



Bermuda Corporate Update  
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## **BERMUDA'S TAX PROTECTION ACT**

Under current Bermuda law, there is no Bermuda income tax, withholding tax, capital gains tax or capital transfer tax payable by a Bermuda Exempted Undertaking (which includes a Bermuda exempted Company or its Bermuda incorporated subsidiaries, exempted partnerships or trusts established for the benefit of non-residents of Bermuda) with respect to their operations in or from Bermuda.

It is expected that each Exempted Undertaking will, upon application, obtain a separate undertaking from the Minister of Finance of Bermuda under The Exempted Undertakings Tax Protection Act, 1966 of Bermuda (as amended) that, in the event of there being enacted in Bermuda any legislation imposing tax computed on profits or income, or computed on any capital asset, gain or appreciation, or any tax in the nature of estate duty or inheritance tax, such tax shall not, until the year 2016, be applicable to any such Exempted Undertaking or its Bermuda subsidiaries or any of their respective operations, or to the shares or other obligations of any such entities.

Although the said Tax Protection Act exempts Bermuda Exempted Undertakings from all forms of direct taxation, such entities will be required to pay stamp duty only on Bermuda property, an incorporation fee and thereafter an annual government fee based upon the assessable capital of the Bermuda company and if a company is an insurer, a registration fee under the Bermuda Insurance Act is payable annually.

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For further information on Bermuda Taxation or the Schedule of Fees applicable upon incorporation or registration under the Insurance Act, 1978 – please contact Lynda Milligan-Whyte, Senior Partner at [lmw@milligan.bm](mailto:lmw@milligan.bm).

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## THE ‘SALE OF GOODS’ IN BERMUDA

The Bermuda Sale of Goods Act, 1978 (the “1978 Act”) applies not only to businesses selling goods in the ordinary course of business but it also applies to those businesses that are buying goods in Bermuda outside of their ordinary course of business.

In common with the various ‘Sale of Goods Acts’ throughout the British Commonwealth, the 1978 Act is based on the English Sale of Goods Act, 1893. The purpose of the original (English) Act was not so much to alter the law, or to afford consumer protection, as it was an attempt to codify the existing law relating to the sale of goods. It is a testimonial to the skill of the draftsman of the original Sale of Goods Act (Sir McKenzie Chalmers) that throughout the Commonwealth the original Act remains substantially unaltered and in force some 110 years later.

### What Goods Are Affected?

In general terms, the 1978 Act applies to all “goods” sold in Bermuda. For the purposes of the 1978 Act, “goods” include virtually anything that you can pick up and hold in your hand. The scope of the 1978 Act is very broad. If one assumes that the Act covers everything except for land and money or monies worth, one can not go far wrong.

The 1978 Act covers virtually everything that a person or business would want to purchase.

## ***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.

## **Who is Affected?**

The 1978 Act applies to all contracts for the sale of goods in Bermuda (subject to certain exceptions). For the purposes of this article, discussion will be restricted to what are known as “consumer contracts”. Consumer contracts exist where the seller of the goods is dealing in the course of a business and the purchaser (though it may be a company or a business) is buying *otherwise than in the course of his or it’s business*. By way of example, a dry goods merchant (or an insurance company) who purchases a computer which is intended to run his accounting system, is dealing as a consumer when he purchases the computer. The dry goods merchant is (presumably) not in the business of selling computers. In this particular example, he is a consumer in the same way a private individual purchasing a computer for use at home would be.

## **The Quality of Goods Sold**

In the context of a consumer contract, there is a term implied into every contract for the sale of goods, that those goods will be of satisfactory quality.

Goods are of satisfactory quality if they meet the standard that a reasonable person would regard as satisfactory taking into account all relevant circumstances (such as any description, the price, etc). Considerations in determining the quality of goods will include the fitness for the purpose for which the good was sold or offered for sale or commonly employed; the appearance and finish of the goods; freedom from defects; and safety and durability.

## **Exploding Myths**

*“I don’t have a written contract, I just bought it.”* This is a myth. No particular form of contract is long standing required. The fact of the matter is that each time a person purchases sweets or fuel for his car or boat, he enters into a contract for the sale of goods.

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*“The problem is a manufacturing defect and therefore out of the control of the vendor.”* That line has no place in contracts for the sale of goods. If the goods do not meet the test of satisfactory quality then the vendor is in breach of contract and the purchaser is entitled to his remedy. That remedy may be a refund of the whole of the purchase price or a replacement with like goods or some other combination. The fact of the matter is, however, that manufacturer’s warranties and other such documents cannot reduce rights under the 1978 Act; though such documents may enlarge rights in excess of the minimum standards imposed by the 1978 Act.

*“I cannot believe I have to wait 3 months for a replacement from the manufacturer/overseas distributor.”* You do not. If the goods are not of satisfactory quality then the vendor is in breach of the contract and it is that vendor who must make good your loss. The fact that the vendor may have to wait some considerable time for satisfaction of his claim against the Manufacturer or overseas distributors does not affect the consumer. It may be that the consumer *wants* a replacement product, in which case waiting may be required, but the general rule is that the consumer is entitled to a 100% refund immediately upon breach of the contract.

The above are but a few examples of common myths surrounding consumer contracts. There are many more. The general rule is that if the contract for the sale of goods has been breached by the vendor, the purchaser is entitled to an immediate refund.

### **Conclusion**

The Bermuda Sale of Goods Act offers some degree of consumer protection for all who purchase goods in Bermuda including other businesses. It does not matter if you are buying only one small item for home or furnishing your office, if you are dealing as a consumer you are entitled to the protection afforded by the 1978 Act.

*The information contained in this article represents general principles and is not intended to be exhaustive. Legal advice should be obtained in respect of any particular complaint.*

*The fact that this article addresses only consumer contracts for the sale of goods within Bermuda should not be taken to mean that the 1978 Act does not affect other types of sales of goods. If in doubt, obtain legal advice.*

For further information please contact Paul A. Harshaw, Senior Associate at [paharshaw@milligan.bm](mailto:paharshaw@milligan.bm).

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## **ESTATE PLANNING-WILL OR TRUST?**

One of the most frequently asked questions in Bermuda is “what is the difference between a Will and a Trust?” This article will look at both estate planning tools.

A person’s estate comprises all assets (both personal and real property) and all liabilities. In anticipation of a client’s estate planning needs, a clear picture of the scope of assets and liabilities must be made. Knowing what you possess and how you own it is important because it will have an effect on your overall estate plan.

Whether the assets are real estate or insurance policies, in both cases such assets do not have to flow through a person’s estate to the beneficiary, they could also be transferred to an *inter vivos* Trust.

The structure of a client’s estate planning will be dictated by what he/she would like to achieve and what he/she would like to avoid. Once you have completed the pre-planning above then it is time to choose the most appropriate estate planning vehicle.

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## RICHMOND GROUP LIMITED AND ITS AFFILIATES

Richmond Corporate Services Ltd. - 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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### What is a Will?

A Will is a legal document which takes effect upon death that allows a person to divide and distribute his/her assets according to his/her wishes. In Bermuda, if a person dies without a Will (*intestate*), the Supreme Court Succession Act, 1974 will apply. In other words the law decides how and who will receive your assets regardless of your wishes or the needs of your family. That is why a Will is so important.

Consequences of not having a Will could include:-

- Ø Distribution of your real and personal property to persons in accordance with the Succession Act, 1974;
- Ø Administrator may not be someone you would have chosen;
- Ø The cost of administration could be higher and distribution to beneficiaries delayed; and/or
- Ø Guardians appointed by the Courts for your children may not be the ones you would have chosen.

### Who needs a Will?

Those persons that have family members, significant assets whether real estate or business assets, should have a Will. In addition, we recommend to clients that if they have any of the following, they should consider a Will.

- ü Have a spouse or common law spouse?
- ü Have children?
- ü Wish to give money to a friend or charity?
- ü Own a home or business?
- ü Wish to pass along family heirlooms or special possessions?

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### **Executor/Executrix of a Will**

The executor/executrix of a Will is the person or trust company appointed as executor of a Will who carries out the wishes of the deceased. Duties may include making funeral arrangements, managing investments, paying death tax and debts owed and making distributions to beneficiaries.

### **Living Will**

A living Will commonly refers to a document that sets out your desire and health directives regarding medical treatment if that individual is in a terminal state. Often limitations are put on the use of life support systems that artificially prolong life.

### **What is a Trust?**

We all make commitments during our lifetime that we wish to see continued. A trust can provide the control and structure needed to ensure that our commitments to the financial security of our families and philanthropic goals continue for significant periods of time and through multiple generations.

A Bermuda trust (whether established '*inter vivos*' or by operation of a Will), for the benefit of a particular class of beneficiaries or for a specified purpose can be extremely flexible for estate planning purposes.

Depending upon the jurisdiction of origin, persons establishing trusts for asset protection purposes may also be able to minimize the incidence of tax on their estates through the formation of Bermuda based discretionary, fixed or special purpose trusts.

A Trust is especially useful when there are long terms needs or goals that you wish to plan for such as.

- Ø A family member with special needs or too young to manage wealth;

- Ø Providing income to someone or to support a specific purpose without requiring that person or entity to make investment decisions;
- Ø A Trust can remain in existence for multiple generations providing continuity planning;
- Ø A trustee can provide professional services and the maintenance of personal financial records and asset protection which are essential;
- Ø Where the importance of professional administration, or the collection, reinvestment and distribution of income capital, custody and safekeeping of assets are of concern; and
- Ø A Trust can offer privacy. A trust deed can remain between the settlor and the trustee/protector. Privacy can be important where beneficiaries may be in unstable jurisdictions where kidnapping and family security makes privacy especially important.

### **Why a Will or a Trust?**

A Will and/or a Trust are both useful estate planning tools that can help to achieve a person's goals whether short or long term. Where the estate planning goals are relatively short term, a Will may be suitable. Where the goals are more long term which take into consideration multiple generations or complex distributions over time to different classes of beneficiaries, then a Trust would be more feasible because it can administer assets over time in a professional manner and can offer continuity planning for future generations.

Further discussion on *Inheritance Tax* from a Bermuda perspective can be found in our Newsletter of June 2003 Issue 6 which is available on our website at [www.richmond.bm](http://www.richmond.bm).

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