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## **EUROPEAN SAVINGS TAX DIRECTIVE: BERMUDA NOT INCLUDED ON EUROPEAN UNION LIST**

Bermuda prides itself on being a major financial centre with credibility and integrity attracting large insurance and reinsurance companies as well as significant high quality international trade. Bermuda has utilized its reputation and position in the global markets to create a world-class economy built upon this commitment to integrity and transparency. Once again, Bermuda's reputation as a "clean offshore jurisdiction" has led to significant international dividends.

When the European Union passed a law which required banks to provide tax details on the savings of any person living within the EU or its dependent territories, Bermuda was not included on the list of EU countries and dependent territories that were made subject to that directive.

In fact, Bermuda was not only the sole British Dependent Territory which was not included on the list of EU countries and their dependent territories but it was not required to make a commitment to that directive as all of the other British Dependent Territories had to do including the Cayman Islands, Jersey, Guernsey and the Isle of Man. The tax law also requires the Netherlands to secure cooperation of its territories in the Caribbean, including Aruba and Netherlands Antilles.

The aim of the this new EU law, known as the European Savings Tax Directive, was designed to crack down on EU citizens trying to avoid taxation of their savings by using so called "tax havens"

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**Reasons For Incorporating  
In Bermuda**

◦ Respected International  
Business jurisdiction  
(built on the principle  
of "know your  
customer");

to put their money.

Under the tax accord, twelve (12) EU countries begin reporting foreign savers' interest income to their home tax authorities as of January 1, 2004.

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## **BERMUDA COMPANY LAW PERMITS INCORPORATION OF CHARITABLE COMPANIES**

### **Company limited by Guarantee**

The Bermuda company law structure permits the incorporation of companies limited by guarantee for charitable or other socially useful purposes. In particular, section 9 of the Companies Act, 1981 states that

“where it is proved to the satisfaction of the Minister of Finance that an association about to be formed as a limited company is to be formed for promoting art, science, religion, charity, sport or any other useful object, and intends to apply its profits, if any, or other income in promoting its objects, and to prohibit the payment of any dividend to its members, the Minister may by licence direct that the association may be registered as a company, without the addition of the word “limited” to its name and the association may be registered accordingly.”

Such a company is prohibited under the Companies Act from making any distributions of income or dividends to its members.

The minimum reserve fund of US\$12,000 (or its equivalent in another foreign currency) must be subscribed, but there is no requirement that this capital be actually paid up. For the avoidance of any further contingent liability on the part of the Members, it is recommended that the minimum reserve fund be paid up in full. This reserve fund may be used for business purposes of the company, including the settlement of incorporation costs and subsequent administration fees.

### **Incorporation Procedure**

- 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.

It is necessary to make an application to the Bermuda Monetary Authority for permission to incorporate a company limited by guarantee and to submit:

(i) Details on the original members of the Company (containing names, addresses, nationalities and occupations of each Member); and

(ii) a Personal Declaration Form for each of the proposed Members of the company.

If any of the Members is:

(iii) a public company, then only an Annual Report is required; or

(iv) a private company, then the most recent audited financial statements, or if unaudited then the unaudited financial statements (with a written explanation for the non-audit) must be produced together with a Personal Declaration Form on each of the Shareholders of the private company holding 5% or more of the shares in that company.

All documents submitted to the Bermuda Monetary Authority in connection with the application for consent to incorporate, are required by statute to be kept confidential, subject to some very limited exceptions.

Incorporation takes place by registration, except in particular circumstances, and normally takes five to seven days.

### **Registration of Charitable Company – Charities Act**

A Company limited by guarantee may also be registered under the Charities Act in Bermuda.

### **Benefits of Bermuda**

In Bermuda, there are no taxes on income or distributions made by an exempted company which is also a company limited by guarantee nor is there any capital gains tax or withholding tax..

The Company, being an exempted company, will be entitled to apply for (and invariably will obtain) an undertaking from the

Government that, in the event of direct taxation being imposed in Bermuda, the company will be exempt from such taxes until the year 2016. This period is extended from time to time.

Such exempted companies will be designated by the Bermuda Monetary Authority (Foreign Exchange Control) as "non-resident" which means that the company will be free to accept contributions to its reserve fund from Members or contributors in any currency of its choosing and will, in effect, be completely free from all Exchange Control regulations.

### **Financial Statements/Audits**

Bermuda companies are required to have audited financial statements approved by the Members at the annual general meeting of the Company. Such audited statements can be waived under the Companies Act if all the Members and directors agree to such a waiver.

If the company limited by guarantee is also registered under The Charities Act, it must produce and file annually with the Registrar General in Bermuda audited financial statements.

### **Resident Bermuda Directors/Resident Representative**

For companies limited by guarantee, the Companies Act requires that there be a minimum of two representatives of the company who are ordinarily resident in Bermuda. This requirement may be satisfied by the company having either of the following combinations of people resident in Bermuda.

- i) have a minimum of two directors, other than alternate directors, ordinarily resident in Bermuda; or
- ii) have a secretary who is ordinarily resident in Bermuda and a director, other than an alternate director, who is ordinarily resident in Bermuda; or
- iii) have a secretary who is ordinarily resident in Bermuda and a Resident Representative; or

A Resident Representative is entitled to attend, to be heard at, and to receive minutes of all proceedings of all meetings of the

directors and members of the company and act as agent for service of process in Bermuda. The Resident Representative also has certain obligations to report material breaches by a company of provisions of the Companies Act or regulations made in respect thereof.

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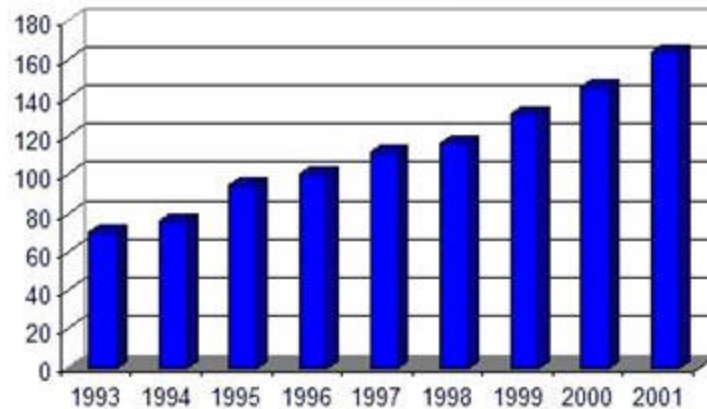
## **BERMUDA - SUCCESSFUL INSURANCE MARKET**

### **Financial Strength**

Bermuda, despite its size, continues to be a net importer of capital fueled largely by the growth in the insurance and reinsurance markets in Bermuda. This economic miracle is largely due to the financial security and strength of Bermuda as a financial market combined with the commercial yet flexible regulatory environment, the availability of a wide range of quality insurance and reinsurance products and the sophisticated infra-structure that Bermuda has developed over the past forty years that makes it one of the fastest growing economies in the world.

The Bermuda Registrar of Companies, who is responsible for regulating companies in Bermuda, states that “the main reasons that insurance companies are formed on the island and that risk managers and brokers from around the world travel thousands of miles to do business with them, is the ease, convenience, speed and sheer efficiency with which the business of insurance can be transacted in this market”.

**International Insurance Total Assets  
(in billions of \$)**



### **Evolving Market**

Bermuda has evolved beyond being a major offshore captive domicile. It now offers from its offshore location an advantage unique among other offshore jurisdictions - it is the only one with a significant property and casualty insurance and reinsurance market that continues to evolve and grow. In addition, the Bermuda market has been consistently creative in supporting the development of new insurance and reinsurance products.

Other factors that influence the growth of this market include:

- Availability of support services within Bermuda for the insurance sector;
- World class financial services sector (banks, investment firms and brokers);
- Growing capital market in the Bermuda Stock Exchange;
- World-class telecommunications services
- Minimal red tape
- Political and economic stability;
- Availability of professionals to support this industry
- Ease of access to other markets

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

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