

BILL AS TABLED

A BILL

entitled

COMPANIES AMENDMENT (NO. 2) ACT 2010

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WHEREAS it is expedient to amend the Companies Act 1981 to permit local and exempted companies to acquire leasehold interests in residential units forming part of hotel developments;

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 may be cited as the Companies Amendment (No. 2) Act 2010.

Amends section 120

2 Section 120 of the Companies Act 1981 ("the Act") is amended—

(a) in subsection (3) by—

(i) deleting the words "subsection (2)" and substituting the words "this section"; and

(ii) deleting the words "of land, or the holding of land, in trust" and substituting "or the holding of land"; and

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

"(5) Notwithstanding subsection (1), a local company that has a physical presence in Bermuda may, with the previous sanction in each case of the Minister but not otherwise, take by way of lease or letting agreement for a term not exceeding 131 years, or such longer period as is provided for in a hotel concession order made under the Hotels Concession Act 2000, land in Bermuda that is designated as

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tourist accommodation or a hotel residence by regulations made under section 102D(1)(ba) of the Bermuda Immigration and Protection Act 1956, provided that it does not exceed in the whole the limit of the company's land holding powers specified in its memorandum.

(6) For the purpose of subsection (5) a local company has a physical presence in Bermuda if it operates from Bermuda with staff and management present in Bermuda, has an affiliate that does so, or is a member of a group, one of the members of which operates in that manner. ”.

Amends section 129

3 Section 129 of the Act is amended—

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

“(aa) acquire or hold land that is designated as tourist accommodation or a hotel residence by regulations made under section 102D(1)(ba) of the Bermuda Immigration and Protection Act 1956, unless—

(i) the company has a physical presence in Bermuda and the Minister responsible for Immigration has given his consent by issuing a licence under Part VI of that Act; and

(ii) the land is acquired or held by way of lease or tenancy agreement for a term not exceeding 131 years, or such longer period as is provided for in a hotel concession order made under the Hotels Concession Act 2000; ”; and

(b) by inserting immediately before subsection (1A) the following—

“(1AA) For the purpose of subsection (1)(aa)(i) an exempted company has a physical presence in Bermuda if it operates from Bermuda with staff and management present in Bermuda, has an affiliate that does so, or is a member of a group, one of the members of which operates in that manner. ”.

Commencement

4 The provisions of this Act come into operation on a day or days appointed by the Minister of Finance by notice in the Gazette.

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EXPLANATORY MEMORANDUM

This Bill seeks to amend the Companies Act 1981 (“the Act”).

Clause 1 of the Bill is the short title.

Clause 2 amends section 120 of the Act to enable local companies that have a physical presence in Bermuda, with the permission of the Minister, to acquire by lease and hold tourist accommodation and hotel residences that are designated as such under the Bermuda Immigration and Protection Act 1956. The clause also makes it clear that nothing in section 120 overrides the application of Part VI of the Bermuda Immigration and Protection Act 1956 to the acquisition or the holding of land in Bermuda.

Clause 3 amends section 129 of the Act to enable exempted companies that have a physical presence in Bermuda, with the permission of the Minister responsible for Immigration (in the form of a licence issued under Part VI of the Bermuda Immigration and Protection Act 1956), to acquire by lease and hold tourist accommodation and hotel residences that are designated as such under that Act.

Clause 4 provides for the coming into operation of the Act.