

CONYERS



Establishing Bermuda Residence

Preface

This publication has been prepared for the assistance of anyone who is considering establishing residence in Bermuda. It deals in broad terms with the requirements of Bermuda law. It is not intended to be exhaustive but merely to provide general information to our clients and their professional advisers.

We recommend that our clients seek legal advice in Bermuda on their specific proposals before taking any steps to implement them.

Conyers Dill & Pearman

TABLE OF CONTENTS

1.	ABOUT BERMUDA	4
2.	RESIDENCE IN BERMUDA	4
3.	RESIDENCE AND EMPLOYMENT IN BERMUDA	6

1. ABOUT BERMUDA

A solitary outpost of beauty and civility in the mid-north-Atlantic, Bermuda enjoys a delightful sub-tropical climate entirely incongruous with its northerly latitude. The proximity of the Gulf Stream accounts for the mild temperatures which, combined with fertile soil, have produced a verdant island, ablaze with the colours of ever-present flowers and shrubs.

Abundant natural beauty has been equally matched by significant economic success so that Bermuda can also boast a highly educated and professional work-force, backed by a sophisticated, well developed infrastructure of physical and support services, which have combined to transform what was once merely an idyllic holiday retreat into a dependable centre for international offshore business.

First settled in 1609, Bermuda has its own democratically elected Parliament dating from 1620, the oldest in the British Commonwealth outside the United Kingdom. As Britain's oldest existing colony, Bermuda has close ties with the United Kingdom which is responsible for the foreign and defence affairs of the island and provides a valuable frame of reference for the local legal system. While the latter is independent, English cases are of strong persuasive authority before the Bermuda Courts and, indeed, final appeal lies to the Judicial Committee of the Privy Council.

The eastern seaboard of the United States is less than two hours flying time from Bermuda with daily flights to major cities. There are flights to London of approximately seven hours duration most days each week. Ease of access is complemented by efficiency and comfort on arrival. First rate hotels and restaurants and easily available water and land sports afford enjoyment and relaxation to the visiting business people already attracted by the reliable communications and commercial expertise of the Island.

2. RESIDENCE IN BERMUDA

For an individual who is not Bermudian and wishes to take up residence in Bermuda but does not wish to be employed in Bermuda, traditionally the only option was to acquire Bermuda real estate. This option provided some real challenges. Ownership of Bermuda real estate is restricted in Bermuda to its citizens, and only a limited inventory is otherwise available to non-Bermudians. Typically that inventory is very expensive. Further, acquisition of Bermuda real estate required the application and purchase of a one-off license to purchase real estate in Bermuda, the cost of which – at one point, since reduced – was 25% of the value of the property.

Whilst acquisition of Bermuda real estate continues to be an attractive option to many foreign clients, since 2012 the Government has undertaken a review of Bermuda's immigration policy with regards to residency in Bermuda by non-Bermudian citizens. The principal legislation in Bermuda is the Bermuda Immigration and Protection Act 1956 ("**BIPA**"). So long as a non-Bermudian is not actively employed in Bermuda, and can meet certain requirements, then there are now two attractive options to establish residency in Bermuda. First, an application can be made for Permission to Reside on an Annual Basis, or second, a person may apply for a Work From Bermuda One Year Residential Certificate. The new Economic Investment Certificate is another option and is addressed separately in section 3.1 below.

2.1. Permission to Reside on an Annual Basis

Persons wishing to reside in Bermuda must apply for permission to the Minister responsible for Immigration (the “**Minister**”). Permission to Reside on an Annual Basis allows an applicant to reside in Bermuda on an annual basis and can be renewed at least 3 months in advance of expiry of the one year term. While referred to as “Permission to Reside on Annual Basis”, in practice such permission can be obtained for periods of up to five (5) years. Applicants must be over the age of 18, and they are prohibited from engaging in employment in Bermuda, although they can work remotely from Bermuda for any position held outside Bermuda (i.e. where the employer is not operating in Bermuda and there is no contact with clients in Bermuda). When applying for permission, the applicant must demonstrate good character, adequate financial resources, and continued medical insurance coverage.

There is no requirement to purchase property if one only wishes to rent, and renting can be the more expedient option when acquiring residence. If the applicant wishes to rent, we would suggest that he/she contact a rental agent, who can then write a letter to confirm that they are assisting in securing a rental property for the client pending the approval of the application.

Permission to reside on an annual basis is an ideal option for those who may not intend to reside in Bermuda for the longer term, such as those who wish to come for an extended visit to see family members. Or this option could be used for persons new to Bermuda who may wish to “get their feet wet” for a year or two.

2.2. The Application Process for Permission to Reside on an Annual Basis

The application process for Permission to Reside on an Annual Basis takes approximately 12 weeks. The following must be submitted when making an application:

- Completed Application for Residence Form¹;
- Three (3) passport-size photographs;
- Notarised copy of the passport cover and data page;
- Notarised copy of marriage certificate (if applicable);
- Two Character Letters of Reference;
- Evidence of health insurance coverage;
- An original Police Certificate²;

¹ The Application for Residence Form is available online at <https://www.gov.bm/online-services/apply-residence> or, alternatively, please contact a member of our Trust & Private Client Department for more information.

² The police certificate can be obtained from the local police precinct/department and note that there is no standard reporting. This must be obtained from the applicant’s place of residence for the past twelve months.

- Evidence of financial means, e.g. Bank Statements, Investment Accounts or any account statement that shows that the applicant has sufficient means to sustain his/her stay in Bermuda;
- Confirmation from a Rental Agency that they are assisting in locating a rental property (we can assist in obtaining the letter) or copy of the approved Land License;
- Original Medical Certificate³.

The government fee for Permission to Reside is currently \$263 for one year and \$1,155 for five years.

2.3. Work from Bermuda Certificate

Effective 1 August 2020 and as a result of COVID-19, a person may apply for a Work from Bermuda One Year Residential Certificate. The criteria for such an application are set out below. You must:

- be at least 18 years old and pay the application fee of \$263;
- not have been convicted of a crime in Bermuda or elsewhere;
- possess valid health insurance coverage;
- demonstrate employment with a legitimate company or your own company registered and operating outside of Bermuda, in the case of a remote worker;
- provide evidence of enrolment in a Research, Undergraduate, Graduate or Doctorate Programme, in the case of a student;
- have substantial means and/or have a continuous source of annual income.

Family members have to apply separately and pay a separate fee. All applications will receive a response within five business days.

There is further information available from us as regarding domestic staff, children, pets, transport and health care.

If successful in your application for a Work from Bermuda Certificate, you will land as a resident. You will not pay Bermuda imposed income tax and a customs allowance of \$200 per person per trip will apply for certificate holders. This one year certificate is renewable on a case by case basis although there is no guarantee of renewal and it is not automatic. The 12 month time period begins on the date the Work from Bermuda Certificate is approved.

3. RESIDENCE AND EMPLOYMENT IN BERMUDA

The Government has updated its policies to accommodate non-Bermudians who wish to reside in Bermuda and seek Bermuda-based employment. First, an application can be made for an Economic

³ There is no standard form for the medical certificate; the physician can merely state that one has been examined and is in good health.

Investment Certificate that is valid for a five year period. Thereafter, an application can be made under the recently amended provisions for a Residential Certificate.

3.1. Economic Investment Certificate

Effective 1 March 2021, a person may apply to the Minister for an Economic Investment Certificate pursuant to section 25 of the BIPA. An Economic Investment Certificate allows the holder to reside in Bermuda for a period of five years. If the holder elects to make their investment in a Bermuda-based business, their work permit in relation to that business will be automatically approved. After five years, the Economic Investment Certificate holder is eligible to apply for the Residential Certificate, which enables the holder, his/her spouse and/or dependents to reside in Bermuda indefinitely.

To be eligible for an Economic Investment Certificate, the applicant must make a “Qualifying Investment”, which is an investment of at least BM\$2.5 million (or the equivalent in another currency or asset) in one or more of the following:

- Residential or commercial real estate in Bermuda;
- Bermuda Government bonds;
- The Bermuda Sinking Fund;
- The Bermuda Trust Fund;
- A Bermuda Registered charity in the areas of sports development, youth, seniors and health;
- An existing Bermuda-based business;
- The development and launch of a new Bermuda-based business; or
- Such other social or useful ventures that benefit Bermuda, Bermudians and things Bermudian as may be determined by the Minister.

Under BIPA, an Economic Investment Certificate holder is considered a Restricted Person and therefore must apply for a license to hold or acquire land. However, they may purchase any residential or commercial property in compliance with BIPA as it applies to non-Bermudians.

Economic Investment Certificates are issued for a five year period and can be revoked by the Minister subject to rules of natural justice.

The Application Process

In addition to providing proof of having made a Qualifying Investment, a non-Bermudian wishing to apply for an Economic Investment Certificate must be at least 18 years old, of good character, not convicted of an indictable or dishonesty offence and in compliance with the Bermuda Department of Health requirements and protocols.

Persons currently residing in Bermuda and who either prospectively or retroactively meet this eligibility criteria are able to apply for an Economic Investment Certificate, which may be granted at the discretion of the Minister.

Documents are required that validate the applicant's identity and attest to his or her compliance with this eligibility criteria. While the Minister has the right to request additional information, the following have historically been accepted when making similar applications⁴:

- Three (3) passport-size photographs;
- Notarised copy of the passport cover and data page;
- Notarised copy of marriage certificate (if applicable);
- Two Character Letters of Reference;
- Evidence of health insurance coverage;
- An original Police Certificate⁵;
- Evidence of financial means, e.g. Bank Statements, Investment Accounts or any account statement that shows that the applicant has sufficient means to sustain his stay in Bermuda;
- Original Medical Certificate⁶.

Certified translations of the above are required for any documents that are not in English. The fee for the issuance of the Economic Investment Certificate is \$2,625.

If the Minister denies an application, a letter of appeal can be submitted to the Immigration Appeal Tribunal within seven working days of the date of the refusal letter.

3.2. Residential Certificate

A Residential Certificate pursuant to section 32 of BIPA grants the holder the right to live and work in Bermuda with the right to enter and exit freely for an indefinite period. In essence, the Residential Certificate holder is free to come and go from Bermuda without restriction.

Effective 1 March 2021, only those who have held an Economic Investment Certificate for at least five years can apply for a Residential Certificate. However, Residential Certificates granted prior to 1 March

⁴ Currently, there is no comprehensive list of required documents and, as such, this indicative list may be subject to change or modification.

⁵ The police certificate can be obtained from the local police precinct/department and note that there is no standard reporting. This must be obtained from the applicant's place of residence for the past twelve months.

⁶ There is no standard form for the medical certificate; the physician can merely state that one has been examined and is in good health.

2021 will continue to be valid, effective, and subject to the same policy considerations and rules that were in effect on or prior to 28 February 2021.

A non-Bermudian wishing to apply for a Residential Certificate must be over the age of 18, of good character, not convicted of an indictable or dishonesty offence and possess valid health insurance. The applicant must also demonstrate that he has sufficient means and/or a continuous source of annual income without the need to engage in gainful employment in Bermuda.

Persons who retroactively meet the eligibility requirements under the EIC may be able to apply for a Residential Certificate, which may be granted at the discretion of the Minister.

There is no obligation to purchase property to secure a Residential Certificate. However, if a certificate holder wishes to hold or acquire Bermuda real property, they must apply for a licence under the BIPA. They may purchase any residential or commercial property or condominium in compliance with BIPA as it applies to non-Bermudians.

Residential Certificates are issued without time limit and are subject to revocation by the Minister responsible for Immigration subject to the rules of natural justice. Notably, a Residential Certificate can be revoked if the holder continuously resides outside of Bermuda for two years or more without seeking prior leave from the Minister.

The Application Process

The application process for a Residential Certificate after having an EIC for five (5) years, has, for obvious reasons, not been finalized yet, but if we were to look at past history it would likely take approximately 12 weeks and the following would likely need to be submitted when making an application:

- Completed Application for Residence Form⁷;
- Proof they have maintained a Qualifying Investment for at least five years, where relevant to the type of investment;
- Proof they have resided in Bermuda a minimum of 90 days in each calendar year for five consecutive years after being granted their Economic Investment Certificate;
- A copy of their Economic Investment Certificate;
- Three (3) passport-size photographs;
- Notarised copy of the passport cover and data page;
- Notarised copy of marriage certificate (if applicable);
- Two Character Letters of Reference;

⁷ The Application for Residence Form is available online at <https://www.gov.bm/online-services/apply-residence> or, alternatively, please contact a member of our Trust & Private Client Department for more information.

- Evidence of health insurance coverage;
- An original Police Certificate⁸;
- Evidence of financial means, e.g. Bank Statements, Investment Accounts or any account statement that shows that the applicant has sufficient means to sustain his stay in Bermuda;
- Confirmation from a Rental Agency that they are assisting in locating a rental property (we can assist in obtaining the letter) or copy of the approved Land License;
- Original Medical Certificate⁹.

Certified translations of the above are required for any documents that are not in English. The fee payable on application for a Residential Certificate is \$2,625.

If the Minister denies an application for a Residential Certificate, a letter of appeal can be submitted to the Immigration Appeal Tribunal within seven working days of the date of the refusal letter.

3.3. Dependents

The spouse or partner and any sponsored dependent children listed on the application by the Economic Investment Certificate holder or the Residential Certificate holder will be granted a corresponding certificate entitling them to reside in Bermuda without the right to work. To be eligible, spouses, partners and children must similarly not have been convicted of offenses in or outside of Bermuda, be of good character, conduct and in compliance with the Bermuda Department of Health requirements and protocols.

If the spouse or dependent wishes to work in Bermuda, they are subject to the Bermuda Work Permit policy pursuant to BIPA.

Absent special circumstances, the right of a dependent child to reside in Bermuda continues until the child completes full time, tertiary education or reaches the age of 25, whichever occurs first. Such dependents are not permitted to attend Bermuda's public schools.

Upon application by the holder of the certificate, the Minister has the discretion to vary or amend an Economic Investment Certificate or a Residential Certificate to add or remove a spouse or dependant.

Upon the death of, or separation or divorce from, a certificate holder, the right of the surviving or former partner or spouse to continue residing in Bermuda may be revoked. Application may be made within three months for the surviving or former partner or spouse to obtain the relevant certificate in their own right. The same eligibility requirements set out above will apply.

⁸ The police certificate can be obtained from the local police precinct/department and note that there is no standard reporting. This must be obtained from the applicant's place of residence for the past twelve months.

⁹ There is no standard form for the medical certificate; the physician can merely state that one has been examined and is in good health.

3.4. Ongoing Duties

Where relevant to the investment, Economic Investment Certificate holders have an ongoing obligation to maintain a Qualifying Investment at a minimum threshold value of BM\$2.5 million for at least five years. They also must reside in Bermuda for a minimum of 90 days in each calendar year for five years after the certificate is granted.

Holders of both certificates have an ongoing duty to inform the Minister via letter to the Chief Immigration Officer of any change in circumstances under which the Certificate was originally granted. This must be done as soon as practicably possible after the relevant change in circumstances. Failure to notify can result in revocation of their certificate and possibly a fine of up to \$25,000.

Further reading and a copy of the latest government policy can be found here:

<https://www.gov.bm/economic-investment-certificate-and-residential-certificate>

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.

© Conyers April 2021