

AS TABLED IN THE HOUSE OF ASSEMBLY

A BILL

entitled

CORPORATE SERVICE PROVIDER BUSINESS AMENDMENT ACT 2014

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SCHEDULE I

WHEREAS it is expedient to amend the Corporate Service Provider Business Act 2012 to make new provision for regulating corporate service provider business by the implementation of classes of licenses; and for purposes connected with and incidental to those matters;

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 Corporate Service Provider Business Act 2012 (the "principal Act"), may be cited as the Corporate Service Provider Business Amendment Act 2014.

Amends section 10

2 Section 10 of the principal Act is amended by inserting the following after subsection (3)—

"(4) An application shall state the class of corporate service provider licence required.

(5) The classes of corporate service provider licences referred to in subsection (4) which may be applied for under this Act are—

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- (a) the unlimited licence, under which a person shall be licensed to provide any or all corporate services under the definition of corporate service provider business;
- (b) the limited licence, under which a person shall be licensed to provide any or all corporate services under the definition of corporate service provider business, excluding the corporate services under sections 2(2)(a) and 2(2)(c)(vii).”.

Amends section 11

3 Section 11 of the principal Act is amended by inserting the following after subsection (5)—

“(6) A licence issued under this section may be subject to such conditions on the scope of the corporate services or the manner of operating the corporate service provider business as the Authority may determine.

(7) The Authority, on application made by an undertaking, may vary or remove any condition imposed on the licence in accordance with subsection (6).”.

Amends section 68

4 Section 68 of the principal Act is amended—

- (a) in subsection (1) by deleting “12 months” and substituting “two years”;
- (b) by inserting at the end of the subsection (1) the words “or such longer period as the Minister may appoint by notice published in the Gazette”; and
- (c) in subsection (2) by deleting the words “Where within the one year period from the date of commencement of this Act” and substituting “Where within the period specified in subsection (1)”.

Schedule 1 amended

5 Schedule 1 to the principal Act is amended by—

- (a) inserting the following after paragraph 1—

“Corporate Governance

1A (1) The undertaking shall implement corporate governance policies and processes as the Authority considers appropriate given the nature, scale, complexity and risk profile of the undertaking.

(2) Without prejudice to subparagraph (1) the business of the undertaking shall be—

- (a) effectively directed by such number of individuals; and
- (b) under the oversight of such number of appointed non-executive directors,

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as the Authority considers appropriate given the nature, size, complexity and risk profile of the undertaking.”;

- (b) repealing paragraph 2, “Composition of board of directors”; and
- (c) repealing paragraph 3(2) and substituting the following—

“(2) In determining whether an undertaking is conducting its business in a prudent manner, the Authority shall take into account any failure by the undertaking to comply with the provisions of—

- (a) this Act;
 - (b) any applicable law, including the provisions of the law pertaining to anti-money laundering and anti-financing of terrorism as provided in the Proceeds of Crime Act 1997, the Anti-Terrorism (Financial and Other Measures) Act 2004 and the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008;
 - (c) codes of practice issued by the Authority pursuant to section 7 of this Act;
 - (d) international sanctions in effect in Bermuda.”;
- (d) inserting after paragraph 3(5) the following—

“(6) An undertaking will not be regarded as carrying on its business in a prudent manner unless it maintains insurance cover that is appropriate to the nature and scale of its operations.”.

Consequential amendments

6 Schedule I, which makes consequential amendments, has effect.

Commencement

7 (1) Except in the case of section 4, this Act shall come into operation on such day as the Minister may appoint by notice published in the Gazette, and the Minister may appoint different days for different provisions.

(2) Section 4 shall be deemed to have come into operation on the 31 December 2013.

SCHEDULE I

EXCHANGE CONTROL REGULATIONS 1973

1 The Exchange Control Regulations 1973 are amended—

(a) by revoking regulation 13A(1) and substituting—

“13A (1) Subject to paragraph (2), where due to a transfer of beneficial ownership a beneficial owner reaches the beneficial ownership threshold of 10% or more of a permit company, such permit company shall, within 14 days of such change, inform the Controller.”;

(b) by revoking regulation 25A and substituting—

“Company engaging corporate service provider

25A (1) Regulations 12, 13(1)(a), 14, 15, 17, 19, 20 and 23 shall not apply so as to require the permission of the Controller for the—

- (a) issue or transfer of securities;
- (b) transfer of coupons;
- (c) substitution of securities; and
- (d) nominee holdings of a security,

where the company that issued or is issuing the security or coupon is a company registered under the Companies Act 1981 and that has its registered office at the registered office of a corporate service provider licensed to hold an unlimited licence under the Corporate Service Provider Business Act 2012, at which the company is required to keep and maintain its register of members in accordance with section 65 of the Companies Act 1981.

(2) In circumstances where the company keeps its register of members at such other place in Bermuda in accordance with section 65 of the Companies Act 1981, regulations 12, 13(1)(a), 14, 15, 17, 19, 20 and 23 shall not apply so as to require the permission of the Controller for the—

- (a) issue or transfer of securities;
- (b) transfer of coupons;
- (c) substitution of securities; and
- (d) nominee holdings of a security,

if such place is at the registered office of a corporate service provider that holds an unlimited licence issued under the Corporate Service Provider Business Act 2012.”.

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EXEMPTED PARTNERSHIPS ACT 1992

2 The Exempted Partnerships Act 1992 is amended in sections 8(1A), 9(1A) 9(1B) and 13(1A) by—

- (a) inserting the words “that holds an unlimited licence issued” after the words “corporate service provider”; and
- (b) deleting the word “licensed”.

LIMITED PARTNERSHIP ACT 1883

3 The Limited Partnership Act 1883 is amended in sections 5(1A) and 8B(3B) by—

- (a) inserting the words “that holds an unlimited licence issued” after the words “corporate service provider”; and
- (b) deleting the word “licensed”.

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EXPLANATORY MEMORANDUM

This Bill amends the Corporate Service Provider Business Act 2012 (the “principal Act”) to make new provision for regulating the business of corporate service providers and for protecting the interests of clients or potential clients of persons carrying on the business of corporate service provider.

Clause 1 provides a citation for the Bill.

Clause 2 amends section 10 of the principal Act to make provision for a new tiered licensing regime of two types of licenses which may be applied for by an undertaking and licensed by the Authority.

Clause 3 amends section 11 of the principal Act to enable the Authority to impose conditions on the scope or the manner of corporate services which an undertaking may conduct.

Clause 4 amends section 68 of the principal Act to extend the period within which applications are to be made to the Authority for a new licence to the 31st December 2014 or such longer period as the Minister may appoint by notice published in the Gazette.

Clause 5 amends Schedule 1 to the principal Act to provide the Authority with the flexibility to require a corporate service provider to put into place an appropriate corporate governance structure based on the nature, scale, complexity, risk profile and type of business or tier of licence obtained by the corporate service provider. The Schedule is also amended to clarify the criteria for determining if a corporate service provide is conducting its business in a prudential manner, to include compliance with any applicable law including any law pertaining to anti-money laundering and anti-financing of terrorism.

Clause 6 makes provision for consequential amendments to be made to the Exchange Control Regulations 1973, the Exempted Partnerships Act 1992 and the Limited Partnership Act 1883 to incorporate the new tiered licensing regime; and to clarify that the provisions of certain specified regulations under the Exchange Control Regulations 1973 do not apply so as to require the permission of the Authority for the issue or transfer of securities if the person has engaged a corporate service provider who holds an unlimited license issued under the Corporate Service Provider Act 2012. Regulation 13A of the Exchange Control Regulations 1973 is amended to provide that notification is required to be made by a permit company within 14 days when a beneficial owner or proposed beneficial owner of a permit company first acquires 10% or more of such company. Reporting is not required after the initial acquisition which meets this threshold.

Clause 7 makes provision for the commencement of the provisions of the Bill.