

COMPANIES AMENDMENT ACT 2008



BERMUDA

2008 : 4

COMPANIES AMENDMENT ACT 2008

Date of Assent: 25 March 2008

Operative Date: 1 April 2008

WHEREAS it is expedient to amend the Companies Act 1981;

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:

Short title

1 This Act may be cited as the Companies Amendment Act 2008.

Repeal and replacement of Fifth Schedule to Act

2 The Fifth Schedule to the Act is repealed and replaced with the following —

“FIFTH SCHEDULE

PART I

(Section 121)

1 The appropriate fee in the case of a company whose business includes the management of any unit trust fund, shall be two thousand nine hundred and five dollars in respect of each unit trust fund managed by that company at the date of the declaration made under section 121.

2 When the issued capital of a company if a company limited by shares, or other company having a share capital, is—

	Issued capital	Tax payable
(i)	less than \$50,000	\$650

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(ii)	\$50,000 or more but less than \$250,000	\$970
(iii)	\$250,000 or more but less than \$500,000	\$1,620
(iv)	\$500,000 or more but less than \$1,000,000	\$3,225
(v)	\$1,000,000 or more but less than \$5,000,000	\$6,445
(vi)	\$5,000,000 or more but less than \$10,000,000	\$12,275
(vii)	\$10,000,000 or more	\$18,410

In the case of a local company which is a mutual company, the tax payable by such company shall be on the same scale as a company limited by shares but the basis shall be the reserve fund of such a company in place of that issued capital.

In the case of a local company which is a company limited by guarantee, other than a mutual company no fee shall be payable.

In the case of a local company engaging in or carrying on wholesale trading business in respect of petroleum and other oils or liquefied petroleum gas the tax payable by such company shall be \$18,410.

PART II (Section 131, 135)

1 A *EXEMPTED COMPANIES* (Section 131)

(a) Where the assessable capital of the exempted company—

Conditions	Fee
(a) Where the assessable capital of the exempted company—	
(i) is \$0-\$12,000	\$1,995
(ii) is \$12,001-\$120,000	\$4,070
(iii) is \$120,001-\$1,200,000	\$6,275
(iv) is \$1,200,001-\$12,000,000	\$8,360
(v) is \$12,000,001-\$100,000,000	\$10,455
(vi) is \$100,000,001-\$500,000,000	\$18,670
(vii) is \$500,000,001 or more	\$31,120

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(b) Where the exempted company's business includes the management of any unit trust fund: in respect of each unit trust fund managed by the company at the date the declaration under section 131(1) was made	\$2,905
(bb) (i) Where the exempted company is a small foreign sales corporation which does not lease aircraft	\$585
(ii) Where the exempted company is a regular foreign sales corporation which does not lease aircraft	\$1,180
(iii) Where the exempted company is a foreign sales corporation, whether small or regular, which leases aircraft	\$1,980
(c) (i) Where the exempted company is one whose capital is denominated in a currency other than Bermuda area currency or currency of the United States of America, and the Bermuda area currency equivalent is \$15,000 or less	\$1,995
(ii) Where the exempted company is one limited by guarantee (but is not a mutual company)	\$1,995
(iii) Where the exempted company is the parent company of a wholly owned exempted company that carries on insurance business as defined in the Insurance Act 1978	\$1,995
(iv) Where the exempted company is one whose capital is denominated in a currency other than Bermuda area currency or currency of the United States of America, and the Bermuda area currency equivalent is \$150,000 or less	\$4,125
(v) Where the exempted company is one which is engaging in or carrying on, in Bermuda, wholesale trading business in respect of petroleum and other oils or liquefied petroleum gas	\$19,330

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B	<i>PERMIT COMPANIES</i>	(Section 135)
Conditions		Fee
(a)	Where the permit company is one which is engaging in or carrying on, in Bermuda, wholesale trading business in respect of petroleum and other oils or liquefied petroleum gas	\$19,330
(b)	Where the principal business of the permit company is finance business or insurance business or, in the case of a permit company which is open-ended, mutual fund business	\$4,125
(c)	Where the permit company's business includes the management of any unit trust fund: in respect of each unit trust fund managed by the company at the date the declaration under section 135 (as read with section 131) was made	\$2,905
(d)	In any other case	\$1,995

For the above purposes, the following expressions have the following meanings—

"finance business" means the business of raising money from the public by the issue of bonds or other securities;

"foreign sales corporation" means a company which—

- (a) has been registered under this Act as an exempted company; and
- (b) has been designated as a foreign sales corporation under the Internal Revenue Code, of the United States of America, and has submitted to the Registrar a certified copy of the document which—
 - (i) evidences such designation; and
 - (ii) specifies whether the company is a small or regular foreign sales corporation;

"insurance business" means the business of effecting or carrying out contracts of insurance or reinsurance as principal, but excluding insurance management or insurance brokerage business;

"mutual fund business" means the business of raising money from the public for investment in real property, shares, stocks or personal property;

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"open-ended company" means a company which has power under the terms of its incorporation to redeem or purchase for cancellation its issued shares at the option of, or on the request of, a shareholder;

"regular foreign sales corporation" means a foreign sales corporation which, under the Internal Revenue Code of the United States of America, has been so designated.

"small foreign sales corporation" means a foreign sales corporation which, under the Internal Revenue Code of the United States of America, has been so designated;

"unit trust fund" means a fund under which the property is held on trust for the participants.

2 Where a company liable to pay the higher fee in any year does not carry on the business attracting the higher fee, it shall only pay the lower. Where a company liable to pay the higher fee at any time during a year carries on the business attracting the higher fee, it shall pay that fee for that year.

C SEGREGATED ACCOUNTS COMPANIES

In addition to the annual fee or tax otherwise payable under this Schedule a segregated accounts company registered under section 6 of the Segregated Accounts Companies Act 2000 shall pay an annual fee of \$280 in respect of each segregated account operated by the company, subject to a maximum annual fee of \$1,120 in the aggregate.

Commencement

3 This Act shall come into operation on 1st April 2008.