

# AS TABLED IN THE HOUSE OF ASSEMBLY

A BILL

entitled

## COMPANIES AMENDMENT ACT 2012

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 (the "principal Act") may be cited as the Companies Amendment Act 2012

### Amends section 14

2 Section 14 of the principal Act is amended by repealing subsection (2)(b) and substituting the following—

"(b) that, where applicable, the Controller of Foreign Exchange has given permission under the Exchange Control Act 1972 [title 16 item 1] for the issue of shares in the company or the company is exempted under that Act from the requirement for the Controller's permission,".

### Amends section 113

3 Section 113 of the principal Act is amended—

(a) in subsection (1) by inserting after paragraph (c) the following paragraph

—

"(cd) a local company—

(i) the shares of which are, at the relevant time, listed on a designated stock exchange and which is engaged as a business in a material way in a prescribed industry; or

(ii) licensed under section 114B;"

(b) by inserting after subsection (4) the following—

COMPANIES AMENDMENT ACT 2012

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“(5) For purposes of this Part—

“designated stock exchange” means the Bermuda Stock Exchange or such other stock exchange as the Minister may designate by order;

“prescribed industry” means telecommunications, energy, insurance, hotel operations, banking, or international transportation services (by ship or aircraft).

(6) The Minister may, for the purpose of revising the categories of industry under the definition of “prescribed industry” in subsection (5), by order amend the definition.

(7) An order under subsection (5) or (6) shall be subject to the negative resolution procedure.

(8) A company shall, 15 days prior to carrying out an intention to rely on the provisions of subsection (1)(cd)(i) or to carrying on business in reliance upon the provisions of section 114(1)(e), notify the Minister of the designated stock exchange on which its shares are listed and the prescribed industry in which it is engaged as a business in a material way, and on expiry of such notice the company shall be entitled to rely on the foregoing sections.”.

Amends section 114

4 Section 114(1) of the principal Act is amended by—

(a) deleting the full stop and substituting “; or”; and

(b) inserting, after paragraph (c), the following—

“(d) it is a wholly-owned subsidiary of a company referred to in paragraph (c); or

(e) it is a company the shares of which are, at the relevant time, listed on a designated stock exchange and which is engaged as a business in a material way in a prescribed industry, or is a wholly-owned subsidiary of such a company.”;

(c) inserting, after subsection (1), the following—

“(1A) Section 118 shall not apply to a company referred to in subsection (1)(e).”.

## COMPANIES AMENDMENT BILL 2012

### EXPLANATORY MEMORANDUM

This Bill makes amendments to the Companies Act 1981 (the “principal Act”) so as to facilitate a more modern approach to foreign direct investment.

Clause 1 provides a citation for the Bill.

Clause 2 amends the principal Act in section 14 to enable a company to be registered without having to obtain the permission of the Controller of Foreign Exchange for the issue of shares in the company on the basis that it is exempt from the requirement to obtain such permission under the Exchange Control Act 1972. This amendment is consequential to the introduction of the Corporate Service Provider Business Bill and the amendments necessitated by the Bill to the Exchange Control Regulations 1973.

Clause 3 amends the principal Act in section 113 by inserting under subsection (1) a new paragraph (cd), which makes provision that deems a local company Bermudian where either the shares of the company are listed on a designated stock exchange (which has been defined to include the Bermuda Stock Exchange) and such company is engaged as a business in a material way in a prescribed industry, or it is licensed under section 114B of the principal Act by the Minister. The clause inserts new subsections (5), (6) and (7) which provide, respectively, for the definitions for the terms “designated stock exchange” and “prescribed industry”, empower the Minister to add to the list of stock exchanges as well as to revise the categories of industry under the definition of “prescribed industry” by order, and to require the orders made by the Minister to be subject to the negative resolution procedure. The clause also inserts a new subsection (8), which requires any company intending to rely on the new section 113(1)(cd)(i) or on the new section 114(1)(e) to notify the Minister of such intention 15 days prior to so relying on any of the sections.

Clause 4 amends the principal Act in section 114 by inserting under subsection (1) new paragraphs (d) and (e). Paragraph (d) clarifies the point that a wholly-owned subsidiary of a company that is entitled under section 114(1)(c) to carry on business in Bermuda can itself carry on business in Bermuda. Paragraph (e) authorizes a company with shares listed on a designated stock exchange and which is engaged as a business in a material way in a prescribed industry (or such company’s wholly-owned subsidiary) to carry on business in Bermuda. Finally, the clause inserts a new subsection (1A) that provides that the provisions of section 118 of the principal Act shall not apply to a company referred to in section 114(1)(e).