



Bermuda Corporate Update
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FIRM'S TRUST CONSULTANT

The law firm of LYNDA MILLIGAN-WHYTE & ASSOCIATES is pleased to welcome **MICHELLE ST. JANE** as a Trust Consultant.

Michelle has joined Richmond Trust Company Limited bringing significant trust experience to Richmond and the Firm. Michelle is a Barrister & Attorney admitted in New Zealand (1997) and in Bermuda (1998). Michelle has represented individuals and professionals in Bermuda



and internationally in multi-disciplinary areas including but not limited to corporate governance, trusts, mutual funds, banking, insurance, philanthropy and charitable giving.

Active in her community and a strong supporter of education, Michelle holds the following academic appointments: she was appointed by Institute of Legal Executives United Kingdom, as an Accredited Centre and Assessor. Bermuda Insurance Law Examiner for the Bermuda Insurance Diploma and teacher of American law for insurance for the Chartered Property and Casualty Underwriter ("CPCU"). She was a seminar leader for the University of Kent Law School from 2001 through May, 2002 and continues to provide mentoring, tutoring and ongoing support for Kent students.

Her community activities include volunteering as a board member for the Bermuda Maritime Museum, the Continuing Education Committee and Social Committee for the Bermuda Bar Association and the National Rights of the Child for the Bermuda Government.

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CORPORATE RE-STRUCTURING & RE-DOMICILIATION TO BERMUDA

WHY BERMUDA?

Bermuda, located in the mid-Atlantic between several major continents and financial markets, is ideally situated for any business involved in international trade or any business which has substantial foreign source income. Global corporations such as SEA CONTAINERS, JARDINE MATHESON, AVAYA, BT plc. and many others have recognized the major benefits of locating operations in Bermuda.

International businesses that have established companies in Bermuda whether through incorporation or re-domiciliation operate from Bermuda in a tax-neutral environment with no exchange controls or stamp duty.

Bermuda's well earned reputation as a stable financial and business centre will undoubtedly continue to grow as more and more companies take advantage of the pro-business climate and the sophisticated legal and professional environment created to support some of the largest corporations in the world.

AVAILABILITY OF MODERN COMMUNICATIONS

Bermuda has excellent communications facilities, particularly good telephone, facsimile, cable and telexes services linking it directly to major financial and business markets located throughout the world. Bermuda has also provided its market with first-class telecommunications and internet services with facilities for data storage and redundancy capabilities for global players that wish their operations conducted in and through Bermuda.

AIRLINE CONNECTIONS

Bermuda has direct flights from and to major U.S. and Canadian cities including New York, Boston, Philadelphia, Atlanta, Miami and Toronto. It also has outstanding airline connections with other U.S. cities as well as direct flights to London, the gateway to Europe.

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.

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TIME ZONE

The time difference with the U.S. East Coast is only one hour which puts Bermuda one hour ahead of one of the world's most important financial markets. Bermuda's time difference with London is only four hours offering strategic opportunities for European businesses to utilize Bermuda for transactions involving North America.

FREEDOM FROM EXCHANGE CONTROLS

International Companies, trusts, partnerships and persons designated as "non-residents" under the Exchange Control Act, 1972 by the Bermuda Monetary Authority are not subject to exchange controls of any kind. In particular, inward or outward foreign exchange transactions whether in the form of payments relating to foreign trade, interest, dividends, leasing or rentals, capital flows, deposits or credits, are all free of exchange or currency controls of such businesses operating from Bermuda. In addition, Bermuda offers international businesses the advantage of unrestricted repatriation or reinvestment of capital any where in the world. No governmental approval or reporting is required for any such payments.

FREEDOM FROM TAXATION

Bermuda remains a zero income tax jurisdiction for international companies that operate from Bermuda. Any exempted undertaking in Bermuda is exempt from all forms of direct taxation in Bermuda. In particular, capital reserve, capital distributions, dividends and other payments whether flowing into or from the Bermuda company are not subject to taxation in Bermuda.

In particular, such Bermuda entities may seek an undertaking from the Minister of Finance of Bermuda pursuant to the Exempted Undertakings Tax Protection Act, 1966 (as amended) that they would be exempt from all taxes whether computed on profits or income or on any capital asset, gain or appreciation or any tax in the nature of estate duty or inheritance tax until the year 2016 or such further period specified by any amendment to the aforesaid Act.

In addition, there may be included in the undertaking an assurance that any such tax shall not be applicable to the shares, debentures or other obligations of such companies or partnerships. The undertaking is generally granted as a matter of routine for the full period.

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REGULATORY ENVIRONMENT

Bermuda based international businesses operate in a regulatory environment that has evolved as a result of a partnership philosophy between the Bermuda Government and the private sector.

Bermuda company law is largely based on U.K. company law with deviations occurring only when such common law and U.K. statutory provisions are inappropriate for the Bermuda market.

Companies incorporated in or re-domiciled to Bermuda and overseas companies doing business in Bermuda are regulated by the Companies Act, 1981 (as amended). All such entities once established in Bermuda are subject to the requirements of the Companies Act, 1981 with respect to minimum capital, reduction of capital, proxies, convening of shareholder and board of director meetings and prospectus requirements.

The Bermuda Monetary Authority, pursuant to the Bermuda Monetary Authority Act 1969 and the Exchange Control Act 1972, is the independent governmental authority which scrutinizes all applications of non-resident persons seeking to do business in or from Bermuda.

TAX CONVENTIONS

In 1988, Bermuda successfully concluded a Tax Convention with the United States relating to taxation of insurance enterprises and to mutual assistance in tax matters: The Convention dealt with four major areas:

1. It exempted, in limited instances, for the period from January 1, 1986, to December 31, 1989 a Bermuda insurer of U.S. source risks from U.S. federal excise tax on premium ceded to and retained by a Bermuda insurer that is not doing business in the U.S.
2. Bermuda incorporated insurers under the Treaty are only subject to direct income taxation in the U.S. and only on profits attributable to the permanent establishment.
3. It qualifies Bermuda as a country in which U.S. persons may take deductions against U.S. taxable income for business expenses incurred in attending conventions in Bermuda.
4. It also qualifies Bermuda as a designated country for the incorporation of companies qualifying as Foreign Sales Corporations which are special companies set up within the

RICHMOND GROUP LIMITED AND ITS AFFILIATES

Richmond Corporate Services Limited - provides corporate administration and compliance services to Bermuda companies, partnerships and trusts.

Richmond Financial Managers Ltd. - provides a wide range of management services to its clients. It can also assist in advising insurance professionals on the Bermuda regulatory environment, particularly the capital requirements, solvency margins and liquidity ratios.

Richmond Investments (Bda) Limited - provides investment advisory services to clients of the Richmond Group of Companies who are institutional and high net worth clients.

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scope of U.S. income tax law to provide an indirect tax benefit to foreign export sales emanating from the U.S.

The Convention will continue for an indefinite period unless prior notice of termination is given by either party.

BANKING ADVANTAGES

Reserves may be invested in the money markets from an offshore location such as Bermuda. Loans may be made by Bermuda Banks to fund capital for the Bermuda company. New banking relationships with Bermuda Banks and other banks that service companies within the offshore world are available to the Bermuda entity.

Added services may be offered by these Banks to Bermuda companies such as foreign exchange dealings, letter of credit facilities, investment management and other banking facilities including custody and registrar & transfer agents.

ARBITRATION

Parties to international sales agreements, reinsurance agreements or treaties, licensing agreements or commodity contracts, whether involving Bermuda law or not, may choose to take advantage of Bermuda's ideal location, supportive infrastructure, excellent communications system and beautiful environment to conduct arbitration proceedings.

Arbitration in Bermuda is governed principally by the Arbitration Act 1986 which was designed to improve upon England's current arbitration legislation. The Bermuda Act encompasses features of England's 1950, 1975 and 1979 Arbitration Act, Hong Kong's Arbitration Ordinance, The New York convention on the Recognition and Enforcement of Foreign Arbitral Awards, and some Bermudian innovations designed to assist in encouraging arbitrations in Bermuda.

Bermuda's beauty and climate have provided it with frequent air links with Europe and North America and many excellent hotels. Immigration permission for persons participating in arbitrations will be expeditiously granted. The Government is committed to facilitating Bermuda's attractiveness as an international arbitration center handling all types of disputes.

RE-DOMICIATION INTO BERMUDA

The re-domiciling of a foreign corporation to Bermuda is permitted under Section 132C (1) of the Companies Act 1981. The Companies

Act 1981 permits foreign corporations to apply to the Minister of Finance for consent to be "continued" in Bermuda as an exempted upon providing satisfactory proof that the foreign corporation has obtained all necessary authorization required under the laws of the country in which it was incorporated, and the filing in Bermuda of its current financial statements.

A foreign corporation seeking to be continued in Bermuda shall:

- a) obtain all necessary authorizations, if any, required under the laws of the jurisdiction in which it was incorporated or is presently registered in order to enable it to continue as an exempted company registered in Bermuda;
- b) provide a memorandum of continuance in such form as the Minister may determine;
- c) provide financial statements of the foreign corporation prepared for a period ending within twelve months of the proposed date of continuance.

The foreign corporation shall deliver to the Registrar of Companies the Memorandum of Continuance for registration.

Within one month after the date of registration of the Memorandum of Continuance, the foreign corporation is required to pay the appropriate government fee payable in respect of the corporation as an exempted company.

If the Registrar of Companies is satisfied that the foreign corporation will be in compliance with the Companies Act, he shall register the Memorandum of Continuance whereupon it will become effective and the Registrar shall issue a certificate of deposit of the memorandum of continuance in such form as the Minister may determine. The memorandum of continuance shall be deemed to be the Memorandum of Association of the foreign corporation.

The foreign corporation will become a company to which the Companies Act and any other laws of Bermuda shall apply as if it had been incorporated in Bermuda on the date of the registration.

The foreign corporation is required to adopt bye-laws which conform to the requirements of the Companies Act and any other law of Bermuda and forward a copy of the certificate of continuance to the competent authority in the country or jurisdiction from which it has been continued.

The redomiciled company becomes a Bermuda exempted company and therefore, will obtain an Undertaking from the Minister of

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Finance exempting it from taxation until the year 2016 or as further extended from time to time.

CONSEQUENCES OF RE-DOMICILIATION INTO BERMUDA

Upon continuance of a foreign corporation as a company under the Companies Act, the property of the foreign corporation continues to be the property of the company; the company continues to be liable for the obligations of the foreign corporation; any existing cause of action, claim or liability to prosecution in respect of the foreign corporation is unaffected; any civil, criminal or administrative action or proceeding pending by or against the foreign corporation may be continued by or against the company; and any conviction against, or any ruling, order or judgment in favour of or against the foreign corporation may be enforced by or against the company.

DISCONTINUANCE FROM BERMUDA

An exempted company may be discontinued under the Companies Act and be continued in a jurisdiction outside of Bermuda as if it had been incorporated under the laws of that other jurisdiction.

An exempted company shall not be discontinued unless:

- a) a resolution of the members (of each class of members) is passed at a general meeting approving the discontinuance; or
- b) the discontinuance is approved in such manner as may be authorized by the bye-laws of the company;
- c) a statutory declaration has been signed by the directors of the company stating that the company is solvent and can meet all of its liabilities and obligations and that the discontinuance will not adversely affect the interests or rights of bona fide creditors and members;
- d) an irrevocable deed poll is executed by such company and its directors pursuant to which such company and each of its directors may be served with legal process in Bermuda in any proceedings arising out of actions or omissions of such company prior to the discontinuance and provision is made for the appointment of a person within Bermuda as agent for such company for the service of process for a period of not less than 3 years from the date of discontinuance and for a signed acceptance of the appointment; or
- e) such company and each of its directors may be served with legal process at a specified address in the United Kingdom, the United States of America or any appointed jurisdiction, and whereby

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such company and such directors submit to the non-exclusive jurisdiction of the courts of that country or jurisdiction;

- f) at least fourteen days prior to the discontinuance such company advertises in an appointed newspaper and in a national newspaper in each jurisdiction within which it carried on a substantial part of its trade or business activities its intention to discontinue under the Companies Act and continue in the named jurisdiction; and
- g) the jurisdiction in which such company is to be continued is approved by the Minister, upon application by the company for the purpose of the discontinuance of the company out of Bermuda.

An exempted company shall not be discontinued from Bermuda unless it files with the Registrar a notice of discontinuance which shall contain or have attached thereto the following information:

- a) the effective date of the discontinuance;
- b) the name of the jurisdiction in which the company will continue;
- c) the address of the registered office or the principal business address of the company in the jurisdiction in which the company will continue;
- d) a copy of the statutory declaration; and
- e) a copy of the deed poll.

Within 30 days after the date of the discontinuance, the company shall file with the Registrar a copy of the instrument of continuance issued by the new jurisdiction. Upon filing such instrument, the Registrar shall issue a Certificate of Discontinuance.

EFFECT OF DISCONTINUANCE

The effective date of the discontinuance of a company from Bermuda shall be the date that such company's continuance in the appointed jurisdiction is effective pursuant to the laws of such other jurisdiction, and such discontinuance and continuance shall not be deemed to operate to create a new legal entity or prejudice or affect the continuity of the body corporate which was formerly the company that was subject to the Companies Act.

Re-domiciliation normally involves a scheme arrangement which may require shareholder or court approval in the home jurisdiction.

If you require further information on Re-Domiciliation into Bermuda, please contact Lynda at LMW@milligan.bm.

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INHERITANCE TAX

“People Don’t Plan To Fail, They Fail to Plan”

(By Kevin G. Bean, Senior Associate)

Unlike many other common-law jurisdictions, Bermuda has sought fit to maintain inheritance tax as a form of raising revenue for the Government. To this extent the Stamp Duties Act 1976 (‘the Act’) is the governing legislation which sets out how ‘death tax’, as it is colloquially known, is determined. In summary, the Act provides that the Supreme Court shall not grant probate of a will or letters of administration of the estate of a deceased person without first requiring and receiving from the person applying for probate or letters of administration or resealing or from some other competent person an Affidavit of Value of the estate in order that the proper stamp duty may be paid. Subject to the criterion set out in the Act certain property will be dutiable and other property may be exempt.

The Act further sets out the following table which lists the amount of stamp duty that shall be paid based on values declared:

- (i) on the first \$50,000 of the value of the estate - nil stamp duty;
- (ii) on the next \$150,000 of the value of the estate - 5 per centum stamp duty;
- (iii) on the next \$800,000 of the value of the estate - 10 per centum stamp duty; and
- (iv) thereafter - 15 per centum stamp duty.

Thus, if a person owns Bermuda property with a value of \$1.5 Million, stamp duty payable upon the demise of that person and the passing of the estate to their beneficiary (save except spouse) would be \$162,500.00. Clearly in the absence of life insurance or some other significant lump sum of cash the property would have to be mortgaged in order to pay the duty which would then be owing.

Time for Stamping: 90 days after the grant of probate or administration or, in the case of a foreign grant, the resealing thereof at the discretion of the Supreme Court, or within such further period as the Registrar or a Judge may, on application, allow.

The person liable for the payment of stamp duty in this regard shall be the Estate representative or other person acting in the administration of the estate.

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Many Bermudians when dealing with Bermuda property have chosen, in an effort to minimize the costs of stamp duty as particularized above, to add the intended beneficiary of the property to the deeds of the real property so as to reflect joint ownership. This method however will merely reduce the stamp duty exposure and not eradicate it. Assume a father and mother own real property jointly. These individuals add their child to the deeds in a joint tenancy capacity in order to prepare for their untimely demise. In this circumstance they have only reduced the stamp duty exposure by 1/3 as their 2/3 interest will still be subject to declaration in the affidavit of value of the estate.

Effective estate planning techniques can drastically reduce the cost and burden of a loved one's death. Proper use of Trust mechanisms will in effect potentially result in a fraction of the cost to the estate and this expense known as death duty (stamp duty) can be avoided for several generations as opposed to being consistently applied every time Bermuda property passes from individual(s) to individual(s) (save an except between spouses).

The cost of establishing a trust can range between \$2,500.00 and \$5,000.00 depending on the complexity involved in drafting the Deed. Further costs will be associated with the conveyance of real property into the Trust. Stamp duty and legal fees associated with such conveyances are the major expense but this is but a fraction of the cost which would be incurred in the event that death duty is applicable. The only other major expense would involve Trust administration fees, which are payable on a per annum basis, usually around \$2,500.00 but can be more costly depending on the complexity and volume of work associated with administering the Trust.

In order to properly determine the best approach and the cost effectiveness of utilizing Trusts, Bermudians should consult with their attorneys for clear explanations and proper estate planning advice in order to potentially avoid the imposition of such onerous costs.

If you require further information on Inheritance Tax, please contact Kevin at kbean@milligan.bm.

