

CHAPTER 93B

CARIBBEAN FINANCIAL SERVICES CORPORATION

ARRANGEMENT OF SECTIONS

SECTION

Preamble.

Citation

1. Short title.

Interpretation

2. Definitions.

Status of Company

3. Continuance under *Companies Act, 1982*.

4. *Idem*.

5. Preservation of company.

6. Application of *Companies Act, 1982*.

PART I

CORPORATE ACTIVITIES

7. Operation of Part II.

8. Business in other Caribbean countries.

9. Business restriction.

10. Capital and reserve.

11. Off-shore banking.

PART II

SPECIAL TAXATION PROVISIONS

Residents and Non-Residents of Barbados

12. Residents and non-residents.

Tax Exemptions

13. Exemption from tax.
14. No assets transfer tax.
15. Withholding tax and report.
16. Exempt trusts.
17. General income tax.
18. Tax on dividends.
19. Service charges.
20. Customs relief.
21. Specialist incentives.
22. Exchange Controls.
23. Application for tax laws.
24. Allowable tax credits.
25. Limited tax holiday.

PART III

CONSEQUENTIAL AND RELATED MATTERS

26. Rates of interest.
27. Non-applying statutes.

PART IV

ADMINISTRATION

28. Regulations.

SCHEDULE

CHAPTER 93B

CARIBBEAN FINANCIAL SERVICES CORPORATION

An Act to provide assistance to Caribbean Financial Services Corporation Limited to enable that private sector financial institution to develop financial and commercial opportunities within the Caribbean, and to provide for such other matters as are incidental, ancillary, consequential or related thereto. 1984—1.

[12th April, 1984.] Commence-
ment.
S.I. 1984/
56.

WHEREAS the Caribbean Association of Industry and Commerce, hereinafter called the "Association", has caused Caribbean Financial Services Corporation Limited to be incorporated in Barbados as a limited liability company with a share capital, hereinafter in this Preamble called the "Company", to provide venture capital and term-financing to the private sectors in Antigua and Barbuda, Belize, Barbados, Dominica, Grenada, Guyana, Montserrat, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago and to the private sectors in other countries within the Caribbean region; and Preamble.

WHEREAS the Association believes that the Company will provide a catalyst for private sector development in those countries in which it will carry on its activities; and

WHEREAS initially the Company was capitalised in United States dollars and for that reason and because of the nature of its activities it will need special legislation to enable it to obtain and maintain a large capital and reserve base, to acquire special tax incentives and receive foreign exchange control exemptions

THE LAWS OF BARBADOS

and to have special legislation in relation to other matters required to support its general objectives; and

WHEREAS it appears expedient and in the public interest that the Company be granted special privileges within Barbados to assist it in achieving its general objectives, and that it be continued as a company under the *Companies Act*, as soon as practicable; NOW THEREFORE:

Cap. 308.
1982—54.

Citation

Short title. 1. This Act may be cited as the *Caribbean Financial Services Corporation Act*.

Interpretation

Definitions. 2. In this Act, "Company" means the Caribbean Financial Services Corporation Limited incorporated in Barbados on the 28th day of July, 1983 and continued pursuant to this Act as the "Caribbean Financial Services Corporation" under the *Companies Act*.

Cap. 308.
1982—54.

Status of Company

Continuance under Companies Act. 3. (1) If on 12th April, 1984, the *Companies Act*¹ is in operation, the Company shall, as soon as practicable, apply under Division C of Part III of the *Companies Act*, for continuance as a company under that Act with the name of "Caribbean Financial Services Corporation".

Cap. 308.
1982—54.

(2) For the purposes of section 11 of the *Companies Act*, the name "Caribbean Financial Services Corporation" is a name reserved for the Company under section 415 of that Act.

Idem.
Cap. 308.
1982—54.
Schedule.

4. (1) If on 12th April, 1984, the *Companies Act*,¹ is not in operation, the Caribbean Financial Services Corporation Limited shall submit articles of continuance, in Form I in the Schedule, to the Registrar of the Supreme Court, who

¹ The Companies Act (1982—54) Cap. 308 came into operation on 1st January, 1985.

thereupon has all the powers and may exercise all the functions of the Registrar of Companies under the *Companies Act*, in respect of the application. Cap. 308.

(2) When the Registrar of the Supreme Court is satisfied that the articles of continuance submitted to him under subsection (1) comply with the requirements of the *Companies Act*, he shall, in accordance with section 352 of that Act, issue in Form 2 of the *Schedule* a certificate of continuance to the applicant under the name of the "Caribbean Financial Services Corporation". Cap. 308.

5. (1) If a certificate of continuance is issued under the *Companies Act* by the Registrar of the Supreme Court pursuant to section 4 of this Act, the Caribbean Financial Services Corporation Limited is continued, under the name Caribbean Financial Services Corporation, as a company under the *Companies Act*. Preservation of company. Cap. 308.

(2) Without otherwise affecting the application of the *Companies Act*, when a certificate of continuance is issued pursuant to section 4(2) in the name of Caribbean Financial Services Corporation (in this provision referred to as "the Company"), Cap. 308.

- (a) the property of the Caribbean Financial Services Corporation Limited continues to be the property of the Company;
- (b) the Company continues to be liable for the obligations of the Caribbean Financial Services Corporation Limited;
- (c) any existing cause of action, claim or liability to prosecution is unaffected;
- (d) a civil, criminal or administrative action or proceeding pending by or against Caribbean Financial Services Corporation Limited may be continued by or against the Company; and
- (e) a conviction against, or ruling, order or judgment in favour of or against, Caribbean Financial Services Corporation Limited may be enforced by or against the Company.

Application of *Companies Act*.
Cap. 308.

6. (1) The notices of the registered office and directors of the Company as required under Division A of Part I of the *Companies Act*¹ shall be sent to the Registrar of the Supreme Court.

Cap. 308.

(2) Except as otherwise provided in this Act, the *Companies Act*¹ applies in respect of the Company notwithstanding that the *Companies Act* has not been brought into operation; and where any matter may be or must be deposited with or done by the Registrar under that Act, it is to be deposited with or done by the Registrar of the Supreme Court until the *Companies Act* is brought into operation and a Registrar is appointed under that Act.

Cap. 308.

(3) Until such time as regulations have been made and are in force under the *Companies Act*, the Minister may make such regulations as are necessary to enable the Company to comply with the requirements of that Act in carrying on its affairs and business.

Cap. 308.

(4) Except where a contrary intention is evident, words and expressions used in this Act and the *Companies Act* have the meanings given them in the *Companies Act*, and are intended to be similarly construed.

(5) Subsections (1) to (3) apply until 1st January, 1985.

PART I

CORPORATE ACTIVITIES

Operation of Part II.

7. Part II does not apply to the Company unless its stated capital account equals or exceeds \$2 000 000 Barbados or the equivalent amount in other currencies.

Business in other Caribbean countries.

8. (1) Subject to subsection (2), the Company shall not carry on or continue to carry on any business or any of its corporate affairs in any other country in the Caribbean unless under the laws of that country the Company receives similar incentives, benefits and exemptions as are granted the Company under Part II of this Act.

¹ The *Companies Act*, (1982-54) Cap. 308 came into operation on 1st January, 1985.

(2) The shareholders of the Company may, by extraordinary resolution, authorise the Company to carry on any business or any of its corporate affairs in a Caribbean country in which it does not receive substantially similar incentives, benefits and exemptions under the laws of that country if the directors reasonably believe that it is in the best interests of the Company to do so.

9. The Company shall not carry on a domestic banking business, that is to say, the business of Business restriction.

(a) receiving money from the general public of Barbados on current accounts, deposit accounts or other similar accounts and paying and collecting cheques drawn on or paid in on those accounts; or

(b) receiving money from the general public of Barbados on savings accounts repayable on demand or after a period of notice,

but the receiving, paying or collecting of money on current, deposit, savings or other accounts kept by the Company otherwise in the ordinary course of its business, and the paying and collecting of cheques relating thereto, does not constitute domestic banking business within the meaning of this section.

10. (1) The Company shall maintain Capital and reserve.

(a) a stated capital account in any currency in a minimum amount that is equal to or greater than \$2 000 000 Barbados; and

(b) a reserve fund invested in securities approved by resolution of its shareholders in an amount determined under subsection (2).

(2) Out of its net profits of each year and before any dividend is paid, the Company must transfer to its reserve fund an amount equal to not less than 15 percent of those profits whenever the amount of its reserve fund is less than its stated capital account.

Off-shore
banking.
Cap. 325.

11. (1) Without acquiring a licence to do so under the *Off-Shore Banking Act*, the Company may carry on the business of off-shore banking, within the meaning of that Act, subject to such terms and conditions as the Minister may prescribe.

(2) In the conduct of any off-shore banking business, the Company may from within Barbados or elsewhere, engage in any generally acceptable banking activities.

(3) Nothing in this section affects the capacity of the Company to carry on any other lawful business within or outside Barbados.

Cap. 325.

(4) In respect of any off-shore banking business carried on by the Company from within Barbados, the *Off-Shore Banking Act*, applies to the Company with such modifications as are necessary to accord with this Act.

PART II

SPECIAL TAXATION PROVISIONS

Residents and Non-Residents of Barbados

Residents
and non-
residents.

12. (1) For the purposes of this Act, the following are residents, namely:

- (a) a natural person ordinarily resident in Barbados or a citizen with a residence in Barbados;
- (b) any incorporated or other body, incorporated, formed or organised in Barbados, the majority of the shares or other ownership of which is beneficially held by persons who are residents within the meaning of paragraph (a);
- (c) any incorporated or other body, wherever incorporated, formed or organised, that is controlled directly or indirectly by a person described in paragraph (a) or (b);
- (d) any incorporated body or other body that is controlled by a body described in paragraph (c), by the Government of Barbados or any agency thereof;
- (e) the Crown in right of Barbados;

(f) a trust

(i) established by a resident as defined in any of paragraphs (a) to (e), other than a trust for the administration of funds for the benefit of persons a majority of whom are persons resident outside Barbados, or

(ii) in which residents as defined in any of paragraphs (a) to (e) have 50 percent or more of the beneficial interest;
or

(g) any incorporated or unincorporated body that is controlled directly or indirectly by a trust defined in this section as a resident of Barbados.

(2) Persons are not residents for the purposes of this Act if they are not residents within the meaning of subsection (1).

(3) A reference in this Part to any beneficial interest or to anything being beneficially owned or held includes ownership through a trust, legal representative, agent or other intermediary.

Tax Exemptions

13. (1) Except as provided by this Part, no income tax, capital gains tax, or other direct tax or impost may be levied in Barbados upon the profits or gains of the Company in respect of any business it carries on within or from without Barbados. Exemption from tax.

(2) Except as provided by this Part, no income tax, capital gains tax or other direct tax or impost may be levied in Barbados in respect of any securities or assets of the Company that are beneficially owned by the Company or by a customer of the Company who is not a resident.

(3) Except as provided by this Part, no estate, inheritance, succession or similar tax or impost may be levied in Barbados in respect of any securities or assets of the Company that are beneficially owned by the Company or a customer of the Company who is not a resident.

(4) Except as provided by this Part, no tax, duty or impost may be levied upon the increment in value of the property or

other assets in Barbados or elsewhere of the Company other than upon such of them as are distributed to shareholders of the Company who are residents by way of a distribution of undistributed profits or upon a winding up of the Company.

No assets transfer tax.

14. (1) Except as provided by this Part, no tax, duty, or other impost may be levied upon the Company, its security holders or transferees in respect of the transfer of all or any part of its securities or other assets to a person who is not a resident.

(2) When the Company or a person who is not a resident transfers shares of the Company to a person who is not a resident or to the Company, the transfer is exempt from the payment of any tax, duty or other impost thereon.

(3) Except as provided by this Part,

(a) no income tax or capital gains tax; and

(b) no other direct tax or impost,

may be levied or collected in Barbados, in respect of any dividends, interest or other returns from any shares, securities, deposits or borrowings of the Company or any assets managed by the Company if the dividends, interest or other returns are in respect of shares, securities, deposits, borrowings or assets beneficially owned by a person who is not a resident; but the onus of establishing ownership lies upon the Company.

Withholding tax and report. Cap. 73.

15. (1) Notwithstanding any provision of the *Income Tax Act* but subject to subsection (2), the Company need not withhold any portion of any dividends, interest or other returns payable to any person in respect of any borrowings of the Company from that person or in respect of securities of the Company held by that person.

(2) All dividends, interest or other returns attributable to the securities of, or the management of securities by, the Company that are payable to a resident who is known to be a resident by the Company must be reported to the Commissioner of Inland Revenue by the Company.

Exempt trusts.

16. When a settlor who is not a resident establishes a trust in favour of the Company or in favour of a person who is not a

resident, the trust is exempt from any tax, duty or impost in Barbados, if the funds of the trust consist of currency and securities and the trust is under the management of the Company.

17. (1) By way of income tax but in lieu of income tax at the rates specified in the *Income Tax Act*, there shall, subject to section 26, be paid to the Commissioner of Inland Revenue by the Company, tax at the rate of tax levied under subsection (2) on the profits, gains, dividends, interest, royalties, fees and other income, gains, profits, revenues and increments of the Company, hereinafter referred to as "income and profits".

General
income tax.
Cap. 73.

(2) There shall be levied upon the Company's income and profits, tax at the rate of one-half of 1 percent on its income and profits of \$10 000 000 or more.

18. (1) By way of income tax but in lieu of income tax at the rates specified in the *Income Tax Act*, there shall be paid to the Commissioner of Inland Revenue in respect of any dividends paid by the Company on its shares in any income year, within the meaning of that Act,

Tax on
dividends.
Cap. 73.

(a) a tax at the rate of 10 percent of the amount of the dividend in the case of a shareholder who is not a resident, and

(b) a tax at the rate of 12½ percent of the amount of the dividend in the case of a shareholder who is a resident, and, in either case, the tax shall be withheld from the dividend and paid by the Company to the Commissioner.

(2) For the purposes of this provision "dividend" includes any payment from the Company for the benefit of shareholders, by way of participation in the earnings and profits of the Company, whether by way of money, issue of shares or securities, of the Company, or other shares or securities, or goods or otherwise; but a dividend is only taxable under this provision in respect of the income year in which it is actually paid by the Company.

(3) Dividends paid by the Company are not taxable income under the *Income Tax Act* for any purpose except the application of section 25.

(4) An amount withheld under this section by the Company from any dividend payment to a shareholder is, in respect of the amount so withheld, a full discharge of any obligation incurred by the Company to the shareholder and relating to the dividend.

Service
charges.

19. (1) Nothing in this Part exempts the Company from the payment of any charge by the Government or any agency of the Government in the nature of a service charge or utility charge.

(2) A service or utility charge includes a charge or fee levied or imposed in respect of any corporate documents, registrations or licences required in Barbados.

Customs
relief.
Cap. 66.

20. The Minister may by order exempt the Company from all or so much of any duty payable under the *Customs Act* or of any other customs impost or surcharge,

(a) in respect of any goods imported by the Company for its business, as the Minister thinks reasonable, if the Company satisfies the Minister that the goods concerned

(i) are not being made or manufactured in Barbados,

(ii) are essential as equipment or fixtures for carrying on its business within or from without Barbados, and

(iii) are not merely goods that will be used up or expended in the ordinary course of its business;

(b) in respect of any building materials, building machinery and equipment imported by the Company to construct a building within Barbados to provide the Company with the office space it requires for its business within the Caribbean and elsewhere, if the Company satisfies the Minister that the materials, machinery or equipment are essential to the construction of the building and are not obtainable within Barbados.

Specialist
incentives.

21. (1) When the Minister is satisfied that the Company needs to use the services of specially qualified individuals in order to do its business effectively from within Barbados and that

- (a) it is unable to acquire those services in Barbados; and
- (b) it is unable to retain or hire those services from outside Barbados without special benefits being made available, the Minister may authorise a special benefit provision for the employment of those specially qualified individuals.

(2) A special benefit provision is one by which a prescribed percentage of an employee's or contractor's salary or fees from the Company

- (a) is exempt from income or other tax in Barbados, and
- (b) is payable
 - (i) in a foreign currency into a trust account without being liable to income or other tax in Barbados as to the amount paid or any earnings thereon, or
 - (ii) in some other prescribed manner in another currency or otherwise without being liable to be taxed thereon in Barbados,

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

22. (1) The dividends, royalties, interest, foreign securities, funds, gains and assets generated or managed by the Company in the course of its business are exempt from the provisions of the *Exchange Control Act*; but in respect of any funds held by the Company in Barbados dollar accounts the Company must comply with any reasonable regulations placed thereon by the Central Bank of Barbados. Exchange controls.
Cap. 71.

(2) Section 11(2) of Part IV of the *Exchange Control Act* does not apply to the Company nor to any company incorporated by the Company. Cap. 71.

23. Except to the extent that they are inconsistent with or repugnant to this Part or to regulations made under section 28, the laws of Barbados relating to income tax and applicable to companies carrying on business in Barbados apply, with such necessary modifications as the circumstances require, to the Company in respect of the levying, calculating and collecting of tax under this Part, the assessment and determination of the amount of the tax, and in respect of appeals therefrom. Applica-
tion for
tax laws.

THE LAWS OF BARBADOS

Allowable
tax credits.

24. For the purposes of this Part, any tax paid by the Company, by withholding tax from dividends or otherwise, to a foreign jurisdiction with which a tax convention for the relief of double taxation is in effect is a foreign tax in the computation of allowable tax credits for the purposes of the *Income Tax Act*.

Cap. 73.

Limited
tax
holiday.
Cap. 73.

25. In respect of the first 10 income years, within the meaning of the *Income Tax Act*, that the Company carries on business within Barbados, the Company is exempt from tax of any kind under that Act on the income and profits accruing to the Company.

PART III

CONSEQUENTIAL AND RELATED MATTERS

Rates of
interest.
Cap. 316.

26. (1) The *Rates of Interest Act* does not apply to the Company in respect of any borrowings made outside Barbados in any currency.

(2) When a loan is made in a currency other than Barbados currency by the Company to a person in Barbados, the Company shall be deemed to be an exempted person under the *Rates of Interest Act*.

(3) When a loan is made in a currency other than Barbados currency by the Company to a person in Barbados, the *Rates of Interest Act* does not apply, but the Company must comply with any general policy regulations made by the Minister of Finance or the Central Bank of Barbados in relation to loans of the like nature.

Non-
applying
statutes.

27. The following Acts do not apply in respect of the Company or its business, namely:

Cap. 322.

(a) the *Banking Act*;

Cap. 77.

(b) the *International Business Companies (Exemption from Income Tax) Act*.

PART IV

ADMINISTRATION

- 28.** The Minister may make regulations Regulations.
- (a) providing for tax returns to be submitted by the Company;
 - (b) governing the information to be furnished for the purposes of computing and collecting any tax imposed pursuant to this Act;
 - (c) prescribing any matters required to be prescribed for the purposes of this Act; and
 - (d) generally to give effect to the provisions of this Act.

SCHEDULE*(Section 4)*

Form I

ARTICLES OF CONTINUANCE

1. Name of the Company:
 2. Company No.
 3. The classes and any maximum number of shares that the Company is authorised to issue
 4. Restrictions if any on share transfers
 5. Number (or minimum or maximum number) of directors
 6. Restrictions if any on businesses the Company may carry on
 7. If change of name effected, previous name
 8. Details of Incorporation
 9. Other provisions if any
 10. Date Signature Title
-

Company No. 1

COMPANIES ACT OF BARBADOS

Form 2

(Section 4)

CERTIFICATE OF CONTINUANCE

CARIBBEAN FINANCIAL SERVICES CORPORATION

Cap. 93B. I hereby certify that the abovementioned Company was continued, as set out in
Cap. 308. the attached Articles of Continuance, pursuant to section 4 of the *Caribbean
Financial Services Corporation Act* and section 351 of the *Companies
Act*.

Registrar

Date of Continuance