

MONTSERRAT  
MISCELLANEOUS AMENDMENTS (FINANCIAL  
SERVICES) ACT 2013

No. 13 of 2013

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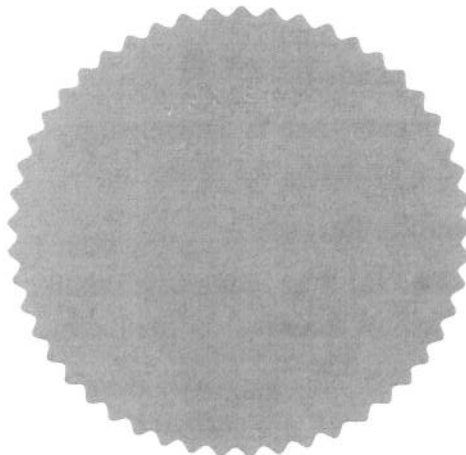


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I ASSENT

*Adrian Davis*

Governor

DATE: 25/8/13

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AN ACT TO MAKE CONSEQUENTIAL AMENDMENTS TO VARIOUS FINANCIAL SERVICES LEGISLATION TO COMPLY WITH INTERNATIONAL BEST PRACTICE IN FINANCIAL SECTOR DEVELOPMENT.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Montserrat, and by the Authority of the same as follows:—

**PART 1—MISCELLANEOUS**

**1. Short title**

This Act may be cited as the Miscellaneous Amendments (Financial Services) Act, 2013.

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### PART 2—COMPANIES ACT, CAP. 11.12

#### 2. Section 148A amended

The Companies Act is amended by deleting section 148A and substituting the following—

##### “Accounting Records

**148A. (1)** A company shall keep reliable accounting records, including underlying documentation, that—

- (a) are sufficient to record and explain the transactions of the company; and
- (b) will at any time enable the financial position of the company to be determined with reasonable accuracy.

**(2)** The accounting records kept by a company specified in section 154(1) must be sufficient to enable financial statements to be prepared and audited in accordance with this Division.

**(3)** Without limiting subsection (1) or subsection (2), the accounting records must contain—

- (a) entries from day to day of all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure takes place;
- (b) details of all sales and purchases of goods by the company; and
- (c) a record of the assets and liabilities of the company.

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debenture has been transferred to him, and in any event, within 30 days after the transfer.

(2) Despite subsection (1), a transferor of a share or debenture has a duty to present the transfer to the company for registration as soon as is reasonably practicable after the transfer, and in any event, within 10 days after the transfer.

(3) Where a company is presented with a transfer of a share or debenture under subsection (1) or (2), the company shall enter in its register of members or debenture holders, the name of the transferee.

(4) Despite anything in the articles or by-laws of a company or in any debenture, trust deed or other contract or instrument, the company shall not register a transfer of any share or debenture of the company unless a transfer in proper form and duly signed by the transferor has been delivered to the company; but nothing in this section affects any duty of the company to register as a member or debenture holder of the company any person to whom the ownership of any share or debenture of the company has been transmitted by operation of law.

(5) Despite anything in the articles or by-laws of a company or in any debenture, trust deed or other contract or instrument, a company shall register the trustee in bankruptcy or the personal representative of a shareholder or debenture holder as a member in respect of the shares, or as holder of the debentures of the bankrupt or as the case may be, the deceased person, in its register of members or debenture holders, as the case may be, within 7 days after he produces to the company

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(4) If the accounting records of a company are kept outside Montserrat, the company must ensure that it keeps at its registered office or at some other place in Montserrat designated by the directors—

- (a) accounting records that are adequate to enable the directors of the company to ascertain the financial position of the company with reasonable accuracy on a quarterly basis; and
- (b) a written record of the place or places outside Montserrat where its accounting records are kept.

(5) The accounting records under this section shall be kept for at least 7 years following their creation.

(6) A company that contravenes this section and every officer of the company who is in default commits an offence.

(7) For the purposes of this section, “underlying documentation” refers to any document that serves as evidence of a transaction and includes invoices, cash receipt, cheques and contracts.”.

### 3. Section 199 amended

The Companies Act is amended by deleting section 199 and inserting the following—

#### “Registration

199. (1) A transferee of a share or debenture shall present the transfer to the company for registration as soon as is reasonably practicable after the share or

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satisfactory evidence of his title and requests it to register him as a member or debenture holder.

(6) Save for subsections (2), (3) and (5), this section does not apply to a transfer of a share held in a company—

(a) whose shares are listed on the Eastern Caribbean Stock Exchange; and

(b) that, by virtue of any enactment, is not entitled to issue share certificates, other document of or evidencing title in respect of the shares transferred.

(7) A person who contravenes subsection (1) or (2) commits an offence and is liable to a fine of \$5,000.”.

#### 4. Section 344 amended

Section 344(1) of the Companies Act is amended by inserting the following as paragraph (ia)—

“(ia) the name and address of each shareholder and the class and number of shares held by each shareholder;”.

#### 5. Companies Regulations amended

The amendments to the Companies Regulations are set out in the Schedule.

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### PART 3—LIMITED LIABILITY COMPANY ACT, CAP. 11.14

#### 6. Section 34A inserted

The Limited Liability Company Act is amended by inserting the following as section 34A—

##### **“Accounting Records**

**34A. (1)** A LLC shall keep reliable accounting records, including underlying documentation, that—

- (a) are sufficient to record and explain the transactions of the LLC;
- (b) will at any time enable the financial position of the LLC to be determined with reasonable accuracy; and
- (c) allow financial statements to be prepared and audited.

**(2)** Without limiting subsection (1), the accounting records must contain—

- (a) entries from day to day of all sums of money received and expended by the LLC and the matters in respect of which the receipt and expenditure takes place; and
- (b) a record of the assets and liabilities of the LLC.

**(3)** The accounting records under subsection (1) shall be kept for at least 7 years following their creation.

**(4)** A LLC or a member or manager of a LLC that fails to comply with this section commits a summary offence and is liable to a fine of \$5,000.

**(5)** For the purposes of this section, **“underlying documentation”** refers to any document



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that serves as evidence of a transaction and includes invoices, cash receipt, cheques and contracts.”.

**PART 4—INCOME AND CORPORATION TAX ACT, CAP. 17.01**

**7. Section 21 amended**

The Income and Corporation Tax Act is amended by deleting section 21 and inserting the following—

**“Books of accounts to be kept**

**21. (1)** A person engaged in any trade, business or in any profession shall keep in the English language proper books of account, including underlying documentation, sufficient to record all transactions necessary in order to ascertain the gains and profits made or the loss incurred in the trade, business or profession, and the books of account shall be kept for at least 7 years following their creation.

**(2)** A person who fails to comply with subsection (1) commits an offence, and in addition to any penalty incurred, he is liable to pay any tax to which he may be assessed under this Act.”

**(3)** For the purposes of this section, **“underlying documentation”** refers to any document that serves as evidence of a transaction and includes invoices, cash receipt, cheques and contracts.”.

**PART 5—LIMITED PARTNERSHIP ACT, CAP. 11.10**

**8. Section 9A amended**

Section 9A of the Limited Partnership Act is amended—

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- (a) in the chapeau to subsection (1), by inserting the words “, including underlying documentation,” after the words “accounting records”;
- (b) by inserting the following as subsection (2A)—

“(2A) The accounting records shall be kept for at least 7 years following their creation.”;

- (c) by deleting subsection 3 and substituting the following—

“(3) If there is a default of compliance with this section, each general partner in default commits a summary offence and is liable to a fine of \$10,000.”; and

- (d) by inserting the following as subsection (4)—

“(4) For the purposes of this section, “**underlying documentation**” refers to any document that serves as evidence of a transaction and includes invoices, cash receipt, cheques and contracts.”.

### PART 6—INTERNATIONAL BUSINESS COMPANIES ACT, CAP. 11.13

#### 9. Section 66 amended

Section 66 of the International Business Companies Act is amended—

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(a) in the chapeau to subsection (1), by inserting the words “, including underlying documentation,” after the words “accounting records”; and

(b) by inserting the following as subsection (6)—

“(6) For the purposes of this section, **“underlying documentation”** refers to any document that serves as evidence of a transaction and includes invoices, cash receipt, cheques and contracts.”.

**10. Section 66A inserted**

The International Business Companies Act is amended by inserting the following as section 66A—

**“Retention period for accounting records**

**66A.** The accounting records under section 66 shall be kept for at least 7 years following their creation and a company that fails to comply with this section commits a summary offence and is liable to a fine of \$5,000.”.

**11. Section 103E amended**

Section 103E of the International Business Companies Act is amended by deleting the words “section 3 of the Perjury Act” and substituting the words “Part 6 of the Penal Code”.

**PART 7—TRUST ACT, CAP. 11.06**

**12. Section 2 amended**

Section 2 of the Trust Act is amended—

(a) by deleting paragraph (b)(i);

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- (b) by deleting paragraph (b)(ii) and substituting the following—

“(ii) a trust company within the meaning of the International Banking and Trust Companies Act;”;

- (c) in paragraph (d) by deleting the words “a licensee under the Offshore Banking Act” and substituting the words “ a licensee under the International Banking and Trust Companies Act”; and

- (d) in paragraph (e)(ii) by deleting the words “Offshore Banking Act” and substituting the word “International Banking and Trust Companies Act”.

#### 13. Section 31 amended

Section 31 of the Trust Act is amended by inserting the following as subsection (6A)—

“(6A) A trustee shall maintain identity information on all the beneficiaries of a trust.”.

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**SCHEDULE**

**1. Regulation 4 amended**

Regulation 4 of the Companies Regulations is amended—

(a) by deleting subregulation (2)(a) and inserting the following:

“(a) subject to subregulation (3), the word “Montserrat” or “Alliouaguana”; or”; and

(b) by inserting the following as subregulation (3):

“(3) Despite subsection (2), Cabinet may approve the use of the word “Montserrat” or “Alliouaguana” in the name of a company.”.

**2. Form 21 amended**

Form 21 and the Instructions to Form 21 in the Third Schedule to the Companies Regulations are deleted and the following are inserted—

**FORM 21**

*(Section 344))*

**COMPANIES ACT OF MONTSERRAT**

**EXTERNAL COMPANY**

**APPLICATION FOR REGISTRATION**

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1.	Name of Company	Company No.
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2.	Address of Registered or Head Office:
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3. Address of Principal Office:

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4. Corporate Structure

(a) Jurisdiction in which incorporated:

(b) Date and manner of incorporation:

(c) Period fixed for duration of company:

(d) Extent to which liability of shareholders limited:

4A. Name of Shareholder			Address of Shareholder		Class and number of shares held	
5. Share Capital			Purchased by Company		Redeemed by Company	
Class of Shares	Number issued and outstanding	Amount of stated capital	In last financial period	Cumulative Total	In last financial period	Cumulative Total
6. Main types of business carried on and the date on which Company intends to commence any of its operations in Montserrat.						
7. The Directors of the Company are:						
Full Name		Address			Occupation	
8. Documents attached are:						

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(a)	Varied copy of corporate instruments defining constitution of Company;	
(b)	Power of Attorney in accordance with section 346;	
(c)	Statutory declaration by Directors;	
(d)	Statutory declaration by Attorney-at-law;	
Date	Signature	Title

#### FORM 21

#### COMPANIES ACT OF MONTSERRAT

#### EXTERNAL COMPANY

#### APPLICATION FOR REGISTRATION

#### INSTRUCTIONS

*Item 1:*

Set out full legal name of company.

*Item 2 and 3:*

Set out address in full, such as street, number and if multi-office building, room number and postal code.

*Item 4:*

Give date, jurisdiction and manner of incorporation and particulars of its

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corporate instruments, including the period, if any, fixed by its corporate instruments for its duration.

*Item 4A:*

State the particulars required by section 344(1)(ia) of the Act.

*Item 5:*

State the particulars required by section 344(1)(j) of the Act.

*Item 6:*

State the main actual business or businesses of the company, and the date on which the company intends to commence any of its operations in Montserrat.

*Item 7:*

With respect to each director, set out first given name, initial and family name and full residential address. Also specify occupation.

*Item 8:*

An authenticated copy of each of its corporate instrument with up-to-date amendments must be obtained from an appropriate official of jurisdiction where the company is incorporated or deemed to be incorporated.

There must also accompany the statement the statutory declarations required by section 344(2)(a) of the Act one of which must include a declaration that the Company is a validly existing Company.

*Signature:*

A director or authorised officer of the company or an attorney-at-law shall sign the application.

Completed instruments, in duplicate and the prescribed fee are to be deposited at the office of the Registrar.



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### 3. Form 24 amended

Form 24 in the Third Schedule to the Companies Regulations is deleted and the following is inserted—

#### FORM 24

*(Section 356)*

#### COMPANIES ACT OF MONTSERRAT

#### EXTERNAL COMPANY ANNUAL RETURN

1.	Name of Company	Return for year ending:	
	Address of Registered or Head Office:	Company No.	
	Address of principal office, if any, in Montserrat	Date of Registration:	
2.	List any changes in corporate structure:		
2A.	Name of Shareholder	Address of Shareholder	Class and number of shares held
3.	Share Capital	Purchased by Company	Redeemed by Company

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## Miscellaneous Amendments (Financial Services) Act 2013

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Class of Shares	Number issued and outstanding	Amount of stated capital	In last financial period	Cumulative Total	In last financial period	Cumulative Total
4. Main type of business carried on:						
5. Name and address of Attorney or Attorneys appointed under section 346:						
6. Director(s) of Company:						
Full Name		Address		Occupation		
Date		Signature		Title		

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SPEAKER

Passed the Legislative Assembly this 25th day of July, 2013.

I certify that this is a true  
copy of the Bill passed by the  
Legislative Assembly

  
CLERK OF THE LEGISLATIVE ASSEMBLY

  
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# MISCELLANEOUS AMENDMENTS (FINANCIAL SERVICES) BILL 2013

## EXPLANATORY MEMORANDUM

The Miscellaneous Amendments (Financial Services) Bill, 2013 seeks to amend various pieces of financial legislation to comply with international best practices in financial sector development.

### **Clauses 2 – 5 amend the Companies Act (Cap. 11.12).**

Clause 2 amends section 148A, in particular, the requirements for the retention of accounting records by a company. It requires that accounting records, including underlying documentation, must be kept for a minimum of 7 years following their creation. It also defines “underlying documentation”.

Clause 3 amends section 199 by requiring the transferee of a share or debenture to present the transfer to the company within a specified time for registration. This however does not apply to cases where by virtue of an enactment, a company is not entitled to issue share certificates or other document evidencing title in respect of the shares transferred and whose shares are listed on the Eastern Caribbean Stock Exchange. Clause 3 also places a duty on the transferor to present the transfer to the company for registration as soon as is reasonably practicable after the transfer. It also penalises a failure to comply with the provision.

Clause 4, in amending section 344(1), increases the amount of information to be filed by an external company desirous of being registered under the Companies Act. The company is required to set out the name and address of each shareholder and the class and number of shares held by each shareholder in the prescribed form.

Clause 5 provides for amendments to the Companies Regulations.

**Clause 6 amends the Limited Liability Company Act (Cap. 11.14).** It inserts as section 34A a requirement for the retention of accounting records, including underlying documentation, by an LLC. It requires that the accounting records must be kept for a minimum of 7 years following their creation. It also defines “underlying documentation”.

**Clause 7 amends the Income and Corporation Tax Act (Cap. 17.01).** It amends section 21 by requiring a person engaged in any trade, business or in any profession to keep proper books of account, including underlying documentation, for at least 7 years following their creation. It criminalises a failure to comply with the provision and makes the person liable to pay any tax to which he may be assessed under the Act.

**Clause 8 amends the Limited Partnership Act (Cap. 11.10).** It requires a partnership to keep accounting records, including underlying documentation, for at least 7 years following the creation of the records and defines “underlying documentation”. It also penalises a partner who is in default of the provision or who is aware of and acquiesces in the default.

**Clauses 9 – 11 amend the International Business Companies Act (Cap. 11.13).**

Clause 9 amends section 66 to require the retention of underlying documentation as part of accounting records and defines “underlying documentation”.

Clause 10 inserts section 66A, which requires the keeping of accounting records for at least 7 years following their creation and criminalises a failure to comply with the provision.

Clause 11 amends section 103E by replacing a reference to the “Perjury Act” with the “Penal Code”.

**Clauses 12 and 13 amend the Trust Act (Cap. 11.06).**

Clause 12 amends the definition of “beneficiary” in section 2.

Clause 13 amends section 31 by requiring a trustee to maintain identity information on all the beneficiaries of a trust.

**The Schedule to the Bill amends the Companies Regulations.**

Paragraph 1 amends regulation 4 by empowering the Registrar to refuse incorporation or registration of a company whose name includes the word “Alliouaguana”. It also empowers Cabinet to permit the use of “Montserrat” or “Alliouaguana” in a company name.

Paragraph 2 amends Form 21 and the Instructions to Form 21 in the Third Schedule to the Companies Regulations.

Paragraph 3 amends Form 24 of the Third Schedule to the Companies Regulations.

  
Esco Henry  
Attorney General

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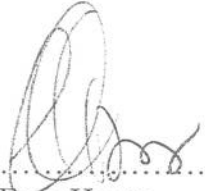
**MISCELLANEOUS AMENDMENTS (FINANCIAL SERVICES) BILL 2013**

**LEGAL REPORT**

The Miscellaneous Amendments (Financial Services) Bill, 2013 seeks to amend various pieces of financial legislation to comply with international best practices in financial sector development.

The Bill was introduced and read a first time on 25<sup>th</sup> June, 2013. It was read a second and third time on 25<sup>th</sup> July, 2013 and was passed with a minor amendment on the same day.

In my opinion, His Excellency the Governor may properly assent to the Bill in the name of and on behalf of Her Majesty.



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Esco Henry  
Attorney General

Attorney General's Chambers  
Brades  
Montserrat

29 July, 2013

