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"In Trinidad and Tobago, there is only a very slender stream of indigenous legal literature. Sheila Teelucksingh's study of the Companies Act, Chap. 81:01, which was enacted in 1995 and came into force in 1997, is a welcome step to boosting the flow of legal writing in this Jurisdiction.

Miss Teelucksingh is eminently qualified by her long experience in company law, conveyancing and banking law, to undertake an analysis of the new Companies legislation. Her easy mastery of corporate law is apparent in her elucidation of the new Companies Act, which is based in part on the Canada Business Corporations Act, and the winding-up provisions of the old Companies Ordinance Ch. 31 No.1.

Miss Teelucksingh's work is lucid and easy to understand, and will benefit legal practitioners, accountants, businessmen and students at the Law Schools, as well as the general public.

I am honoured to be invited to do this Foreword, and hope that this work achieves the success it deserves."

—**R. F. Nelson**
Justice of Appeal

"*The New Companies Act of Trinidad and Tobago - A Commentary* gives a very detailed comparison of the 'old' Companies Ordinance, Chapter 31 No.1, and the 'new' Companies Act 1995 as amended by the Companies (Amendment) Act 1997. She was an Associate Tutor at the Hugh Wooding Law School, Trinidad & Tobago for many years. The manner in which she goes through the sections is testimony to her teaching skills.

Those of us who have spent years mastering the Companies ordinance will readily grasp the intricacies of the new legislation. Ms Teelucksingh's treatment of the material makes it easy to locate and to understand the relevant provisions of the Companies Act 1995.

This work should be of benefit to practitioners, students and anyone seeking an appreciation of the provisions of the new legislation."

—**Annestine Sealey**
Principal, Hugh Wooding Law School

"One of the challenges faced by candidates who sit the local examination programme of the Institute of Banking and Finance of Trinidad and Tobago is the difficulty in finding texts which are applicable to the local environment. Miss Teelucksingh must be congratulated for producing a text for the lay person on the Companies Act."

—**Doris Wong**
Chief Executive Officer
Institute of Banking and Finance of Trinidad and Tobago

THE NEW COMPANIES ACT OF TRINIDAD AND TOBAGO

— A Commentary —

SHEILA M. TEELUCKSINGH

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Statutory Declaration by an Attorney engaged in the formation of the Company or by a person named in the Articles as a Director or Secretary, that all formalities relating to registration of the Company, and matters precedent or incidental thereto have been complied with. In addition, for the incorporation of a Public Company, consents of the persons who had consented to become Directors of the Company were also required to be filed. Furthermore, after incorporation, Returns of Particulars of Directors and Notice of Situation of Registered office were also required to be filed within the time specified. Now however, *under sc.8 of the Act*, the documents to be filed for the incorporation of any Company include Articles of Incorporation in the prescribed form, and a statutory declaration by an Attorney-at-Law engaged in the formation of the Company, or by a person named in the Articles or in the documents accompanying them as a Director or Secretary of the Company, that all requirements precedent to the formation of the Company have been complied with, and that to the best of his knowledge, information or belief, no signatory to the Articles is an individual prohibited by Sc.8(2) of the Act. Additional documents are also required to be filed with the Articles of Incorporation, namely a Notice of Directors of the Company and Notice of the address of its registered office.

Under the former law, the Memorandum of a Company about to be incorporated, was required to set out in detail, the objects of the Company, and alteration of such objects had to be authorised by special resolution of the Company, and could not take effect until confirmed on petition to the Court. Now however, the whole concept of a Company's ability to carry on business being limited by its stated objects, has been abolished entirely and is no longer applicable, so that the objects of the Company are not required to be stated in its Articles of Incorporation, but the Articles must set out, *under Sc. 9 of the Act*, the following (inter alia):

(a) If there are two or more classes of shares, the rights, privileges, restrictions and conditions attached to each class; and if a class of shares can be issued in a series, the authority, if any, given to the Directors to fix the number of shares of each series, or to determine the rights, privileges, restrictions and conditions attached to such shares;

(b) A statement as to any restrictions on the transfer or ownership of shares and the nature of such restrictions;

(c) If the preemptive rights with respect to the issue of shares referred to in Sc.38 are to be varied, a statement as to the nature of such variations;

(d) If the power of the Directors to make amend or repeal the By-laws of the Company under Sc.66 is restricted, a statement as to the nature of such restrictions;

(e) The number of Directors or subject to Sc.73(a), the minimum and maximum number of Directors;

(f) Any restrictions on the business that the Company may carry on;

(g) Whether the Company is a non-profit Company.

In addition, the Articles may set out the maximum number of shares that the Company is authorised to issue.

Under Sc.10 of the Act, it is stipulated that if the Articles or any Unanimous Shareholder Agreement (as defined in Sc.137), require a greater number of votes of Directors or Shareholders than that required by the Act to effect any action, the provisions of the Articles or of the Unanimous Shareholder Agreement shall prevail, but the Articles shall not require a greater number of votes of Shareholders for the removal of a Director other than the number specified in Sc.75.

Under Sections 12 and 13 of the Act, it is stipulated that the Registrar must issue a Certificate of Incorporation for a Company in accordance with Sc.481, after the Articles of Incorporation and other required documents complying with the provisions of the Act have been filed; and such a Certificate is deemed to be conclusive proof of the incorporation of the Company on the date shown on the Certificate, and the Company comes into existence on that date.

Name of Company

Under the former law, a Company with limited liability formed for charitable and other similar objects could dispense with the word "limited" at the end of its name, if it obtained a licence from the State. Now however, *under Sc.14 of the Act*, every limited liability Company other than a non-profit Company, must have the word

"limited" or the abbreviation "Ltd" as the last word of its name, and every unlimited liability Company must have the word "unlimited" or the abbreviation "Unltd" as the last word of its name. A Company is also now permitted to use and be legally designated by either its name in full or the abbreviated form thereof indicated in the Section, though an abbreviation was not previously permitted.

Formerly, a Company could not be registered by a name which in the opinion of the Registrar was undesirable, or closely resembled the name of another Company already in existence. Now however, *under Sc.15 of the Act*, a Company being incorporated cannot use a name which is prohibited or refused under Sc.493, or which is reserved for another Company under Sc.492. Furthermore, if by inadvertence, the Company is formed with a name which contravenes the requirements of Sc.15, the Registrar may direct the Company to change its name in accordance with Sc.214.

Under Sc.17 of the Act, a Company that is continued under the Act is entitled to carry the name it lawfully had before continuance.

It must also be noted that while previously, a Company had the right to change its name by special resolution with the approval of the Registrar, under the new law, any change of name by the Company is regarded as a fundamental amendment to the Articles of Incorporation or Continuance, but under Sc.214 of the Act, any such amendment can be effected by special resolution of the Company, without approval of the Registrar, unless the new name is one prohibited by Sc.493 of the Act.

Pre-Incorporation Agreements

Under the common law, a Company could not ratify or adopt a contract purported to have been made on its behalf before incorporation. Now however, express provision is made by *Sc.20 of the Act* to remedy this situation, which stipulates that though a person who enters into a written contract on behalf of a Company before it comes into existence, remains personally liable thereon, unless steps are taken to procure its adoption by the Company, the Company may, as provided by ss(2), within a reasonable time after it comes into existence, by action or conduct, adopt the contract. In such event the Company becomes bound by the contract and entitled to the benefits thereof, as if it had been in existence at the time when the contract was made and had been a party to it, and the person who purported to act on behalf of the Company ceases to be bound by the contract or to be entitled to the benefits thereof. However, any party to a contract adopted by a Company after its incorporation, may apply to the Court for an Order fixing obligations or apportioning liability between him and the Company, unless it is expressly provided in the contract that the party purporting to act on behalf of a Company before it came into existence is not in any event to be bound by the contract or entitled to the benefits thereof.

Corporate Capacity and Powers

Previously, a Company formed under the Companies Ordinance was a body corporate having perpetual succession, but capable only of exercising all the functions of an incorporated Company, meaning that the Company had the capacity to do only such acts as were expressly or impliedly authorised by the "objects clause" contained in its Memorandum of Association, and any acts by the Company not so authorised were held to be "ultra vires" and void. Now however, there is no necessity for an objects clause to be included in the Company's constitution, and the doctrine of "ultra vires" is abolished entirely. *Under Sc.21 of the Act*, a Company incorporated or continued under the Act has no limits on its legal capacity, and possesses all the rights, powers and privileges of an individual, including the power to hold lands in any part of Trinidad and Tobago and elsewhere, except in the case of a non-profit Company, which must obtain a licence from the President to hold lands in excess of two acres in extent, as previously. A Company now has full capacity to carry on its business, conduct its affairs and exercise its powers in Trinidad and Tobago, to the extent that the laws of Trinidad and Tobago permit, and in any jurisdiction outside Trinidad and Tobago, to the extent that the laws of that jurisdiction permit. It is also not necessary for a By-law to be passed to confer any particular power on the Company or its Directors.

Under Sc.22 of the Act, the carrying on of any business and the exercise of any power by the Company are subject only to any restrictions on the exercise of those powers

ne value of the share or Debenture in question, is guilty of an offence under the ct, and is also, in civil proceedings, liable to compensate any person for any direct oss incurred by that person as a result of the transaction, unless the information was nown or should, by the exercise of reasonable diligence, have been known to that erson at the time of the transaction. The insider is also accountable in civil roceedings to the Company for any direct benefit or advantage received or ceivable by him as a result of the transaction. It is also provided that notwithstand- g any written law, an Officer of the Commission can institute and conduct criminal roceedings in a summary Court for an offence under Sc.305.

nder Sc. 306 of the Act, however, no civil proceedings brought under Sc. 305 may e commenced except within two years after discovery of the facts that gave rise to e cause of action. There is thus a two-year limitation period for bringing of civil tions under Sc. 305.

It is to be noted that under Division 4 of the Act, insider trading, which involves ansactions concerning the securities of a Company by persons who, by virtue of eir positions or connections with the Company, have access to information about e value of such securities which is not available to the general public, is prohibited, d the person guilty of insider trading is accountable to the Company for any direct nefit or advantage received by him as a result of the transaction. The insider is so liable to compensate any person for any direct loss suffered by that person as result of the transaction.

Chapter VIII

Division I – Companies Without Share Capital

Under Sc.307 of the Act, it is stated that Division I of Part V applies to a nonprofit Company, and that where a provision of Division I is inconsistent with, or repugnant to other provisions of the Act, the provision of Division I, in so far as it affects a non-profit Company, shall prevail over such other provisions. It is also stated that for the avoidance of uncertainty, certain provisions of the Act, as specified, apply to a non-profit Company, and that a non-profit Company may be a Company limited by guarantee.

Sc.308 of the Act stipulates that no Articles in respect of a non-profit Company, shall be accepted for filing without the prior approval of the Registrar, and that in order to qualify for such approval, the business of a non-profit Company must be restricted to one that is of a patriotic, religious, philanthropic, charitable, educational, scientific, literary, historical, artistic, social, professional, fraternal, sporting or athletic nature or the like, or to the promotion of some other useful object. However, the approval of the Registrar is not required for a Former-Act Company, being a Company formed for charitable or other purposes, which was registered as a Company with limited liability by licence of the President pursuant to Sc.20 of the Companies Ordinance, and is continued under the Act.

Sc.309 of the Act stipulates that the Articles of a non-profit Company must be in the prescribed form, and sets out the particulars which must be included therein.

Sc.310 of the Act provides that a non-profit Company must have no fewer than three Directors, but the Articles or By-laws of the Company may provide for individuals to become Directors, by virtue of holding some office outside the Company.

Under Sc.311 of the Act, no limit is placed on the number of members of a non-profit Company, unless its Articles or By-laws otherwise provide, and such Articles or By-laws may provide for more than one class of membership.

Sc.312 of the Act also states that persons may be admitted to membership of a non-profit Company by resolution of its Directors, subject to its Articles or By-laws.

Sc.313 of the Act states that each member of every class of members of a nonprofit Company is entitled to one vote, but the Articles of the Company may provide that each member of a specified class has more than one vote, or has no vote.

Sc.314 of the Act provides that unless the Articles of a non-profit Company otherwise provide, the interest of a member in the Company is not transferable, but lapses and ceases to exist upon his death or when he ceases to be a member by resignation or otherwise in accordance with the By-laws of the Company. However, the By-laws of such a Company may not restrict the transfer of the interest of a member in the Company, if the Articles of the Company provide that such interest of a member is transferable.

Sc.315 of the Act sets out the matters in respect of which the Directors of a non-profit Company may make By-laws, provided that the same do not conflict with the provisions of the Act or the Articles of the Company. Sc.315 also provides that a By-law passed under ss(2) is not effective until confirmed by at least two-thirds of the votes cast at a general meeting of the members duly called for that purpose.

Sc.316 of the Act provides that on dissolution of a non-profit Company, after satisfaction of all its debts and liabilities, the Company must give or transfer any remaining property to such other non-profit Company as the members may, with the approval of the President, determine, and where the Company is exempt from corporation tax under Sc.6(1) of the Corporation Tax Act, its remaining property must be transferred to such other nonprofit Company enjoying a similar tax exemption, as selected by the members with the approval of the Board of Inland Revenue.

Division 2 – External Companies

Sc. 317 of the Act states that Division 2 shall apply to all external Companies which (a) establish a place of business in Trinidad and Tobago, or (b) had established a place of business in Trinidad and Tobago before the commencement of the Act, and continue to have such an established place of business at the commencement of the Act, or (c) establish or use a share transfer or share registration office in Trinidad and Tobago. The definition of an external Company is therefore now extended to include foreign Companies who operate a share transfer or share registration office in Trinidad and Tobago, even though they do not carry on business in Trinidad and Tobago.

Under Sc.318 of the Act, an external Company which after the commencement of the Act, has established a place of business in Trinidad and Tobago, is required within fourteen days thereafter, to file with the Registrar, a Statement in the prescribed form setting out the particulars listed in the Section, which Statement must be verified in the manner indicated therein.

Under Sc.319 of the Act, every external Company which was carrying on business in Trinidad and Tobago immediately before the commencement date of the Act, and was registered under the Companies Ordinance, is required within eighteen months after that date, to apply to the Registrar in the prescribed form, for a Certificate of Registration under Division 4 of the Act, and upon receipt of the application, together with the documents required by Sc.318, a Certificate of Registration must be issued by the Registrar to the Company. Upon such registration, it is stated that the provisions of Sc.343 and Sc.344 of the Act would apply to the Company in respect of its business in Trinidad and Tobago, with any necessary modifications.

of the Company which were deemed to be otherwise unlawful by reason only of non-registration of the Company.

Under Sc.332 of the Act, where the name of an external Company registered under the Act has been changed, or its corporate instruments have been altered, or its objects altered or its business restricted, the Company is required, within thirty days after the change, to file with the Registrar, copies of the instruments by which the change has been effected, duly certified in accordance with Sc.318(2)(a), and after receipt of the required documents and the prescribed fee, the change in question must be entered by the Registrar in the Register. Where a change has also been made in the Directors of an external Company, the Company must also within thirty days after the change, deliver to the Registrar a notice in the prescribed form setting out the change, together with the prescribed fee. It is also provided that upon registration under Sc.322 of a change in respect of an external Company, a certificate of the change in question must be issued by the Registrar, which is admissible in evidence as conclusive proof of such change.

Under Sc.333 of the Act, an external Company is also required to deliver to the Registrar, not later than thirty days after the anniversary date of its registration under the Act, an annual return in the prescribed form, containing the prescribed information, made up to such anniversary date, duly certified by a Director or Officer of the Company, and accompanied by the prescribed fees.

Sc.334 of the Act stipulates that where an external Company required to be registered under the Act has not been so registered, the Company cannot maintain without leave of the Court, any action, suit, counterclaim or other proceeding in any Court in Trinidad and Tobago, though it can be made a defendant to an action. However, upon the registration or revival of registration of an external Company under the Act, the Company would then be entitled to maintain an action, suit or other proceeding as if it had never been disabled, subject however to such terms and conditions imposed on the Company as the Court may order.

Sc.335 of the Act requires every external Company to exhibit at its principal office in Trinidad and Tobago, along with its name, the jurisdiction in which it was incorporated, and if the liability of its members is limited, a notice of that fact. The

name of the Company and the jurisdiction in which it was incorporated must also be stated in legible characters in all name plates, bill heads and letter paper, and in all notices, advertisements and other official publications of the Company originating in Trinidad and Tobago. Furthermore, if the liability of the members is limited, notice of that fact must be stated in legible characters in all such documents, and affixed on every place where the Company carries on business.

Sc.337 of the Act states that certain provisions of the Act, namely those contained in Sections 22 to 27, and 493(b) to (f), Divisions 2 to 4 of Part IV and Divisions 2 and 4 of Part VII, apply mutatis mutandis to external companies.

It is to be noted that under Division 2 which applies to all external Companies, the most important change in the law is that introduced by Sections 323 to 325, in that whereas previously under the Companies Ordinance, a foreign Company which proposed to institute or defend an action in Trinidad and Tobago, was merely required to register the names and addresses of some one or more persons resident in Trinidad and Tobago who were authorised to accept on behalf of the Company, service of process and notices, under the Act, a fully executed Power of Attorney must now be filed with the Registrar, formally appointing a Company incorporated in Trinidad and Tobago, or persons resident in Trinidad and Tobago, as Attorneys of the Company, specifically for the purpose of receiving on its behalf, service of process or notices.

Division 3 – Former-Act Companies

Sc.338 of the Act expressly states that Division 3 does not apply to external Companies.

Under Sc.340 of the Act, it is stipulated that every Former-Act Company, other than a Public Company, must within two years after the commencement date of the Act, apply to the Registrar for a Certificate of Continuance under the Act, while every Former-Act Company which is a Public Company, is required to apply to the Registrar for a Certificate of Continuance within twelve months after such com-

Under Sc.342 of the Act, it is provided that Articles of Continuance may without so stating therein, effect any amendment to the corporate instruments of a Former-Act Company, if the amendment is one which a Company incorporated under the Act is authorised to make in its Articles, and a Shareholder or member of the Company may not dissent under Sc.227, in respect of such an amendment, if made by the Company. Articles of Continuance in the prescribed form together with the documents required by Sections 71 and 176, must be sent to the Registrar in connection with an application for Continuance of a Company made to the Registrar.

Under Sc.343 of the Act, the Registrar, on receipt of an application for Continuance, provided that the applicant has complied with all reasonable requirements of the Registrar to have the Company accord with the requirements of the Act, is required to issue a Certificate of Continuance to the Company, and on the date shown in the Certificate, the Company becomes a Company to which the Act applies, as if it had been incorporated under the Act; and the Articles of Continuance become the Articles of Incorporation of the Company, and the Certificate of Continuance becomes the Certificate of Incorporation of the Company, except for the purposes of Sc. 67(1).

Sc.344 of the Act stipulates that when a Former-Act Company is continued under the Act, the property of the Former-Act Company continues to be the property of the Company, the Company continues to be liable for the obligations of the Former-Act Company, and any existing cause of action, claim or liability to prosecution of the Former-Act Company is unaffected. A civil, criminal or administrative action or proceeding pending by or against a Former-Act Company may also be continued by or against the Company, and a conviction against, or ruling, Order or judgment in favour of or against a Former-Act Company may be enforced by or against the Company. Sc.344 also provides that when the Registrar determines, on the application of a Former-Act Company, that it is not practicable to change a reference to a nominal or par value of shares of a class or series that the Former-Act Company was authorised to issue before it was continued under the Act, the Registrar may, notwithstanding Sc.30, permit the Company to continue to refer in its Articles to those shares, whether issued or non-issued, as shares having a nominal or par value. However, it is expressly stated that the Company must set out in its Articles, the maximum number of the shares in question, and may not amend its Articles to increase the maximum number of shares, or to change the nominal or par value of the shares.

Sc.345 of the Act states that the share of a Former-Act Company which was issued before the Company was continued under the Act, is presumed to have been issued in compliance with the Act, and the Articles of Continuance, regardless of whether the share was fully paid or not, and regardless of any designation, rights, privileges, restrictions or conditions attached to the shares, or set out or referred to in the Certificate representing the share. It is also expressly stipulated that Continuance under the Act does not deprive a Shareholder of any right or privilege claimed by him in respect of a share issued by the Company, nor does it relieve him of any liability in respect of such share. The word "share" for the purposes of the Section, includes an instrument recording conversion privileges, options or rights to acquire shares.

Sc.346 of the Act provides that if a Former-Act Company fails to apply to the Registrar for a Certificate of Continuance within the prescribed time, then after the expiration of that period, the Company may not, without leave of the Court, sue or counterclaim in any proceedings brought by or against it, but can be made a defendant to a suit. Furthermore, in such event, no dividend can be paid to any Shareholder of the Company without leave of the Court. Sc.346 also stipulates that every Director of the Company becomes personally liable to a specified penalty, for each day during which the Company carries on business, after the prescribed period for making application to the Registrar for a Certificate of Continuance has expired, without such an application being made.