



Bermuda Corporate Update
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FIRM'S NEW CONSULTANT

The law firm of LYNDA MILLIGAN-WHYTE & ASSOCIATES is pleased to welcome Arthur Hodgson, J.P., M.P. as a Consultant to the Firm. He will be practicing primarily in the commercial area of law.

As a sitting Member of the Bermuda Parliament, a former Magistrate in the Magistrate's Court, a former Cabinet Minister, a Bermuda Scholar, a Rhodes Scholar and a commercial lawyer with more than 15 years experience in Bermuda, he brings a broad range of experience to this firm.

Mr. Hodgson is a graduate of Michigan State University where he studied as a Bermuda Scholar and received a Bachelor's Degree in Economics. He subsequently earned the distinction of being selected as a Rhodes Scholar and graduated from Oxford University in England with a Bachelors Degree in Philosophy, Politics and Economics. He also graduated with a degree in education from the University of Guyana.

After a period of teaching in the Bermuda Educational System, and a period as the owner and operator of various businesses in Bermuda, Mr. Hodgson then studied law at University of Buckingham in the U.K., where he was awarded a Bachelor of Law Degree. He attended the Middle Temple in London and was admitted to the Bar of England and Wales in 1986 and Bermuda in 1987.

Mr. Hodgson will be practicing law in the commercial area. For further information please contact Arthur at ahodgson@milligan.bm

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THE RESIDENT REPRESENTATIVE OF BERMUDA COMPANIES

Bermuda exempted companies are required to meet certain residency requirements laid down by the Companies Act, 1981. In order to meet the residency requirements, some exempted companies have appointed resident Bermuda directors and secretaries; while others have appointed a Resident Representative and secretary, both of whom should be ordinarily resident of Bermuda. The Resident Representative, once appointed, is entitled to:

- (a) attend, to be heard at, and to receive minutes of all proceedings of, all meetings of the directors and members of the company or of any committee of such directors;
- (b) upon giving notice to the company of any address for the purposes of receipt of notices, be entitled to receive notices of any meeting of the directors or members, or any committee of such directors;
- (c) act as agent for the service of process in Bermuda;
- (d) file all documents and make all applications required or permitted by this Act.

In addition to the above, the Resident Representative has a statutory duty to report to the Registrar any breaches of the provisions of the Companies Act or any issue or transfer of shares of the Company that has contravened Bermuda law.

In the case where the shares of a company are listed on a Stock Exchange, the Companies Act requires that the Resident Representative shall maintain at its office in Bermuda originals or copies of minutes of all proceedings of meetings of directors and members of the company, all financial statements required to be prepared by the company together with the auditor's report thereon (and all records of account).

The office of the Resident Representative is also the registered office of the Company in Bermuda at which the records of the Company are kept including the Register of Members and Register of Directors & Officers.

For further information on the role of the Resident Representative in Bermuda, please contact LMW@milligan.bm.

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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“SARBANES-OXLEY DOESN’T STOP AT THE US BORDER”

(Gordon Pehrson - New York Attorney)

In 2002 the US Congress passed the Sarbanes-Oxley Act (hereinafter "Sarbox") in response to the Enron crisis. As a result, Sarbox has an impact far beyond U.S. borders.

For the accounting industry, these far reaching rules established by Sarbox contain a number of auditor-independence and record retention directives that reflect the disgrace of the profession following Enron.

Sarbox establishes the requirement to reveal off balance sheet arrangements and strictures on the use of pro forma numbers, trading restrictions during employee blackout periods, and a description of the financial expert, if any, on the audit committee.

Attorneys are also required to report wrong-doing up the corporate ladder without regard to the traditional attorney-client relationship regarding privileged communication.

Sarbox now arguably requires new inquiries into offshore transactions of companies subject to US jurisdiction. For example, while performing an annual audit of a multinational, if auditors find suspicious payments on the books of a company's foreign subsidiary that could be questionable, under Sarbox, they are now required to recommend that the client undertake "a rigorous analysis" and disclose the results. In turn, the disclosure could result in heavy fines under the Foreign Corrupt Practices Act (FCPA)?

This is a major change from the way executives previously handled baksheesh. Under FCPA and export/import rules, corporate executives had no duty to disclose questionable practices overseas.

Leaving such practices undisclosed is no longer an option as CFOs must now certify the validity of their financial statements under section 302 of Sarbox. That is because penalties for such practices can be a balance sheet liability with, for example, fines reaching 100% of the value of an illegally imported item.

The good news is that a company can avoid or at least mitigate such fines by reporting the "error" before a customs agent discovers the problem.

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. (Formerly known as Richmond Managers (Bermuda) Ltd.)

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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CORPORATE GOVERNANCE ISSUES

COMPANY REGISTER OF CHARGES

The Registrar of Companies in Bermuda keeps a register of charges with respect to each company and any person, including the company, interested in a charge on the assets of a company may apply to have that charge registered. Any charge registered shall have priority based on the date that it is registered and not on the date of its creation and shall have priority over any unregistered charge.

Where a charge is created by a company but is a charge on assets outside Bermuda, the instrument creating or purporting to create the charge may be registered notwithstanding that further proceedings may be necessary to make the charge valid according to the law of the country in which the property is situated.

There is a nominal fee for registering charges as aforesaid.

WAIVING AUDITED ACCOUNTS & APPOINTMENT OF AUDITOR

The Companies Act, 1981 of Bermuda provides that if all members and directors of a Bermuda company, either in writing or at a general meeting, agree that in respect of a particular interval, no financial statements or auditor's report thereon need be laid before a general meeting or that no auditor shall be appointed to the close of the next annual general meeting then there shall be no obligation to lay financial statements for such period or to appoint an auditor until the close of the next annual general meeting.

For the purposes of obtaining agreement from the members, members can agree in writing or at a general meeting at which they are present.

For further information on Corporate Governance issues, please contact LMW@milligan.bm.