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## MEMORANDUM ON THE RECENT AMENDMENTS TO THE BERMUDA COMPANIES ACT AND EXEMPTED/LIMITED PARTNERSHIP ACTS

### INTRODUCTION

The Government of Bermuda passed various amendments to the Laws of Bermuda which were designed to promote growth in international business and investment in its financial services sector.

The portfolio of legislation passed by the House of Assembly included the following:

1. The Companies Amendment Act 2009
2. The Partnership Amendment Act 2009
3. The Exempted Partnership Amendment Act 2009
4. The Limited Partnership Amendment Act 2009
5. The Overseas Partnership Amendment Act 2009
6. The Stamp Duties Amendment Act 2009

The intention of Parliament behind the implementation of these amendments was to “remove barriers for businesses in Bermuda”.<sup>1</sup>

With these amendments, provisions were introduced to enhance the procedures when incorporating or registering a business or partnership in Bermuda.

### THE COMPANIES AMENDMENT ACT 2009

#### E-Filing

The Companies Amendment Act 2009 was introduced to improve the e-filing requirements of the Registrar of Companies. Firstly the amendment allows for the publication of a document on a company’s website to be deemed as adequate notification to members/ individuals. The

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<sup>1</sup> - Alex Wright, the Royal Gazette, June 29, 2009.

amendment qualifies the process of e-filing by requiring that those members must first be informed in writing that the particular document will be published on the website; give the particulars of the website and the document to allow the document to be easily identified. Notwithstanding the e-filing of documents, the Amendment Act also enables a member to obtain physical copies upon request.

#### *Residency Requirements:*

Previously under Bermuda Law, an exempted company (except for an exempted company which was listed on an Exchange) upon being incorporated in Bermuda was required to meet the residency requirements prescribed by Section 130(1) of the Companies Act. In essence, a Bermuda exempted company was previously required to meet any of the following residency requirements:

- (1) appoint and maintain at all times at least two (2) directors, both of whom were ordinarily resident in Bermuda;
- (2) appoint and maintain a Director and Secretary, both of whom were ordinarily resident in Bermuda;
- (3) appoint and maintain at all times a Resident Representative and Secretary, both of whom were ordinarily resident in Bermuda;

The Companies Amendment Act 2009 relaxed the residency requirement previously in place for Bermuda exempted companies. Such companies may meet the residency requirement by appointing and maintaining either a Director, Resident Representative or Secretary who in each case must be ordinarily resident in Bermuda.

#### **THE EXEMPTED PARTNERSHIP AMENDMENT ACT 2009**

The intention behind the amendment to the Exempted Partnership was to streamline the formation process in line with the procedures for companies and transfer to the Bermuda Monetary Authority the power to approve the formation of Partnerships and any subsequent change to the name, partners or business of the partnership.

The Exempted Partnership Amendment Act also makes it clear that certain restricted business activities prescribed by the Companies Act shall apply equally to exempted partnerships in the same manner as they apply to companies registered under the Companies Act 1981.

Business activities that are to be included in the restrictions that apply to Exempted Partnerships are:-

- (a) operating a financial institution within the meaning of section 1(1) of the Bermuda Monetary Authority Act 1969 other than institutions that are investment funds or persons registered under section 4 or 10 of the Insurance Act 1978;
- (b) providing by way of business any of the following services to the general public offering of professional services as a barrister and attorney, medical practitioner, architect, dental practitioner, public accountant, optometrist, optician, professional surveyor, nurse, health service provider or any profession or occupation specified under the First Schedule to the Professions Supplementary to Medicine Act 1973;
- (c) trafficking in armaments as defined in the Armaments (Control) Act 1964;

- (d) operating lotteries as defined in the Lotteries Act 1944 or gambling facilities, including the operation thereof through the Internet;
- (e) importation, exportation trading in, manufacture, production or supply of controlled drugs as defined by the Misuse of Drugs Act 1972.

### **THE LIMITED PARTNERSHIP AMENDMENT ACT 2009**

The amendments to the Limited Partnership Act introduced by the Limited Partnership Amendment Act reflect the amendments as set out in the Exempted Partnership Amendment Act discussed above. These amendments relate to the transfer to the Bermuda Monetary Authority of the approval process when making the application to form the Partnership and the application of certain restricted business activities prescribed by the Companies to limited partnerships.

### **THE OVERSEAS PARTNERSHIP AMENDMENT ACT**

In this instance the amendment of the Overseas Partnership Act (the "OPA") expands the exemptions available to a Partnership Fund from being required to have a permit. This exemption applies to a Partnership Fund that engages a person in Bermuda to be the fund administrator or registrar to perform the following services:

- i. corporate secretarial;
- ii. accounting;
- iii. administrative
- iv. registrar or transfer agency;

The Act also provides additional powers of revocation available to the Minister of Finance. The Minister can now revoke a permit in instances where there is a:

- i. substantial change in control of the Partnership; or
- ii. where annual fees were not paid; or
- iii. if the partnership is being wound up or if any partner who directly; or indirectly controls the partnership is wound up or it ceases to carry on business; or
- iv. where the partnership fails to comply with the provisions of the Act

Lastly the OPA also stipulates which types of changes in the partnership will require the consent of the Minister.

### **THE PARTNERSHIP AMENDMENT ACT**

This Partnership Amendment Act (the "PAA") modifies the legislation to allow a judgment debt of a partnership to be enforceable against an individual partner although the judgment was for a tort or a breach of trust which did not otherwise relate to a debt of the partnership.

### **STAMP DUTIES ACT 2009**

In short the Stamp Duties Amendment Act (the "SDA") includes an aircraft in the list of vessels that are exempted from paying stamp duties in Bermuda.

CONCLUSION

These amendments in essence will have the effect of enhancing the Business acumen in Bermuda which will further propel Bermuda into being the jurisdiction of choice in the international corporate community as it relates to the regulation of registered businesses.