

A BILL

entitled

BERMUDA IMMIGRATION AND PROTECTION AMENDMENT ACT 2013

TABLE OF CONTENTS

1	Citation
2	Amends section 13B
3	Amends section 13D
4	Amends section 61
5	Amends section 82
6	Transitional and commencement

WHEREAS it is expedient to amend the Bermuda Immigration and Protection Act 1956;

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 Bermuda Immigration and Protection Act 1956 (the "principal Act"), may be cited as the Bermuda Immigration and Protection Amendment Act 2013.

Amends section 13B

2 Section 13B(1) of the principal Act is amended by deleting the words ", one of whom shall be a barrister and attorney".

Amends section 13D

3 Section 13D of the principal Act is amended—

(a) in subsection (1)—

(i) by inserting after "25(1)" the words "or of the Minister's decision regarding conditions or limitations imposed under section 25(1)";

(ii) in paragraph (b)(i) by deleting the word "or" at its last occurrence;

BERMUDA IMMIGRATION AND PROTECTION AMENDMENT ACT 2013

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(iii) in paragraph (b)(ii) by deleting the full-stop and substituting the word “; or”; and

(iv) by inserting after subparagraph (ii) the following—

“(iii) to dispense with, vary or modify the conditions or limitations as the Tribunal sees fit, where the appeal is in respect of a decision of the Minister regarding conditions or limitations imposed under section 25(1).”; and

(b) in subsection (2)—

(i) by deleting the words “or a decision made under section 31D, 34 or 61,” and substituting “, 31D, 34 or the proviso to section 61(7),”; and

(ii) by repealing and replacing paragraph (b) with the following—

“(b) where the Tribunal quashes a decision of the Minister restricting the terms of a permission granted under section 61, direct the Minister to issue an order under the proviso to section 61(7) containing such terms as the Tribunal sees fit.”.

Amends section 61

4 Section 61 of the principal Act is amended by inserting the following after subsection (6)—

“(6A) For the avoidance of doubt, it is hereby declared that a decision of the Minister to withhold permission or grant permission subject to any duration, condition or limitation, is not subject to appeal to the Immigration Appeal Tribunal.”.

Amends section 82

5 Section 82 of the principal Act is amended—

(a) in subsection (1) by repealing and replacing paragraph (bb) with the following—

“(bb) holds or acquires land in Bermuda, so long as the person is the spouse of a person who possesses Bermudian status;”; and

(b) by repealing subsection (3).

Transitional and commencement

6 (1) For the avoidance of doubt, where, immediately before commencement, a person held or acquired land subject to conditions attached to the Minister’s approval in accordance with the Code of Practice issued under section 82(3) of the principal Act (which is repealed by section 5(b) of this Act), those conditions no longer apply after commencement.

BERMUDA IMMIGRATION AND PROTECTION AMENDMENT ACT 2013

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- (2) In this section, “commencement” means the day this Act comes into operation.
- (3) This Act, other than section 2, comes into operation on the date of the Governor’s assent.
- (4) Section 2 is deemed to have come into operation on 4 March 2013.

## BERMUDA IMMIGRATION AND PROTECTION AMENDMENT BILL 2013

### EXPLANATORY MEMORANDUM

This Bill seeks to amend the Bermuda Immigration and Protection Act 1956 (the “principal Act”) to clarify who may be appointed to a panel by the Chairman of the Immigration Appeal Tribunal (the “Tribunal”); to clarify the powers of the Tribunal regarding conditions and limitations imposed by the Minister under section 25(1) of the principal Act; to clarify the decisions of the Minister under section 61 of the principal Act which are subject to appeal to the Tribunal; to remove the requirement inserted by the Bermuda Immigration and Protection Amendment Act 2012 (the “2012 Act”) for the spouse of a Bermudian to seek the approval of the Minister to hold or acquire more than one interest in land in Bermuda; and to provide a transitional provision and for commencement of this Act.

Clause 1 is self-explanatory.

Clause 2 amends section 13B(1) of the principal Act by providing for the Chairman to appoint two members of the Tribunal to a panel who are not barristers and attorneys.

Clause 3 amends section 13D of the principal Act by providing for the Tribunal to direct the Minister to dispense with, vary or modify conditions or limitations, where the Tribunal quashes a decision regarding conditions or limitation imposed by the Minister under section 25(1) of the principal Act; and by clarifying that where the Minister makes a decision in any of the ways set out under section 61(7) of the principal Act and by doing so he issues an Order under the proviso revoking or restricting the terms of any permission granted, a person may appeal to the tribunal against the Order.

Clause 4 amends section 61 of the principal Act by inserting a new subsection (6A) which declares, for the avoidance of doubt, that the decision of the Minister to either withhold or grant permission to engage in gainful occupation subject to any duration, condition or limitation, is not subject to appeal to the Immigration Appeal Tribunal.

Clause 5 amends section 82 of the principal Act. Paragraph (a) replaces subsection (1) (bb) to provide that a person will not commit an offence under section 76, 77 or 78 (holding or acquiring land without licence) by holding or acquiring land in Bermuda, so long as the person is the spouse of a Bermudian. This removes the requirement, inserted by section 2(a) of the 2012 Act, for such a person to obtain the approval of the Minister to do so in relation to a second or subsequent interest in land. Paragraph (b) repeals subsection (3), inserted by section 2(b) of the 2012 Act, which required the Minister to publish a Code of Practice setting out the circumstances in which he would give his approval and the types of conditions which he could attach to his approval.

Clause 6 confirms, for the avoidance of doubt, that where, immediately before commencement, a person held or acquired land subject to conditions attached to the Minister’s approval in accordance with the Code of Practice issued under section 82(3) of the principal Act (which is repealed by clause 5(b) of this Act), those conditions no longer apply after commencement, as the Code falls away on the repeal of section 82(3). Clause 6 also provides for the commencement of this Act, and for section 2 to be deemed to have

BERMUDA IMMIGRATION AND PROTECTION AMENDMENT BILL 2013

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come into operation on 4 March 2013 (the date on which the Bermuda Immigration and Protection (Appeal) Rules 2013 came into operation).