

AS TABLED IN THE HOUSE OF ASSEMBLY

A BILL

entitled

COMPANIES AMENDMENT ACT 2014

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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, 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.

(2) Subject to subsection (3), where the Minister is satisfied that the restricted business activity relating to corporate land holding applied for under subsection (1) is in accordance with policy approved by the Cabinet regarding such restricted business activity, 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 Minister shall give his consent under subsection (2) in accordance with policy approved by the Cabinet, which policy shall—

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

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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 taking land other than in the case of land acquired or taken 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;
- (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 in 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 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;
- (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.”.

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EXPLANATORY MEMORANDUM

This Bill amends the Companies Act 1981 (the principal Act) so as to revise and update provisions of the principal Act relating to corporate land holding.

Clause 1 provides a citation for the Bill.

Clause 2 amends section 2 of the principal Act to insert a definition of “land” for purposes of the principal Act.

Clause 3 amends the principal Act to insert a new section 4AA. Subsection (1) of the section prohibits any company to carry on restricted business activity relating to corporate land holding without the consent of the Minister. Subsection (2) requires the Minister to be satisfied that the restricted business activity relating to corporate land holding applied for is in accordance with the policy approved by the Cabinet. Subsection (3) empowers the Minister to grant his consent subject to such conditions as he may deem appropriate. The subsection further empowers the Minister to modify his consent or the conditions applicable to the consent and to revoke his consent where a company granted consent contravenes any of the conditions imposed. The Minister is required, before revoking his consent, to inform the company of his intentions in writing setting out his grounds and affording the company an opportunity to submit a statement setting out its objections to the revocation. Subsection (4) prohibits a company to change the business purpose for which the land is held without the consent of the Minister and where a company does change its business purpose without Minister’s consent the subsection empowers the Minister to revoke his consent. Subsection (5) requires that where the Minister’s consent is revoked the company is to divest itself of the land within a period of three years commencing with the date of the Minister’s revocation. Subsection (6) requires the Minister to give consent for restricted business activity relating to corporate land holding in accordance with policy approved by the Cabinet.

Clause 4 amends section 7 of the principal Act to repeal paragraph (g) of subsection (1) so as to remove the requirement that the memorandum of a company should state the maximum land holding powers of the company and details with respect to the land to be held by the company.

Clause 5 amends section 120 of the principal Act to repeal subsection (1) and to provide for consequential amendments to other subsections. The clause further inserts a new subsection (1A) to provide that the Eleventh Schedule shall have effect for the purpose of saving the rights, powers, duties and liabilities that are applicable to the land held by a local companies which obtained a sanction to hold the land under the repealed subsection (1), and to also empower the Minister to act with respect to land held by a local company contrary to the repealed subsection (1).

Clause 6 amends the Ninth Schedule to the principal Act by inserting a new a paragraph (c) so as to make the acquiring of land or taking of land other than in the case of land

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acquired or taken under sections 120 and 129 to be a restricted business activity requiring the Minister's consent under section 4AA(1).

Clause 7 amends the principal Act to insert the Eleventh Schedule which shall provide for the saving of all rights, powers, duties and liabilities pertaining to the land held by a local company under the repealed section 120(1). The Eleventh Schedule shall also provide for the conditions that are to apply in order that land held by a local company contrary to the repealed section 120(1) may be retroactively sanctioned.