

# CONYERS

## Bermuda Permit Companies

## Preface

This publication has been prepared for the assistance of those who are considering the formation of permit companies in Bermuda. It deals in broad terms with the requirements of Bermuda law for the establishment and operation of such entities. It is not intended to be exhaustive but merely to provide brief details and information which we hope will be of use to our clients. We recommend that our clients and prospective clients seek legal advice in Bermuda on their specific proposals before taking steps to implement them.

Before seeking to obtain a permit for an overseas company to carry on trade or business in Bermuda, persons are advised to consult their tax, legal and other professional advisers in their respective jurisdictions.

Copies of the Bermuda Companies Act 1981, as amended, have been prepared and are available on request.

**Conyers Dill & Pearman**

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## 1. OVERSEAS COMPANIES

Pursuant to the Bermuda Companies Act 1981 (the “Act”), an overseas company means any body corporate incorporated outside Bermuda. An overseas company must not engage in or carry on any trade or business in Bermuda without a permit from the Bermuda Minister of Economic Development (the “Minister”).

## 2. APPLICATION FOR PERMIT

The policy of the Minister is not to grant permits to overseas companies unless satisfied that the activities of the overseas company could not be carried out by a Bermuda company. In circumstances where a Bermuda company carrying on the proposed business would be subject to some disadvantage to which the overseas company would not be subject, the Minister will generally be prepared to grant a permit.

Permits are subject to such conditions as the Minister may think fit to impose and shall be specified in the permit. A permit may require that the overseas company have one or more directors ordinarily resident in Bermuda (and see further below, “8. Economic Substance”. Overseas permit companies are usually required to inform the Minister of any change in beneficial ownership.

Each overseas permit company must pay an initial government establishment fee which is then payable again in March of each following year. This government fee varies depending on whether the permit company has a physical presence in Bermuda or not and on the principal business of the company.

The fee for a permit company engaged in wholesale trading business in respect of petroleum and other oils or liquefied petroleum gas is \$20,300. The fee where the principal business of the permit company is finance or insurance business or, in the case of a permit company which is open-ended, mutual fund business, is \$4,335. The fee where the permit company's business includes management of any unit trust fund is \$3,050 in respect of each unit trust fund managed.

However, where the permit company does not fall within one of the above specified categories and where the company has:

- (a) a physical presence in Bermuda; or
- (b) has no physical presence in Bermuda but the principal business of the permit company falls within one of the below specified categories,

the fee is \$2,095. The specified categories are:

- (a) ownership, commercial management or operation of ships or aircraft;
- (b) pharmaceutical operations; research and development in bio-science or bio-medicine; or
- (c) a charitable purpose, within the meaning of the Charities Act 2014, which would enable the permit company to be registered as a charity under that Act if it were established as such in Bermuda.

In any other case in which the permit company has no physical presence in Bermuda, the fee is \$25,000.

Within three months prior to an application for a permit, an overseas company must publish, in an appointed newspaper in Bermuda, an advertisement announcing the company's intention to apply for a permit. The advertisement must specify the overseas company's full name and state the trade or business it proposes to engage in or carry on in Bermuda.

### **3. PRINCIPAL REPRESENTATIVE**

The overseas company will be required to appoint and maintain a principal representative in Bermuda and will be required to give notice, in writing, to the Registrar of Companies ("Registrar") of such particulars of its principal representative as the Minister may determine. If any particulars of a principal representative required to be notified to the Registrar are altered, the overseas company must provide to the Registrar, in writing, particulars of such alteration within twenty one days after the alteration is made. Conyers Corporate Services (Bermuda) Limited, an affiliate of Conyers, provides principal representative services. Should a resident director also be required, then additional fees will be levied, depending on number and duration of board meetings held annually. We will be pleased to provide a schedule of our fees upon request.

### **4. REVISIONS TO PERMIT**

The Minister may, on the application of the overseas permit company, vary the terms of its permit and may at any time revoke the permit if:

- (a) the overseas permit company or any of its servants or agents contravenes a condition of its permit;
- (b) in the opinion of the Minister, the overseas permit company is carrying on business in a manner detrimental to the public interest;
- (c) the overseas permit company ceases to engage in or carry on any trade or business in Bermuda;
- (d) a court or other competent authority in any country makes an order for the winding up, dissolution or judicial management of the overseas permit company or of any person who directly or indirectly controls the overseas permit company;
- (e) the overseas permit company is otherwise wound up or if any person who directly or indirectly controls the overseas permit company is wound up or ceases to carry on business;
- (f) there is a substantial change in the effective control of the overseas permit company;
- (g) there is a substantial change in the nature of the business carried on by the overseas permit company;

- (h) the overseas permit company does not pay its annual fee within thirty days of the due date; or
- (i) the overseas permit company contravenes or fails to comply with any provision of the Act.

## **5. REGISTER OF PERMIT COMPANIES**

The Registrar shall keep a register of overseas permit companies in such form as he shall determine but which shall show:

- (a) the name of the overseas permit company;
- (b) the principal place in Bermuda from which the overseas permit company engages in or carries on any trade or business in Bermuda and the address of its registered office outside Bermuda;
- (c) the date and place of its incorporation; and
- (d) a copy of its permit.

The register shall be open to inspection by members of the public during ordinary office hours on payment of such fee not exceeding five dollars as the Minister may determine.

## **6. REGISTRAR OF COMPANIES**

Every overseas permit company lawfully engaging in or carrying on any trade or business in Bermuda shall, within one month of the issue of the permit, deliver to the Registrar (i) a copy of its memorandum or, in the event of it not having a memorandum, a document setting out the objects of the overseas permit company, the names of the directors and their nationalities, the trade or business it is permitted to engage in or carry on in Bermuda and the amount of its authorized and paid up share capital; (ii) a copy of its permit; (iii) particulars of its place or places of business in Bermuda and the address of its registered office outside Bermuda; (iv) a list of persons resident in Bermuda authorised to accept on its behalf service of process and any notices required to be served on it.

An alteration of any of the matters details of which are required to be delivered to the Registrar as set forth above shall be notified to the Registrar by the overseas permit company within thirty days of the alteration becoming effective.

## **7. ACTIVITIES OF PERMIT COMPANIES**

An overseas permit company may not:

- (a) acquire or hold land in Bermuda except –
  - (i) land required for its business by way of lease or tenancy agreement for a term not exceeding fifty years; or

- (ii) with the consent of the Minister granted in his discretion, land by way of lease or tenancy agreement for a term not exceeding twenty-one years in order to provide accommodation or recreational facilities for its officers and employees;
- (b) subject to limited exceptions (see below), take any mortgage of land in Bermuda;
- (c) acquire any bonds or debentures secured on any land in Bermuda other than bonds or debentures issued by the Government or a public authority;
- (d) carry on business of any kind or type whatsoever in Bermuda either alone or in partnership or otherwise except:
  - (i) carrying on business with persons outside Bermuda;
  - (ii) doing business in Bermuda with an exempted undertaking in furtherance only of the business of the permit company carried on exterior to Bermuda;
  - (iii) buying or selling or otherwise dealing in shares, bonds, debenture stock obligations, mortgages or other securities or investments issued or created by an exempted undertaking, or a local company, or any partnership which is not an exempted undertaking;
  - (iv) transacting banking business in Bermuda with and through an institution licensed as a bank under the Banks and Deposit Companies Act 1999;
  - (v) effecting or concluding contracts in Bermuda, and exercising in Bermuda all other powers, so far as may be necessary for the carrying on of its business with persons outside Bermuda;
  - (vi) as manager or agent for, or consultant or adviser to, the business of an exempted undertaking whether or not such business is the sole business of the permit company provided that the overseas company is authorised by law to carry on the kind or type of business in Bermuda;
  - (vii) notwithstanding the Non-Resident Insurance Undertakings Act 1967, carrying on the business of re-insuring risks undertaken by any company incorporated in Bermuda and permitted to engage in insurance and reinsurance business.

Subject to the following, the overseas permit company may hold in its corporate name a mortgage on real and personal property of every description in Bermuda, in the same manner and in the same respects as a local company, and shall, as mortgagee, have all the rights of a local company. In order to secure any principal sum exceeding \$50,000, however, the overseas permit company must obtain the prior consent of the Minister. The Minister is entitled to withhold such consent without assigning any reason. If the overseas permit company enters into possession of any land in Bermuda as mortgagee, it shall cause the land to be sold within five years of so entering into possession thereof, or within such further period as the Minister may from time to time sanction in any such case, and any such land which is not sold within such time shall be liable to escheat.

The overseas permit company must keep, at its principal place in Bermuda from which it engages in or carries on any trade or business in Bermuda, such records of its acts and financial affairs as will show adequately the trade or business it is engaging in or carrying on or has engaged in or carried on in Bermuda except that if the records of its acts and financial affairs are kept at some place outside Bermuda, there shall be kept at an office of the company in Bermuda, such records as will enable the directors to ascertain with reasonable accuracy the financial position of the company at the end of each three month period.

The Minister has the same power to appoint an inspector to investigate the affairs of the overseas permit company under the Act.

## 8. ECONOMIC SUBSTANCE

The Economic Substance Act 2018 and the Economic Substance Regulations 2018 require that entities within the scope of the legislation, including overseas permit companies where they are carrying on a 'relevant activity' as a business, comply with economic substance requirements. Relevant activities are:

- Banking
- Insurance
- Fund management
- Finance and leasing
- Headquarters
- Shipping
- Intellectual property
- Distribution and service centres
- Holding entity

Overseas permit companies coming within the scope of the legislation must maintain a substantial economic presence in Bermuda. These requirements will be met if:

- the entity is managed and directed in Bermuda;
- core income generating activities are undertaken in Bermuda with respect to the relevant activity;
- the entity maintains adequate physical presence in Bermuda;
- there are adequate full time employees in Bermuda with suitable qualifications; and
- there is adequate operating expenditure incurred in Bermuda in relation to the relevant activity.

The Registrar is responsible for monitoring compliance with the economic substance regime. The Registrar will determine whether or not the economic substance requirements are met. To this end, the Registrar requires that each overseas permit company file, at the time of paying its annual government fee, a statement of whether or not the company is carrying on a relevant activity, and the type of relevant activity carried on by the overseas permit company.

For more detailed information about economic substance requirements in Bermuda, please refer to our [Economic Substance Requirements for Bermuda-based Entities](#) publication.

## 9. TAXATION

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

The Exempted Undertakings Tax Protection Act 1966 applies to overseas companies as if they were Bermuda exempted companies. This means that an overseas permit may apply for the grant of a “tax assurance” which provides 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 31 March 2035 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 overseas permit company.

*This publication should not be construed as legal advice and is not intended to be relied upon in relation to any specific matter. It deals in broad terms only and is intended merely to provide a brief overview and give general information.*

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