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## NEW LEGISLATION IN BERMUDA

2004 has been a relatively busy period for legislators in Bermuda with nearly two dozen Acts passed in the first eight months of this year. Among the notable legislative changes are the Workmen's Compensation Amendment Act 2004, the Health and Safety at Work Amendment Act 2004 and the Bermuda Health Council Act 2004. These Acts are summarized below.

### Workmen's Compensation Amendment Act 2004

Bermuda's Workmen's Compensation Amendment Act 2004 has amended Bermuda's Workmen's Compensation Act 1965 (which is based on the English Act of the same name of 1925) in a number of ways. Perhaps the most obvious way that the 1965 Act has been amended is that it is now known as the "Workers' Compensation Act 1965". Indeed, the words "workman" and "workmen" have been replaced throughout the 1965 Act with the words "worker" and "workers" respectively.

Of a more substantive nature, an "employee" is, for the first time, defined in the 1965 Act, and that definition is by reference to the definition of an "employee" under section 4 of the Employment Act 2000. "Worker" now has the same meaning as "employee" under the 1965 Act.

The cap under section 5 of the 1965 has potentially been raised by repealing the provision that the maximum amount

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**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,

payable to dependants in the case of fatal injuries is \$42,000.00. The calculation is now the actual earnings of the deceased in the 4 years prior to the incident or 4 years of the average annual *per capita* income as recorded in the most recent official national statistics, which ever is the lesser. Similarly, the compensation payable in respect of permanent total incapacity has had the \$53,000.00 cap removed and is simply 4 years earnings prior to the incident or 4 years of the average annual *per capita* income as recorded in the most recent official national statistics, which ever is the lesser.

Provision has now been made for immediate compensatory part payments by an employer, subject to verification by a government safety and health officer. This amendment appears to contemplate that all employers who may be potentially liable under the 1965 Act will have Workers' Compensation Insurance, as the part payment is to be made “pending the conclusion of an insurance company's investigation into an incident.” No provision requiring such insurance beyond the present class of employers (road haulage or tractors, building contractors, diving and quarrying operations and public utilities) is included in the Act however.

The voluntary submissions to arbitration as between an employer and a third party as to who is responsible in whole or in part for injury to a workman now have a statutory basis for appeal to the Supreme Court from the arbitration on a point of law only.

## Health and Safety Work Amendment Act 2004

The Health and Safety at Work Amendment Act 2004 has amended the Health and Safety at Work Act 1982 in a number of ways, not the least of which is by renaming the 1982 Act the “Occupational Safety and Health Act 1982”.

The office of the health and safety at work Inspector has been abolished and all powers formerly vested in the Inspector are now vested in a Safety and Health Officer.

	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 Act imposes duties on all employers to investigate and report accidents and dangerous occurrences, display a copy of the 1982 Act (as amended) and any regulations made thereunder and to keep those documents up to date. A duty is imposed on all medical officers to provide to the employer (or the Minister, where the worker is self-employed) a report on any worker who is suffering from an occupational disease or illness (an employer who receives such a report is then obligated to report the matter to the Minister).

Insurance companies who provide workers compensation insurance are now required to provide the Minister with data pertaining to accidents, injuries and illnesses for the previous calendar year, in such form and in such detail as the Minister may direct. Such reports must be made on or before the last day in January in each calendar year for the year immediately preceding.

Employees may now lawfully refuse to undertake dangerous work, subject to certain obligations on the employee, such as remaining available to perform the work if it is found not to be a source of imminent and serious danger or where the withdrawal of the services of the employee could endanger the safety or life of another person. A procedure has now been laid down whereby an employee who has reasonable cause to believe that the condition of an article or place of employment presents an imminent and serious danger may refuse to work, and that procedure must be followed if the employee is not to be in breach of his contract of employment. Protection from disciplinary measures as a result of exercising his rights under the 1982 Act is now enshrined in the legislation.

This Act now applies to all employers, not only those who employ 10 or more persons, though the requirements for small employers are somewhat less stringent than for those who employ 10 or more persons.

## **Bermuda Health Council Act 2004**

This new Act establishes a Bermuda Health Council with the objective of regulating, co-ordinating and enhancing the

delivery of health services in Bermuda . The functions of the council are:

- ensure the provision of the essential health services and to promote the good health of residents of Bermuda ;
- to exercise regulatory responsibilities of health services in Bermuda ;
- to regulate health service providers by monitoring licensing and certification and establishing fees, standards and codes of practice;
- to regulate health professionals by monitoring licensing, certification, standards and codes of practice;
- to manage the Health Insurance Plan established under the Hospital Insurance Act 1970 and all licensed health insurers;
- to establish and promote wellness programmes;
  
- to conduct research and to collect, evaluate and disseminate information to the public in relation to the incentives of illness in connected issues; and
- to advise the Minister of any matter related to health services.

The Bermuda Health Council consists of the Chief Medical Officer, a Chief Executive Officer, the Permanent Secretary of the Ministry of Health and Family Services, the Financial Secretary and between 9 and 11 other “Ordinary Members” appointed by the Minister.

It will be unlawful in Bermuda for any person, group of persons or organization to carry on a business as a health service provider unless licensed to do so under regulations pursuant to this Act. The Minister is empowered to designate public officers as inspectors under the Act, who may inspect any premises operated by a health service provider and require a production of records relating to fees and services provided by that person.

The Act contemplates that the Minister will make regulations governing applications for the issue of licenses to health services providers, fees payable by health service providers, and an appeals procedure where a license is refused,

suspended or cancelled, prescribing professional and other qualifications for health service providers, requiring licensed health service providers to supply information to the council. The council and all of its officers are under a duty of confidentiality in relation to information provided to the council.

As a consequence of this Act a number of amendments have been made to the Hospital Insurance Act 1970, including its renaming as the Health Insurance Act 1970.

**For further information please contact Lynda Milligan-Whyte & Associates, Mr. Paul A. Harshaw, Senior Associate.**

## **COMPANY CONVERTING FROM A LIMITED LIABILITY COMPANY TO AN UNLIMITED LIABILITY COMPANY**

Section 14A (2) of the Companies Act 1981 (“the Act”) provides that a Limited Liability Company (“LLC”) may convert to an Unlimited Liability Company (“ULC”) but that such application must have been previously agreed by all the members of the Company at a Special General Meeting called for that purpose.

All of the members of a company shall be deemed to have agreed at a general meeting if either-

- all the members are present in person or by proxy at the meeting and agree; or
- if some of the members are not present in

person or by proxy at the meeting, then, if the members present in person or by proxy at the meeting agree and there produced at the meeting statements.

(a) certified copy of the agreement referred to in subsection (3)(a), or certified copies of the agreement and the written statements referred to in subsection (3)(b); and

(b) a statutory declaration made by at least two directors of the company that the persons who have signified their agreement pursuant to subsection (3) constitute the whole membership of the company. in writing from the members not present in person or by proxy stating that they agree.

Section 14A (5) of the Act states that the application shall set out such alterations in the Company's Memorandum as are required in order to conform with the memorandum of a ULC and shall be accompanied by the documents as specified in sub-section (6) which include the following:

### **Board Meeting**

The directors of the company are responsible for convening meetings of the members upon giving to each member five (5) days notice. The notice must stipulate the place, day and time of the meeting and the general nature of the business to be discussed.

The Board of Directors' meeting makes the recommendation to the members that the application be made to convert the Company from an LLC to a ULC and that the Memorandum of Association of the company be altered accordingly and the name of the company be altered to remove the word "Limited" or "Ltd." from the name.

Once the members of the Company agree to the proposals put forward by the Directors (see below), the Directors hold another meeting for the purpose of ratifying the members' resolutions and providing a statutory declaration (made by at least two directors) as required by Section 14A(6)(b) of the

Act that the persons who have signified their agreement pursuant to subsection (3) constitute the whole membership of the Company.

### **Special General Meeting**

The members of the company will then have their meeting passing resolutions agreeing to the proposals put forward by the Board of Directors of the company. A certified copy of the resolutions of this meeting will form part of the application to the Registrar of Companies (s14A (6)).

### **Application Procedure**

An application form for the conversion of an LLC to a ULC must be completed and signed by a director and the secretary of the company. The application lists the documents needed in order to convert the limited liability company to an unlimited company and they are as follows:-

- A certified copy of the unanimous resolution of all of the members of the Company pursuant to s14A(3)(a) of the Companies Act 1981 or a certified copy of the company in general meeting in addition to the production of written statements in writing tendered to the meeting pursuant to section 14A(3)(b) of the Act.
- A statutory declaration made by at least 2 directors of the company that the persons who have signified their agreement pursuant to section (3) constitute the whole membership of the company;
- A printed copy of the altered memorandum

incorporating the alterations in it as set out in the application; and

A further application form “Application to alter the Memorandum of Association” must be completed and signed by 2 officers of the company stating how the memorandum is to be altered.

The prescribed fee to apply to alter the Memorandum of Association will need to be sent along with the application form.

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.