this Act applies is of good standing if the Commission is satisfied that

- (a) the name of the limited liability company is on the register;
- (b) the limited liability company has paid all fees required under this Act; and
- (c) the limited liability company is not in contravention of any of the provisions of this Act or is in the process of being wound up and dissolved.

**99. Form of certificate**

Any certificate or other document required to be issued by the Commission under this Act shall be in such form as the Minister may prescribe.

**100. Directions for Commission**

The Commission may apply to the court in Antigua and Barbuda for directions in respect of any matter concerning its duties under this Act and the Court may give the directions and make further orders as it thinks fit.

**101. Appeal from decision of Commission**

A person who is aggrieved by a decision of the Commission may apply to the court in Antigua and Barbuda for an order requiring the Commission to modify or rescind its decision, and the Court may make any order it thinks fit.

Passed by The House of Representatives  
This \_\_\_\_ day of \_\_\_\_\_, 2007

Passed by the Senate this  
\_\_\_\_ day of \_\_\_\_\_, 2007

\_\_\_\_\_  
Speaker

\_\_\_\_\_  
President

Clerk to the House of Representatives

Clerk to the Senate

**EXPLANATORY MEMORANDUM**

This Bill seeks to provide another vehicle through which investors and other entities can conduct business in Antigua and Barbuda. It is divided into fourteen parts.

Part I deals with the general provisions that would apply to international limited liability companies, explaining that they have the capacity of a natural person and may carry on any business in furtherance of their business purposes, except business that would require a license. Part I also would provide for the general administration of the Act for which this is the Bill. For example, clause 4 deals with the procedure for filing documents and clause 7 makes provision for instances where notices cannot be sent to members. Clause 11 deals with disputes being settled by the High Court.

Part II deals with the formation of companies. One or more persons would be allowed to form a company which would have perpetual existence unless otherwise provided in the Articles or an operating agreement. The name would be required to comply with certain guidelines as set out in clause 14 and clause 15 sets out the Commission’s obligation to keep a register of names. Clause 16 would provide for the possibility for a licensee to reserve a name for a company. Clause 17 would provide details on the information that must be listed in the Articles of Organisation and Clause 18 would provide for the filing of articles. Clause 19 would provide for the coming into existence of the company on the date the documents are filed. Clause 20 would provide that filing constitutes notice of the information contained in the documents. Clause 21 would make provision for the Articles to be amended and for the amendment

not affecting any existing action or pending suit. Clause 22 would permit a consolidated version of the articles and all amendments in one document: Articles of Restatement. Clause 23 would provide for the designation of a registered agent.

Part III deals with the relationship of a limited liability company and its members to third parties. Clause 24 provides that the members and managers would not normally be responsible for the debts of the company unless they assume the obligation in writing. This Part also deals with the proper parties to an action by or against a company.

Part IV sets out provisions about contributions and distributions. Clause 33 provides that agreement of all members is required on the amount or character of a capital contribution, and clause 34 provides that any promise to make a capital contribution would be required to be in writing to be binding. Clause 35 would provide for the possibility of distributions in cash or other property to be made prior to termination of the company, the order in which a distribution may be made and valuation of the property. Clause 37 would provide that if the company owes a member a distribution the member would become a creditor of the company. Clause 38 would provide that distributions would not be made if after making them the fair market value of the liabilities of the company would exceed its assets and would provide for the determination of the valuation. Clause 39 is a provision for distribution on withdrawal of a member and Clause 40 contains provisions for distribution on winding up. Clause 41 would deal with profits being shared in accordance with an operating agreement or in accordance with the way members would share distributions and losses in accordance with a member's capital contributions.

Part V deals with the rights of members of the company, how members would enforce their rights, how they would be admitted as members and what actions would constitute withdrawal from the company.

Part VI deals with the withdrawal of members of a company, voluntary transfers, expulsion of members and the right of the company to require expelled members to sell their interests at fair market value.

Part VII would provide for the management of the company by one or more managers who need not be members. Any act not in the ordinary course of the business or operations of the company would not be binding on the company unless authorized in fact. Any act in violation of a restriction would not bind persons who should have known of the restrictions. Clause 56 would enumerate circumstances where the vote of all the members would be required. There are also are certain enumerated circumstances where a vote of a majority of the managers would be required. The rights given to managers would be specific to them and there would be no rights accruing to a voluntary or involuntary transferee of such right. A manager would serve until he or she becomes disabled or resigns. Clause 57 makes provision for the appointment of emergency managers in certain situations. Where the company has a succession committee the agent may appoint a member of that committee as manager. Clause 59 provides that the standard of care to be exercised by managers would be that of an ordinarily prudent person. Clause 60 would provide for a succession committee in a company to help prepare non-managers to become managers.

Part VIII makes provision for the dissolution of the company. Clause 63 lists the circumstances under which a company would be dissolved and makes provision for a notice of dissolution and winding up to be sent to the Commission. Under clause 64 the Commission would have the power to administratively dissolve a company which did not pay annual fees or maintain a registered agent or office. The company would be allowed to cure defects within three years of the administrative dissolution. Clause 65 lists the circumstances under which a company could be judicially dissolved, including deadlock between the members, illegal activity in the operation of the company and where assets are being wasted. Clause 66 and 67 provide that after dissolution the company would wind up but would normally continue operating for three years for the purpose of disposing of assets, settling its business, continuing litigation, winding up the company's business etc. Clause 67 would also provide that liquidation could be carried out under supervision of the High Court in certain situations. Clause 70 provides for articles of termination.

Part IX (clauses 71 and 72) makes provision for the merger or consolidation of a number of companies, on approval, and deals with both international and domestic limited liability companies.

Under Part X, the procedure, rights and obligations of a foreign limited liability company that would wish to transfer its domicile to Antigua and Barbuda are set out and Part XI deals with the transfer of domicile of a domestic limited liability company from Antigua and Barbuda to another jurisdiction.

Part XII would provide for the emergency transfer of domicile into Antigua and Barbuda.

Part XIII provides that companies would be exempt from certain taxes and duties.

Part XIV deals with miscellaneous matters such as obtaining certificates from the Commission and provisions dealing with appeals from the decisions of the Commission. It also makes provision for the Commission to apply to the court for directions. It contains provisions dealing with confidentiality and translations, and contains a regulation-making power.

Hon. Justin L. Simon QC  
Attorney General and  
Minister of Legal Affairs

