

## **BERMUDA STREAMLINES ITS PROSPECTUS FILING REQUIREMENTS**

*With the latest amendment to the Bermuda Companies Act 1981 (the "Act") Bermuda is demonstrating its commitment to ensuring that it has a regulatory regime that is both effective and practical.*

*The Companies Act Amendment Bill 2013 (the "Bill"), which was drafted to improve the efficiency of the administration of companies in Bermuda, has been approved by the House and Senate and is awaiting enactment from the Governor of Bermuda.*

*The Bill amends the Act by removing the current requirement for the filing of a prospectus with the Registrar of Companies by any company whose prospectus is received or otherwise accepted by an appointed stock exchange or a competent regulatory authority in connection to the offering of shares to the public.*

When the Bill is enacted, the law on filing a prospectus will consist of the following:

### **Requirement to publish and file a prospectus**

Section 26(1) of the Act provides that no company shall offer shares to the public unless prior to such offer it publishes in writing a prospectus, and prior to or as soon as reasonably practicable after publication of such a prospectus, it is filed with the Registrar of Companies.

The prospectus requirements apply to every company incorporated in Bermuda, to unit trusts, where shares are offered prior to incorporation and to companies incorporated outside Bermuda but which have a permit to carry on business from within Bermuda.

### **Offer of shares to the public**

An offer to the public includes any section of the public. However, an offer need not be treated as an offer or invitation to the public if it is:

- an offer to existing holders of shares in the company of the same class as the shares comprised in the offer without any right of renunciation;
- an offer without any right of renunciation to the holders of convertible debentures or debentures having subscription rights in respect of shares into or in respect of which the right of conversion or subscription exists;
- an offer certified in writing by an officer of the company on behalf of the board of directors to be an offer which the board considers as not being calculated to

result, directly or indirectly, in the shares becoming available, in the case of an exempted company, to more than 35 persons;

- an offer having a private character (including an offer that is made in consideration of or in connection with the provision of services to a company by employees, independent contractors, directors or officers of a company, or of any affiliate of a company (wherever incorporated or established), including an offer made pursuant to an employees' share scheme or other employees' incentive plan); or
- an offer certified in writing by an officer of the company on behalf of the board of directors to be an offer which the board considers as not being calculated to result, directly or indirectly, in shares becoming available to persons other than persons whose ordinary business involves the acquisition, disposal or holding of shares, whether as principal or agent.

### **Exceptions to Requirement to File a Prospectus**

It is not necessary to publish and file a prospectus at any time or in any circumstances where: (i) the shares are listed on an appointed stock exchange, or an application has been made for the shares to be so listed, and the rules of the relevant exchange do not require the company to publish and file a prospectus at such time or in such circumstances; (ii) the company is subject to the regulations of a competent regulatory authority and such rules and regulations do not require the company to publish and file a prospectus at such time or in such circumstances, except where exemption from publication and filing of a prospectus is given by reason of the offer being made only to persons who are resident outside the jurisdiction of the authority: or (iii) <sup>1</sup>*an appointed stock exchange or any competent regulatory authority has received or otherwise accepted a prospectus or other document in connection with the offer of shares to the public.*

For further information, please contact: Andrea Moniz-DeSouza, Associate, Corporate and Commercial Department; + (441) 294 1542 or email: [amonizdesouza@chw.com](mailto:amonizdesouza@chw.com).

This memorandum does not constitute legal or tax advice and should not be relied upon as such. Interested parties are urged to seek advice from qualified advisors before carrying out any commercial decision concerning matters discussed herein.

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<sup>1</sup> Companies Act Amendment Bill 2013