

***BERMUDA***

***Nicholas B. B. Dill  
Conyers Dill & Pearman  
P.O. Box 11M 666, Clarendon House  
Church Street, HM CX Bermuda  
TEL: (809) 295-1422  
FAX: (809) 292-4720  
TELEX: 3213 CODAN BA***

*Prepared as of \_\_\_\_\_, 199\_*

*The information on the taxing regime of the above country is intended to be accurate and current. Before relying on the information, however, please contact the above firm, which prepared and is responsible for revising the information to verify its accuracy.*

## **LEX MUNDI DESKBOOK - BERMUDA**

### **I. Companies.**

At the date of this memorandum, there is no Bermuda income tax, profits tax, withholding tax, capital gains tax, capital transfer tax, estate duty or inheritance tax payable by a Bermuda company or its shareholders, other than shareholders ordinarily resident in Bermuda.

The principal statute governing the formation and operation of Bermuda companies' of the Companies Act 1981 as amended from time to time. Bermuda law distinguishes between companies, which are owned, predominantly by Bermudians ("local companies") and those, which are owned predominantly by no-Bermudians ("exempted companies"). Only local companies are permitted to carry on and compete for business in Bermuda. Exempted companies may be resident in Bermuda and carry on business from Bermuda in connection with the transactions and activities, which are external to Bermuda. In terms of taxation there are some minor differences between local companies and exempted companies. There is no formal distinction between the notion of a public company and a private company.

An exempted company may apply for and is likely to receive from the Minister of Finance under the Exempted Undertakings Tax Protection Act, 1966 an assurance that, in the event of there being enacted in Bermuda any legislation imposing tax computed on profits or income, or computed on any capital assets, gain or appreciation, or any tax in the nature of estate, duty or inheritance tax, such tax shall not until March 2016 be applicable to the company or to any of its operations or to the shares, debentures or other obligations of the company except insofar as such tax applies to persons ordinarily resident in Bermuda and holding such shares, debentures or other obligations of the company or any land leased or let to the company.

No stamp duty is payable in respect of any instrument executed by an exempted company or in respect of an instrument relating to an interest in an exempted company. Stamp duty may, however, be payable in respect of transactions involving Bermuda property.

An exempted company is required to pay a fee in Bermuda at the time of its incorporation and in January of each year thereafter (if incorporation incurs after 31st August in a year, the fee is reduced by half for that year). The fee is provided for on a sliding scale and is based upon the company's capital as follows:

<u>Capital of an exempted company</u>	<u>Fee</u>
\$0-\$12,000	\$ 1,680
\$12,001-\$120,000	\$ 3,360
\$120,001-\$1,200,000	\$ 5,040
\$1,200,001-\$12,000,000	\$ 6,720

\$12,000,001-\$100,000,000	\$ 8,400
\$100,000,001-\$500,000,000	\$15,000
\$500,000,001 or more	\$25,000

For this purpose, a company's capital is calculated as the aggregate of:

- (a) the authorised capital as stated in its Memorandum of Association, and
- (b) the amount standing to the credit of its share premium account (that is, the aggregate of premiums on the issue of shares by the company).

The capital is measured to the nearest whole dollar (rounding up, if necessary) as at the date of incorporation or 31st August as appropriate.

Where an exempted company's business includes management of a unit trust, the company will pay an additional \$2,365 in respect of each unit trust.

A permit company (that is, a foreign company with a permit to operate from Bermuda) will be subject to an annual fee based on its business activity. In most cases, the fee will be \$1,680. However, where the permit company carries on finance business, insurance business or mutual fund business the fee will be \$3,360. Where a permit company manages any unit trust it will pay an additional fee of \$2,365 in respect of each unit trust.

The registration fee for a permit company is payable on its establishment in Bermuda and then in March of each year. The initial fee on establishment is reduced by one-half if the establishment occurs after 31st October in any particular year.

Bermuda is independent for the purposes of exchange control which is operated under the Exchange Control Act, 1972 and related regulations.

Exempted companies and permit companies are designated non-resident for exchange control purposes. The non-resident designation allows these entities to operate free of exchange control regulations and enables them to make payments of dividends, to distribute capital, to open and maintain foreign bank accounts and to purchase securities, etc. without reference to the Bermuda Monetary Authority. However, issues and transfers of the shares and the change in the ultimate beneficial ownership of a Bermuda exempted company must be approved by the Bermuda Monetary Authority.

Insurance companies which are also exempted companies are required to pay the same fees. However, the minimum share capital for an insurance company starts at \$120,000 (higher if the company carries on long-term business or both general and long-term business) which means that the lowest threshold for fees is \$3,360. For mutual funds the minimum reserve fund is \$250,000. Where an exempted company has as its principal object the holding of shares of a Bermuda registered insurance company, the annual fee will be \$1,680 regardless of the level of capital.

In addition to the annual Government fee, insurance companies are required to pay an annual insurance registration fee. An application fee of \$100 is payable (except in the case of registration of an insurance salesman where the fee is \$50.00) on the initial application together

with the following registration fees in respect of registration as:

(a)	An insurer being		
	(i) a non-resident insurance undertaking	\$2,755	
	(ii) an exempted company		\$2,205
	(iii) a permit company		\$2,205
	(iv) other		
	\$1,655		
\$1,100	(b) an insurance manager		-
	(c) an insurance broker	-\$1,100	
	(d) an insurance agent	-\$1,100	
\$58	(e) an insurance salesman		-

## II. Partnerships

At the date of this memorandum there is no Bermuda income tax or profits tax, withholding tax, capital gains tax, capital transfer tax, estate duty or inheritance tax payable by any exempted partnership or its partners ordinarily resident in Bermuda. Further, no such tax is imposed by way of withholding or otherwise on any payment to be made to or made by such partnership.

An exempted partnership may apply for and is likely to receive from the Minister of Finance under the Exempted Undertakings Tax Protection Act, 1966 the same assurance provided to that of an exempted company.

The annual Government fee for an exempted partnership is \$2,000 payable in January of each year. If a partnership is formed after 31st August, the Government fee is \$1,000 for that calendar year. An annual declaration of the business of the exempted partnership has to be completed and filed with the fee.

Exempted partnerships are not subject to any stamp duty or other similar charge in Bermuda except in respect of Bermuda property.

Exempted partnerships are designated non-resident for exchange control purposes. The non-resident designation allows such partnerships to operate free of exchange control regulations and enables them to make payments, distributions, to open and maintain foreign bank accounts and to purchase foreign currency and securities, etc. without reference to the exchange control authorities.

### III. Individuals

At the date of this memorandum, there is no Bermuda income tax, profits tax, withholding tax, capital gains tax or capital transfer tax payable by individuals. There is an estate/stamp duty on probate. There is also a customs duty levelled on imports at variable rates. Each employee/employer must pay a hospital levy and an employment tax. There is a land tax on a sliding scale payable annually. Stamp duty is also payable on conveyances including transfer of property from an estate.

### IV. Trusts

Stamp duty is payable on the establishment of a Bermuda trust or any Bermuda property settled on trust. Non-Bermuda property is exempt from stamp duty. Such property includes foreign realty, foreign currency and foreign issued securities whether or not held in Bermuda, and securities in Bermuda exempted companies. Bermuda properties such as realty, local company securities and Bermuda dollar cash settled then or added later there is duty equal to 2% of the first BD\$100,000 of value and 5% thereafter, with no maximum (a Bermuda trust cannot own Bermuda realty unless all the beneficiaries are Bermudian).

There is an exemption from stamp duty for a trust made for the benefit of any object which the Minister of Finance is satisfied is charitable. Capital gains and income accruing to a trust fund, and distributions of trust property, are not subject to Bermuda duty or taxation in any form except normal stamp duty on documents of appointment for Bermuda property.

### V. Tax Treaties

Bermuda is not a party to any double taxation treaty. However, Bermuda is a party to a tax treaty with the United States (signed on the 11th July, 1986 and operative on the 2nd of December, 1988)("the Treaty") relating to the taxation of insurance enterprises and to mutual assistance in tax matters. The Treaty brings certain tax relief to insurance companies and other tax concessions in relation to business conventions and foreign sales corporations.

Further, in certain restricted circumstances either Government may be requested to provide information for the assistance of the other in carrying the laws relating to the prevention of tax fraud, the evasion of taxes, and other fiscal laws.

No information can be requested with respect to taxable years beginning prior to 1st January, 1977. Also, neither Government is obliged to supply information relating to taxable years beginning prior to the operative date of the Treaty if the provision of such information would result in the breach of an obligation to maintain confidentiality under the laws in effect on the date the Treaty was signed.

The obligation of the Bermuda Government to make information available is further limited by the laws of confidentiality, and particularly:

(a) documents for information entitled to confidentiality by virtue of the laws of Bermuda relating to lawyer/client privilege will, in all cases, continue to be entitled to confidentiality;

(b) documents and information requested in connection with civil tax matters (other than civil fraud) relating to taxable years beginning before 1988 will continue to benefit from Bermuda's statutory and common law rules relating to confidentiality. Information obtained by banks in the course of a banker/client relationship will continue to be protected by virtue of this provision;

(c) in respect of documents or information created in or derived from periods prior to 1st January, 1988, but required in respect of taxable years beginning on or after that date, they will continue to benefit from the statutory and common law rules relating to confidentiality as in effect on the 11th of June, 1986, unless such a document or information is of a kind that has a "continuing operational effect".

#### **INSTRUCTIONS TO THE WORD PROCESSING DEPARTMENT**

AUTHOR: \_\_\_\_\_

(Note: Summer Associates MUST fill in the name of the ATS&D Attorney who assigned them the project.)

If other than Author, Return to: \_\_\_\_\_

#### **YOUR CURRENT Document Information MUST Be Supplied**

FOLDER NAME: 08888\00540 FILENAME: J0732

REVISION DATE: May 9, 2002

OPERATOR: Jensen

AUTHOR: Phil Louis

CLIENT NAME: Tax Department

DESCRIPTION: Lex Mundi Deskbook - Bermuda

#### **Preparation Instructions:**

\_\_\_\_\_ **Draft** or \_\_\_\_\_ **Bond** (Final)

\_\_\_\_\_ Copy Existing Doc (FOLDER\DOC NAME: \_\_\_\_\_\\_\_\_\_\_.\_\_\_\_)

\_\_\_\_\_ Create New Document (Is this a Master Form?)  
\_\_\_\_\_ Yes

\_\_\_\_\_ Scan Material \_\_\_\_\_ Cleanup by WP  
# \_\_\_\_\_ Cleanup By Secretary

\_\_\_\_\_ Compare Document  
\_\_\_\_\_ [To What Document (FOLDER\DOC NAME: \_\_\_\_\_\\_\_\_\_\_.  
\_\_\_\_) ]

Spacing:

Paper:

_____ SS	_____ 8-1/2x11	_____ Envelopes
_____ DS	_____ 8-1/2x13	_____ Letterhead
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_____ Landscape (sideways)		_____ Plain White

COMPLETION: DATE: \_\_\_\_\_ TIME: \_\_\_\_\_ am / pm

Other Instructions: