



Bermuda Corporate Update
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FIRM'S SENIOR ASSOCIATE

The law firm of LYNDA MILLIGAN-WHYTE & ASSOCIATES is pleased to welcome **PAUL A. HARSHAW** as a Senior Litigation Attorney.



Paul brings to the firm extensive experience in dealing with complex litigation in the Bermuda Courts, having acted for both international and local clients.

His knowledge of the Rules and Procedures of the Supreme Court in Bermuda is extensive which has led to him becoming one of Bermuda's most respected civil litigation attorneys. Mr. Harshaw specializes in commercial and insolvency law having begun his Bermuda practice at Conyers, Dill & Pearman in Bermuda.

Mr. Harshaw is a graduate of the University of Buckingham, England, where he earned his law degree with Honours in 1995. He is also a member of the Honourable Society of the Lincoln's Inn and was called to the Bar in England & Wales in 1996.

For the past seven years, Mr. Harshaw's practice has spanned a wide spectrum of commercial legal matters ranging from providing legal opinions on complex international contracts with multi-jurisdictional elements to dealing with commercial disputes of Bermuda-based insurance and reinsurance companies.

His Bermuda practice has also included acting for local clients on commercial and matrimonial matters and he brings to our firm a comprehensive knowledge of Bermuda Immigration laws and work permit procedures.

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WHY BERMUDA?

BERMUDA

Situated in the mid-Atlantic Ocean, 750 miles east of New York City; 3,350 miles from London, England; population about 63,400.

CAPITAL CITY

Hamilton

LANGUAGE

English

TIME ZONE

New York + 1 hour

COMMUNICATIONS

Excellent: Telephone, facsimile, internet and email.

ACCESSIBILITY ROUTES

Excellent: direct flight to most Eastern cities of the United States (New York, Boston, Washington D.C., Philadelphia, Charlotte, Atlanta, Florida) and Canada (Toronto and Halifax) and the U.K. (London).

LEGAL SYSTEM

British: English common law applies including, the doctrines of equity and all English Acts of general application which were in force on July 11, 1612 subject to acts passed in Bermuda since that date repealing, modifying, or amending those pre-1612 statutes or the common law.

JUDICIAL STRUCTURE

The Courts in Bermuda consist of a Magistrate's Court, a Supreme Court, and a Court of Appeal, with a final appeal to the Judicial Committee of the Privy Council in the U.K.

POLITICAL SYSTEM

Very stable: Bermuda, a self-governing dependent territory of the U.K., is a Parliamentary Democracy based upon the Bermuda

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.

Constitution which became effective on June 8, 1968 and provides for internal self-government through an elected Parliament and appointed Senate with responsibility for external affairs, and internal security remaining in the control of the U.K. Government (in the person of the Governor). Became an associate member of the OECD in April 1990.

COMMON CORPORATE VEHICLES

Limited liability Companies, Limited Duration Companies; Companies Limited by Guarantee; Unlimited Liability Companies, Mutual Companies, Private Act Companies and Permit Companies (i.e., branches of foreign corporations).

OTHER BUSINESS VEHICLES

Exempted Partnerships (both limited and general); Unit Trust Schemes; Discretionary & Fixed Trusts and Special Purpose Trusts.

NORMAL TIME TO FORM A COMPANY OR PARTNERSHIP

Approximately **THREE - FIVE** days.

CURRENCY

United States dollars widely circulated; Bermuda dollars (on par with U.S. dollars) for residents only.

EXCHANGE CONTROLS

None: non-residents (including exempted companies, partnerships and trusts) can operate their business dealings in any foreign currency other than Bermuda dollars, free from any exchange control restrictions.

MAJOR BANKS

The three banks in Bermuda are: The Bank of Bermuda Limited, The Bank of N.T. Butterfield & Son Ltd. and The Bermuda Commercial Bank; all locally owned; All banking services available; accounts can be maintained in any foreign currency.

BANK CONFIDENTIALITY

Very strict: English common law rule of confidentiality prevails; see U.S.A./Bermuda Tax Treaty for mutual assistance in certain tax matters.

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CAPITAL REQUIREMENTS

Yes:

- (i) **Ordinary Company:** A minimum of US\$12,000 or its equivalent in another foreign currency; if capital is not fully paid, the shareholders are liable for the unpaid capital.
- (ii) **Insurance Company:** Capital depends upon whether insurer is registered as a Class 1, 2, 3 or 4.

General Business - Class of Insurance License

CLASS 1	CLASS 2	CLASS 3	CLASS 4
Single Parent Captives (writing risks of parent and affiliates).	Multi-owner or Group Captives (up to 20% net premium from unrelated risks).	Insurers/Re-insurers writing unrelated risks (not within Class 1, 2 or 4).	Excess Liability and/or Property Catastrophe Insurers and Reinsurers.
Minimum Capital: US\$120,000	Minimum Capital and Surplus: US\$250,000	Minimum Capital and Surplus: US\$1,000,000	Minimum capital and Surplus: US\$100,000,000

- (iii) **Partnerships:** A minimum of US\$12,000 or its equivalent in another currency. Partnership capital may include assets other than cash.

TAXES AND DUTIES

- (a) Withholding taxes: **No**
- (b) Capital Gain Taxes: **No**
- (c) Income Taxes: **No**
- (d) Death Duties: **No**
- (e) Stamp Duties: **No:** as of April 1, 1990, stamp duty was eradicated on all instruments executed by or on behalf of international businesses.

TAX CONVENTION

USA/Bermuda Tax Convention - special provisions on U.S. excise tax relating to premium from a U.S. source paid to Bermuda Insurers;

Bermuda approved for foreign sales corporations of U.S. manufacturers, distributors and retailers; and mutual assistance on U.S. tax matters.

OFFICERS AND DIRECTORS

It is also a requirement of Bermuda law that an exempted company incorporated in Bermuda shall have:-

- (a) a minimum of two directors, other than alternate directors, ordinarily resident in Bermuda; or
- (b) a secretary who is ordinarily resident in Bermuda and a director, other than an alternate director, who is ordinarily resident in Bermuda; or
- (c) a secretary who is ordinarily resident in Bermuda and a resident representative; or
- (d) in the case of a company the shares of which are listed on an appointed stock exchange, have a resident representative.

President and Vice President or Chairman and Deputy Chairman must be directors; Secretary need not be a director.

The provision of Directors, the Company Secretary and Resident Representative as well as the provision of the Company's registered office can be provided by a service company owned by the partners of the law firm. Payment for such services will be charged to the annual Corporate Administration Fee.

MEETING REQUIREMENTS

Yes: Annual General Meeting required every year, Telephonic Board meetings permitted.

SHAREHOLDERS

- (a) Nationality Requirement **No**
- (b) Government Screening: **Yes:** Beneficial owners must provide a Personal Declaration or Annual Reports for the BMA.
- (c) Proxies: Only other shareholders may act as a proxy unless a mutual fund or exempted by Private Act.

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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.

Contact:

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Manager
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Fax: 441-295-8555
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- (d) Corporate Representative: Need not be a shareholder.
- (e) Nominative Shares: **Yes:** Shares must have a par value.
- (f) Bearer Shares Available: **No**

REGISTERED OFFICE REQUIRED

Yes: Share Register, Register of directors/officers, minute book and company seal kept at registered office in Bermuda. Both Registers are open for public inspection at the registered office.

MUST COMPANY PUBLISH ACCOUNTS

No: only annual declaration on assessable capital, directors and registered office filed with Registrar of Companies with payment of annual fee.

LOCAL AUDITOR

Yes: auditor is appointed at Annual General Meeting; annual audit may be waived upon consent of all shareholders and directors.

RE-DOMICILLIATION

Yes: re-domiciliation of companies is permitted in general company law. Bermuda trusts can contain clause authorizing transfer of trust to another jurisdiction.

STOCK EXCHANGE

Yes: The Bermuda Exchange; In addition, the Minister of Finance has approved a number of foreign Appointed Stock Exchanges and Competent Regulatory Authorities for listing of Bermuda-based securities.

REGULATORS

- (i) The Minister of Finance.
- (ii) The Bermuda Monetary Authority.
- (iii) The Registrar of Companies.
- (iv) The Registrar of Shipping.
- (v) The Registrar of Aircraft.

INTELLECTUAL PROPERTY

The U.K. Copyright Act, 1956 applies to Bermuda with certain minor modifications. Patent law and trade mark law similar to U.K. law.

FREEPORT CONCEPT

The Government of Bermuda will grant licenses to foreign manufacturers to manufacture goods in Bermuda through a Bermuda company for distribution worldwide. Such goods will be free of custom duties.

If you require further information, please contact Lynda Milligan-Whyte at LMW@milligan.bm.

BERMUDA - OECD Update!

The Paris-based Organization for Economic Co-operation and Development ("OECD") has continued to exclude Bermuda from its list of un-cooperative tax havens. The six remaining countries on the un-cooperative list will be given a period until December 2005 to improve the transparency of their tax and regulatory systems and establish effective exchange of information for tax matters with OECD countries.

Bermuda is one of thirty two non OECD countries to commit to the principles of transparency and exchange of information for tax

purposes. The OECD hopes the remaining six jurisdictions included in its list of un-cooperative tax havens will now make similar commitments.

According to the OECD, the conditions that make a jurisdiction a tax haven are:-

- No or nominal taxes;
- Strict secrecy rules which prevent exchange of information with tax authorities in other countries;
- Lack of transparent legal and administrative regimes; and
- No requirement that foreign investments be active.

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The OECD defines tax havens as regimes that impose no more than nominal taxes; allow non-residents to escape taxation in their country of residence; and engage in so called harmful tax practices, such as refusing to exchange information; a lack of transparency or a desire to attract businesses with no substantial activities.

The OECD organization has been championing tighter rules and regulations of the international financial system in light of turmoil caused by the economic crises in Asia, Latin America and Eastern Europe. The OECD members are expected to renounce or re-negotiate tax and investment treaties with the jurisdictions that are on the OECD un-cooperative tax haven list.

The OECD was also concerned about the lack of transparency in some jurisdictions with regard to disclosure of beneficial ownership of companies and the main activities of businesses registered in those countries. Bermuda rated very high on this issue having carefully developed vetting procedures based on “know your customer” principle for all Bermuda based international operations.

The omission of Bermuda from the OECD un-cooperative list of harmful tax havens continues to give Bermuda a competitive edge in the offshore world.

PHILANTHROPY: How Effective?

Philanthropists often seek to contribute to the well being of society in one of two ways: by making donations to charities; or by settling property or money into a trust for charitable purposes.

Making a gift is in essence a form of partnering with non profits to make a difference by supporting their efforts – a commitment to objectives and results. The giving is one part of the process but this also requires some thought to holding the recipients accountable for the gifts they receive in terms of results. Let’s explore how to do this.

How can you be sure your gift is being used efficiently and effectively?

When you are considering making a large capital donation in the furtherance of a community project accountabilities need to be factored in. Creating an information channel is one way of communicating to a charity that you expect them to be accountable.

Information needs to move like the ebb and flow of the tides back and forth between you and your charity or beware “a paddle here, a paddle there - the canoe stays still” to quote an African proverb.

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To encourage transparency, accountability and responsible use of your gift I would suggest asking for the following information:-

- A copy of board and/or management structure (this shows the reporting and/or decision making structure);
- A copy of the business plan (this is a check on whether goals, objectives and timelines are being met). If there is not a business plan then ask why (this avoids or explains poor planning);
- Ask for regular reports on how funds are being used and what the results are or projected to be (this avoids inefficient operations and highlights high administration costs); and
- Ask for reports such as financials to monitor income and expenditures (this avoids inadequate reporting and provides yearly comparisons over time).

Building the Right Team

With lives racing along at 100 miles an hour the demands of this day and age make it easier to write the check than to get involved. A philanthropist may not have the time or luxury of committing time to getting involved with a charity. One solution is a charitable trust which allows a donor to choose the length of time and level of involvement with a charity or charities by incorporating monitoring processes through a trustee. Furthermore, a trust that qualifies as a charitable trust enjoys a number of fiscal advantages such as an exemption on a conveyance of real or personal property to a charity that is registered under the Charities Act 1978 as a result of such exemptions a donor could consider increasing the size of the gift to the trust.

By incorporating “responsible giving” when making donations you will be strengthening infra-structure and contributing to the success of the charity you are giving to. According to an American educator, Nicholas Murray Butler (1852-1947) people can be divided into three groups: Those who make things happen; those who watch things happen; and those who wonder what happened.

If you require further information, please contact Michelle St. Jane at mstjane@milligan.bm.

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