



BERMUDA

COMPANIES AMENDMENT ACT 2014

2014 : 13

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WHEREAS it is expedient to amend the Companies Act 1981 so as to revise and update provisions of the Act relating to corporate land holding;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

1 This Act, which amends the Companies Act 1981 (the "principal Act"), may be cited as the Companies Amendment Act 2014.

Amends section 2

2 Section 2 of the principal Act is amended by inserting in the appropriate alphabetical order the following definition—

“land” in relation to land held by a company under this Act, includes land covered by water and any building erected on land and any estate,

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interest or right in or over any land or building, except that it does not include easements or mortgages in or over any land or building;”.

Inserts section 4AA

3 The principal Act is amended by inserting the following new section after section 4A—

“Restricted business activity relating to corporate land holding

4AA (1) No company shall carry on any restricted business activity relating to corporate land holding as set out in paragraph (c) of the Ninth Schedule without the consent of the Minister under section 4A, which consent shall be given subject to the provisions of this section.

(2) Subject to subsection (3), where the Minister is satisfied that an application under subsection (1) is in accordance with the policy approved by the Cabinet, he may consent to such application.

(3) The Minister’s consent given under subsection (2)—

- (a) may be made subject to such conditions as the Minister may consider as appropriate to impose;
- (b) may be modified or the conditions applicable to the consent modified and such modification shall, where necessary, be implemented by the company within such time period as the Minister may stipulate;
- (c) may be revoked where a company contravenes any condition subject to which the consent is granted, except that the Minister shall not confirm a decision to revoke his consent until he has—
 - (i) given the company notice in writing of his intention to revoke his consent specifying therein the grounds on which he proposes to revoke such consent; and
 - (ii) afforded the company an opportunity of submitting to him a written statement of its objections to the revocation of the consent.

(4) A company shall not change the business purpose for which the land is held without the Minister’s previous consent, and where a company makes any such changes without the Minister’s consent the Minister may, in terms of subsection (3)(c), revoke his consent given under subsection (2).

(5) Where the Minister revokes his consent under subsections (3)(c) or (4), the company affected shall divest itself of the land for which it had obtained the Minister’s consent under subsection (2) within a period of three years from the date of the Minister’s revocation of his consent.

(6) The policy referred to in subsection (2)—

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- (a) shall set out the requirements the Minister must consider before determining whether to give his consent under subsection (2); and
- (b) shall be published in the Ministry website and be available for inspection at the offices of the Ministry.”.

Amends section 7

4 Section 7 of the principal Act is amended by repealing paragraph (g) of subsection (1).

Amends section 120

5 Section 120 of the principal Act is amended—

- (a) by repealing subsection (1);
- (b) by inserting the following subsection—
 - “(1A) The Eleventh Schedule shall have effect with respect to—
 - (a) all rights, powers, duties and liabilities pertaining to the land held by a local company pursuant to a sanction granted by the Minister to a local company under the repealed subsection (1); and
 - (b) land held by a local company contrary to the repealed subsection (1) before the commencement of this subsection.”;
 - (c) in subsection (2) by deleting the words “Notwithstanding subsection (1) of this section and section 7(1)(g) but subject” and substituting “Subject”;
 - (d) in subsections (4) and (5) by deleting the words “Notwithstanding subsection (1), a local company” and substituting “A local company”.

Amends Ninth Schedule

6 The Ninth Schedule to the principal Act is amended—

- (a) in paragraph (b) by deleting the period after the word “1973” and substituting a semicolon; and
- (b) inserting the following paragraph—
 - “(c) acquiring land or holding land other than in the case of land acquired or held under sections 120 and 129.”.

Inserts Eleventh Schedule

7 The principal Act is amended by inserting the following new Schedule—

“ELEVENTH SCHEDULE

(Section 120(1A))

REPEALED SECTION 120(1) SAVING PROVISIONS

Saving provisions

1 Notwithstanding the repeal of section 120(1), which provided for a local company to acquire and hold in its corporate name any land in Bermuda with the previous sanction of the Minister, the following savings shall apply to the land acquired and held under that subsection—

- (a) all rights vested in or in any manner held on behalf of a local company over land acquired under that subsection immediately before the commencement of this paragraph shall continue to be vested in such local company or held on behalf of such company (as the case may be);
- (b) all liabilities and obligations subsisting against the local company with respect to the land acquired under that subsection immediately before the commencement of this paragraph shall continue to subsist against such local company;
- (c) every contract in respect to the land acquired under that subsection, being a contract between the local company and any other party immediately before the commencement of this paragraph shall thereafter continue to subsist between the local company and such other party;
- (d) all rights, powers and duties, whether arising under any written law or otherwise, with respect to the land acquired under that subsection, which immediately before the commencement of this paragraph were vested in or applied to the local company shall, by virtue of this paragraph, continue to be vested in, imposed on, or be enforceable by or against the local company.

Retroactive sanctions

2 Notwithstanding the repeal of section 120(1), the Minister may, where he considers it appropriate to so do, sanction retroactively the holding of land by a local company that is holding land, before the commencement of this paragraph, contrary to the provisions of the repealed section 120(1), only in the case where—

- (a) all statutory requirements for the holding of the land, other than the repealed section 120(1) of the Act, have been complied with by the local company;
- (b) the intention of the Minister to sanction retroactively the holding of the land by the local company is advertised in an appointed newspaper once each week for four consecutive weeks;

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- (c) no person registers any claim with the Minister with respect to that land during a period of 90 days from the date the advertisement is first published;
- (d) a claim registered under subparagraph (c) is proved not to affect the local company's right to the title to the land for the period of time to be retroactively sanctioned.”.

[Assent Date: 27 March 2014]

[Operative Date: 27 March 2014]