



Bermuda Corporate Update
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Changes to Bermuda Company Law

The Companies Amendment Act 2002 (“The Amendment Act”) came into force on February 14, 2003 and introduced the following amendments to Bermuda Company law:-

Objects and Powers in Memorandum of Association

The Amendment Act abolishes the requirement that special government consent be obtained for the objects and powers of a Bermuda company. Bermuda companies will be able to be formed for any purpose except if involved in restricted activities (i.e. licensed financial and investment services) or prohibited activities.

Share Premium

The Amendment Act removed the restriction that the premium arising from the issue of shares must be applied only in share transactions of the same class with the result that it can now be used in capital transactions of any class of share.

Share Registers

The Amendment Act has done away with the requirement to keep one year’s history of past shareholders on the Share Register.

Prospectus Filings

The Amendment Act changes the time when a Prospectus must be filed particularly with respect to listings on exchanges outside of Bermuda. A prospectus may now be filed as soon as reasonably practicable after publication.

Summary Financial Statements

The Amendment Act has introduced provisions whereby listed companies may now distribute summary financial statements to their shareholders. Full financial statements can still be requested by a shareholder.

Reasons for Incorporating in Bermuda

- Respected International Business jurisdiction (built on the principle of “know your customer”);
- Tax Neutral Business Environment (no income, capital gains, transfer or withholding taxes);
- Business sensitive and well established Legal System (based upon English common law);
- Minimal Government Annual Reporting except for Restricted Businesses;
- Access to Capital Markets (through Bermuda Stock Exchange listings);
- Access to one of the most successful Insurance/Reinsurance Markets in the world;
- Reliable Banking System;
- Efficient Support Services (legal, accounting, management, corporate and trust services);
- State-of-the-Art Global Internet Services and Telecommunications (connecting Bermuda to the world); and
- Friendly yet efficient business environment for holding Company Meetings.

The contents of this newsletter are not intended to be a complete statement of the law on any subject and should not be used as a substitute for legal advice in specific fact situations. If you require more detailed information or advice concerning a specific fact or situation, you are invited to contact one of the above named for that purpose. Lynda Milligan-Whyte & Associates cannot accept any liability or responsibility for loss occurring as a result of anyone acting or refraining from acting in reliance on any material contained in this newsletter.

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Bermuda Stock Exchange ‘Mezzanine Market’

The Bermuda Stock Exchange (“BSX”) Mezzanine Market offers small and medium sized companies with high growth potential the opportunity to raise capital to develop product, start production, increase sales or recruit personnel by listing on a recognized international stock exchange at a much earlier stage than is currently possible in many other major financial centers.

Those businesses that take advantage of the BSX Mezzanine Market achieve an enhanced status as a listed company with publicly traded securities.

The BSX restricts Mezzanine Market investment to “Qualified Investors” which means institutional or sophisticated investors - providing a form of “listed private equity” with greater visibility and marketability for the security, while at the same time exposing management to the process of complying with listing regulations.

The BSX Mezzanine Market has been created to meet the needs of businesses that want to take an intermediate step before listing on an international market such as the LSE, NASDAQ, NYSE or other exchanges. Such companies are not required to have a minimum track record, market capitalization, or profitability in order to qualify for a BSX Mezzanine Market listing. Yet, once listed, a company has all of the prestige of being publicly listed without having to conduct a retail IPO.

All listing applications for the Mezzanine Market must be sponsored by one of the BSX’s Trading Members and the sponsor will guide the way through the listing process and submit the formal application on behalf of the Company which includes the filing of a Prospectus or Offering Document, sponsorship fees and listing fees. The BSX listing fee is dependent upon the market capitalization of the Company and it ranges between \$5,000 and \$25,000 (\$10M-1,000M market cap).

Corporate Governance Update

- The Bermuda Monetary Authority must approve all share issues and transfers amounting to 5% or more of a Bermuda Company prior to the approval by Board of Directors.
- The Investment Business Act 1998 (‘IBA’) is the statutory basis for regulating investment businesses in Bermuda. The IBA provides for a licensing regime for any person or entity (unless otherwise exempted) engaging in investment business either in or from within Bermuda. The IBA also applies to foreign investment professionals coming to Bermuda to conduct business.