



BERMUDA

COMPANIES AMENDMENT AND VALIDATION ACT 2021

2021 : 51

WHEREAS it is necessary to amend section 2 of the Companies Act 1981 with retrospective effect in relation to the appointment of stock exchanges for the purposes of that Act, to validate any appointment of a stock exchange made under that section since 6 May 2020, to insert section 2AA with retrospective effect in relation to delivery of electronic records, and to make minor and consequential amendments;

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 Companies Act 1981 ("the principal Act"), may be cited as the Companies Amendment and Validation Act 2021.

Amends section 2

2 In section 2 of the principal Act, at the end insert—

"(9) The Minister may appoint a stock exchange and shall cause the appointment to be published in an appointed newspaper."

Inserts section 2AA

3 After section 2A of the principal Act, insert—

"Delivery of electronic records in other circumstances

2AA (1) Subject to section 2A, where there is a requirement in this Act, in any statutory instrument made under this Act or in any bye-laws of a company to provide a document to a person, or for a document to accompany another

COMPANIES AMENDMENT AND VALIDATION ACT 2021

document, the requirement may, unless precluded by the bye-laws of a company, be met by the delivery, or deemed delivery, of an electronic record of the document in accordance with this section.

(2) For the purposes of subsection (1), “to provide” includes to send, forward, give, deliver, submit, file, deposit, furnish, issue, leave at, serve, circulate, lay, make available or lodge.

(3) An electronic record of a document may be delivered to a person by communicating it by electronic means to the person at the address or number that has been notified by the person for the purposes of communication by electronic means.

(4) Subject to subsection (7), an electronic record of a document is deemed to have been delivered to a person if it is published on a website and the person is sent a notice which includes details of—

- (a) the publication of the document on the website, the address of the website, the place on the website where the document may be found and how the document may be accessed on the website; and
- (b) how the person is to notify the company that the person elects to receive the document in a physical form if the person wishes to receive the document in a physical form.

(5) If, in accordance with a notice sent to a person under subsection (4), the person elects to receive a document in a physical form, the company shall send to that person such document within seven days of receipt of that person’s election.

(6) The accidental omission of a company to send a document to a person in accordance with subsection (5), or the non-receipt by the person of a document that has been duly sent to that person, does not invalidate deemed delivery of that document to that person pursuant to subsection (4).

(7) If there is a requirement that a person have access to a document for a specified period of time, the person must be notified of the publication of the document before the commencement of the period and, subject to subsection (8), the document must be published on the website throughout the whole of the period.

(8) Nothing in subsection (7) shall invalidate the deemed delivery of an electronic copy of a document under subsection (4) if—

- (a) the document is published for at least part of a period; and
- (b) the failure to publish it throughout the whole of the period is wholly attributable to circumstances that the person providing the document could not reasonably have been expected to prevent or avoid.

(9) Subject to any rules made under section 199, this section shall not apply to the sending or receipt of any documents to or by the Court.

COMPANIES AMENDMENT AND VALIDATION ACT 2021

(10) Sections 10 and 17 of the Electronic Transactions Act 1999 do not apply to the delivery of an electronic record in accordance with this section.”

Minor and consequential amendments

- 4 (1) In section 2A of the principal Act—
- (a) at the end of the headnote of section 2A, insert “to and from the Registrar”; and
 - (b) in subsections (1) and (3), delete “regulations” in each place, and substitute “rules”.
- (2) In the Companies Amendment Act 2006, sections 3 and 46 are repealed.

Retrospective commencement and validation

- 5 (1) Section 2 shall be deemed to have come into effect on 6 May 2020.
- (2) Accordingly, any appointment of a stock exchange purportedly made by the Minister of Finance under section 2(9) of the Companies Act 1981 on or after 6 May 2020 is hereby validated.
- (3) Sections 3 and 4 shall be deemed to have come into effect on 31 May 2021.

[Assent Date: 24 December 2021]

[Operative Date: 24 December 2021]