

COMPANIES AMENDMENT ACT 1997



BERMUDA
1997 : 21

COMPANIES AMENDMENT ACT 1997

[Date of Assent 8 July 1997]

[Operative Date 2 September 1997]

WHEREAS it is expedient to amend the Companies Act 1981:

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 (hereinafter referred to as "the principal Act") may be cited as the Companies Amendment Act 1997.

Amends sections 25 and 27 of principal Act

2 Section 25 of the principal Act is amended in subsection (4)(c)(ii), and section 27 is amended in the proviso to subsection (1)(f), by inserting, next after the words "exempted company" in each of those sections, the words "or a permit company".

Amends section 120 of principal Act

3 Section 120 of the principal Act is amended—

- (a) by renumbering the section as subsection (1); and

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(b) by inserting the following subsections—

" (2) Notwithstanding subsection (1) of this section and section 7(1)(g) but subject to subsection (3) of this section, where a local company is licensed under the Trust Companies Act 1991, the company shall have the power to acquire and hold in its corporate name any land in Bermuda provided it holds such land in its capacity as trustee of any trust or settlement established by written instrument.

(3) Nothing in subsection (2) overrides any provision in Part VI of the Bermuda Immigration and Protection Act 1956 relating to the acquisition of land, or the holding of land, in trust."

Amends section 129 of principal Act

4 Section 129 of the principal Act is amended—

(a) by substituting "; or" for the full stop at the end of sub-paragraph (vii) of paragraph (e) of subsection (1) and adding the following sub-paragraph—

"(viii) in accordance with subsection (7)—

(aa) marketing of shares or dealing with the holders of shares of an exempted company where the exempted company is a mutual fund;

(bb) marketing interests in or dealing with holders of interests in a limited partnership in respect of which the exempted company is a general partner;

(cc) marketing units in or dealing with holders of units in a unit trust scheme in respect of which the exempted company is a manager."; and

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

" (7) For the purposes of subsection (1)(e)(viii), an exempted company shall be deemed to be marketing, or dealing with holders of shares, interests or units if it undertakes any of the following activities in Bermuda, that it to say,—

(i) the offering of such shares, interests or units for subscription

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- or purchase by way of a prospectus or otherwise;
- (ii) the acceptance of subscriptions for, or of offers to purchase, or of applications to redeem, such shares, interests or units;
- (iii) the distribution of shareholder, limited partnership or unitholder information to holders of such shares, interests or units;
- (iv) the making known, by way of advertisement or otherwise, that it may be contacted at a particular address in Bermuda for the purpose of communicating with the holders of such shares, interests or units or the distribution and collection of shareholder, limited partnership or unitholder information;
- (v) any other dealing with the holders of such shares, interests or units with respect to any such shares, interests or units held by them."

Amends section 136 of principal Act

5 Section 136 of the principal Act is amended—

- (a) by renumbering the section as subsection (1); and
- (b) by inserting the following subsections—

" (2) Subject to any conditions which may be specified in a permit pursuant to subsection (1), an overseas company which has been granted a permit shall have power in Bermuda—

- (a) if it is a mutual fund as defined in subsection (5), to market its shares or deal with holders of its shares in Bermuda;
- (b) if it is a general partner in a limited partnership, as so defined, to market

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interests in, or deal with the holders of interests in, such limited partnership; or

- (c) if it is the manager of a unit trust scheme, as so defined, to market units in, or deal with holders of units in, such unit trust scheme,

in accordance with subsection (3).

(3) For the purposes of subsection (2), an overseas company shall be deemed to be marketing or dealing with the holders of the shares of that overseas company, interests in a limited partnership, or units in a unit trust scheme, if it undertakes in Bermuda any of the activities specified in subsection (4).

(4) The activities referred to in subsection (3) are—

- (i) the offering of such shares, interests or units for subscription or purchase by way of a prospectus or otherwise;
- (ii) the acceptance of subscriptions for, or of offers to purchase, or of applications to redeem, such shares, interests or units;
- (iii) the distribution of shareholder, limited partnership or unit-holder information to holders of such shares, interests or units;
- (iv) the making known, by way of advertisement or otherwise, that it may be contacted at a particular address in Bermuda for the purpose of communication with the holders of such shares, interests or units or the distribution and collection of shareholder, limited partnership or unit-holder information; and
- (v) any other dealing with the holders of such shares, interests or units with respect to

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any such shares, interests or
units held by them.

(5) In this section—

- (a) "mutual fund" means a company incorporated outside Bermuda but having the characteristics set out in section 156A of this Act;
- (b) "limited partnership" means a limited partnership formed under the laws of a country outside Bermuda, but having the characteristics set out in section 2(1) of the Limited Partnership Act 1883;
- (c) "unit trust scheme" means a unit trust scheme formed under the laws of a country outside Bermuda, but having the characteristics set out in section 1 of the Exempted Undertakings Tax Protection Act 1966."

Amends section 143 of principal Act

6 Section 143 of the principal Act is amended by inserting next after the words "authorized by" the words "this Act or".

Amends section 156C of principal Act

7 Section 156C of the principal Act is amended by deleting subsection (1) and substituting the following—

" (1) A mutual fund shall, if authorized by its memorandum or bye-laws, have power to redeem or purchase for cancellation its issued shares at the option of the company or at the option, or on the request, of a member."

Commencement

8 This Act comes into operation on such day as the Minister of Finance may appoint by notice published in the Gazette.