



Conyers Dill & Pearman

## Acquiring a Residence and Property in Bermuda

## Foreword

This Memorandum has been prepared for the assistance of anyone who is considering establishing a residence in Bermuda, and who may wish to acquire residential property. It deals in broad terms with the requirements of Bermuda law and, where applicable, the policies of the Bermuda Government. It is not intended to be exhaustive but merely to provide general information to our clients and their professional advisers. In particular it is not intended to deal with acquisitions by non-Bermudians married to Bermudians or non-Bermudians acquiring property for their Bermudian children or grandchildren since, in both cases, special rules apply.

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

This Memorandum has been prepared on the basis of the law and practice as at the date referred to below.

**Conyers Dill & Pearman**

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## 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 astonishing economic success so that Bermuda can also boast a highly educated and professional work-force, backed by a sophisticated infrastructure of support services, which have combined to transform what was once merely an idyllic holiday retreat into a dynamic 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 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 businesspeople already attracted by the exceptional communications and commercial expertise of the Island.

## 2. RESIDENCY IN BERMUDA

A person may enter Bermuda and remain as a visitor for an initial period of 21 days, although extensions are routinely granted for stays of up to six months.

Persons wishing to reside in Bermuda must apply to the Minister of National Security for permission. It will be necessary to complete an application form giving certain personal information and to supply evidence of good health and the ability to support oneself financially. Permission to reside will normally be given for up to twelve months in the first instance and may be renewed provided the applicant has demonstrated good character, adequate financial resources, and continued medical insurance coverage.

For both persons wishing to reside in Bermuda and those who wish to gain full residential status, it is necessary to apply for a Residential Certificate. A Residential Certificate grants the right to the holder to live in Bermuda and to enter and exit freely for so long as the Certificate is in existence. A non-Bermudian wishing to apply for a Residential Certificate must be retired globally, over fifty years old and in possession of substantial financial means (i.e. demonstrate the ability to support oneself without having to be employed) and either:

- (a) a person who was, immediately prior to the application, employed in Bermuda for at least five years; or
- (b) the owner of property in Bermuda.

Residential Certificates are issued without time limit and are subject to revocation by the Minister of National Security subject to the rules of natural justice.

### 3. ACQUIRING PROPERTY

The Islands of Bermuda comprise an area of approximately 24 square miles, measuring some 21 miles in length with an approximate maximum width of 1 mile. The physical constraints on residential property will therefore be apparent and the stated intention of the relevant legislation is to preserve the majority of the housing stock and undeveloped residential land for Bermudian ownership. However, the Government recognises that there is a limited Bermudian market for the higher priced properties. It is these properties, provided they are already the subject of foreign ownership that may be acquired by non-Bermudians for their private residential use.

### 4. LICENCE TO ACQUIRE PROPERTY

A non-Bermudian wishing to acquire property in Bermuda must obtain a Licence from the Minister of National Security. Applicants must complete the prescribed form and are required to supply a banker's reference and two personal references from people who have known them for at least three years. The referees need not be Bermudian, although this is preferable. Evidence must also be given to show that Bermudians have been given a fair opportunity to acquire the property. Copies of advertisements appearing in local newspapers are currently satisfactory evidence.

A Licence when granted will contain a number of conditions including:

1. That the property is used for the private residential use of the Licence holder and his household only.
2. That in general the property remains as purchased without alteration of any type unless specific permission is obtained from the Minister of National Security in particular:
  - (a) That the property shall not be internally divided nor developed in such a way so as to add to the number of potential dwelling units without the permission of the Minister;

- (b) That the property may not be let as a whole nor shall any part of it be let or sub-let separately from the remainder without the specific permission of the Minister; and
- (c) That in the event the property changes ownership after the date of the Licence the property shall be conveyed as a single unit and not subdivided.

## 5. LICENCE FEE

The fee for the grant of a Licence issued by the Minister of National Security to a non-Bermudian to acquire property in Bermuda is currently 25% of the value of the land in the case of the purchase of a house, 18% of the value of the land for the purchase of a condominium, 6.5% of the value of the land for the purchase of tourist accommodation or hotel residence with election to keep for private use, 0% of the value of the land for the purchase of a tourist accommodation or hotel residence with election to place on hotel inventory and 5% of the value of the land for any other type of land not mentioned above acquired in any way.

## 6. ACQUISITION OF A HOUSE

In order for a house to qualify for purchase by a non-Bermudian it must already be the subject of foreign ownership and have an Annual Rental Value ("A.R.V.") at least equivalent to the minimum established by the Government from time to time. Currently the minimum A.R.V. is set at **\$153,000.00**, ensuring that only the higher valued properties are available for non-Bermudian purchase. (It should be noted that the A.R.V. is established by the Land Valuation Office from time to time and the amount of Land Tax payable is calculated as a percentage of the A.R.V; the A.R.V. does not indicate the amount of rent a property could achieve if let on the open market).

Further restrictions exist to prohibit non-Bermudians from acquiring multi-unit dwellings, except those which are already owned by non-Bermudians and subject to one of the units having an A.R.V. of, or in excess of, **\$153,000.00**. Further, non-

Bermudians are not permitted to own more than one residential property (whether a house, apartment or condominium) at any one time; the only exception being that a non-Bermudian will be permitted to purchase a second property on condition that the individual disposes of the original property within twelve months of the issuance of the Licence for the second property.

In general, non-Bermudians will not be allowed to sub-divide land and will be required to sell the property as a whole single unit. An exception may be made where the property has more than one dwelling and the sub-division would result in the non-Bermudian retaining a dwelling with an A.R.V. in excess of the minimum and the portion divided for sale is sold to a Bermudian.

## **7. ACQUISITION OF APARTMENTS OR CONDOMINIUMS**

A non-Bermudian may be permitted to acquire a condominium where the unit has an A.R.V. of **\$32,400.00** or more and is located in a “designated development”. Additionally, the unit must be either already in non-Bermudians ownership or be acquired directly from a developer of a designated development. The Government has designated a number of condominium developments in Bermuda and a list of such developments can be supplied upon request.

## **8. ACQUISITION OF TOURIST ACCOMMODATION OR HOTEL RESIDENCIES**

A non-Bermudian may only acquire tourist accommodation or a hotel residence by a conveyance that transfers ownership of the entire legal estate in the property (or fraction of the property in the case of a fractionally owned tourist accommodation) to the non-Bermudian or to a person who acquires or holds the property on his behalf.

A non-Bermudian who holds a licence for tourist accommodation shall not permit anyone to occupy it except – himself, his family and guests who are staying with him or his family; or paying transient guests, if the tourist accommodation is being managed by a property management company.

A non-Bermudian who holds a licence for tourist accommodation may occupy it for a maximum of 90 days in any calendar year. However, when a non-Bermudian holds a licence for more than one room, suite, unit or fraction of a unit of tourist accommodation, he may reserve all of the tourist accommodation for which he holds a licence for use by himself, his family and guests for a total of up to 120 days per calendar year, provided that the total period of such occupancy does not exceed six months in any twelve month period.

No person may hold or acquire an interest in more than two fractions of the fractionally owned tourist accommodation located at a hotel. The holders of licences for a fractionally owned unit must agree on a defined reservation schedule for use of the unit during the year.

Every applicant for a licence to acquire or hold tourist accommodation or a hotel residence shall include in his application – an election as to whether the applicant will – place the accommodation or residence in the hotel inventory; or keep the accommodation or residence for his private use, including, in the case of a hotel residence, to rent it out privately; and the prescribed land-holding charge, according to his election.

## **9. ACQUISITION OF UNDEVELOPED LAND**

The sale of undeveloped residential land to non-Bermudians is prohibited except for:

- A non-Bermudian spouse where the property is owned by a Bermudian spouse or held under licence; or
- The non-Bermudian child of a Bermudian where the property in question is owned by the Bermudian parent;
- The non-Bermudian parent of a Bermudian child who owns the property in question; or
- The owner of the land where the owner holds his spouse's equitable interest in the land as trustee; or

- Any person who within the three year period ending with the date of application would have qualified under paragraphs 1, 2 and 3 above.

## 10. LETTING OF PROPERTY

A non-Bermudian who owns a house or a condominium must obtain the permission of the Minister of National Security in order to let the same. Permission will seldom, if ever, be granted for a period in excess of twelve months in the first instance and renewal of permission will be considered on its merits at the time. Further, permission will not normally be given if the owner intends to reside in Bermuda during the rental period. In addition, a non-Bermudian who owns a house (but not a condominium) may, with permission, rent to non-Bermudian visitors in which case a Government tax (currently 7.25% of the rent paid or \$72.50 whichever is greater) will be payable. No tax is payable on rentals to Bermudians or *bona fide* residents of Bermuda.

## 11. ACQUISITION BY WAY OF INHERITANCE, VOLUNTARY CONVEYANCE ETC.

Generally a non-Bermudian will not be granted a Licence to hold real estate in Bermuda as a result of voluntary conveyance, deed of gift, devise, inheritance, purchase, lease in excess of five years or any other means of acquisition unless the property is one that is available for purchase by non-Bermudians (i.e. is over the requisite A.R.V. and currently owned by non-Bermudians). However, special rules apply in the case of non-Bermudian spouses where the property is owned by the other spouse and non-Bermudian children of a Bermudian where the property is owned by the Bermudian parent.

## 12. TITLE TO PROPERTY

A non-Bermudian who is granted a Licence to acquire property in Bermuda will be required, under the terms of that Licence, to hold the property in his individual name and will not be permitted to hold title through a Company or a Trust. Further, land acquired by devise or inheritance must be vested in an individual or individuals.

### 13. TAXES

There is no income or profits tax, withholding tax, capital gains tax, capital transfer tax, estate duty or inheritance tax payable by persons ordinarily resident in Bermuda. As previously mentioned, Land Tax is payable by a property owner and is calculated as a percentage of the A.R.V. Certain deeds, for example, conveyances of freehold and leasehold property and Mortgages attract *ad valorem* stamp duty. Further, *ad valorem* stamp duty is payable on the Affidavit of Value of the Estate of a person who dies owning property in Bermuda, but only upon the value of the Bermuda asset.

### 14. CONCLUSION

This Memorandum is intended to cover the general aspects of acquiring property and/or residence in Bermuda. For further clarification or more detailed information please contact our Real Property Department, who are available to assist.

*This publication is not a substitute for legal advice nor is it a legal opinion. It deals in broad terms only and is intended merely to provide a brief overview and give general information.*

### **About Conyers Dill & Pearman**

Conyers Dill & Pearman advises on the laws of the Cayman Islands, British Virgin Islands, Bermuda, Mauritius and Cyprus. Conyers' lawyers specialise in company and commercial law, commercial litigation and private client matters.

The combination of Conyers' structure, culture and expertise enables the highest quality, responsive, timely and thorough legal advice. Conyers' strategic global presence in major international business centres allows a seamless 24 hour service.

Conyers' sophisticated client base includes FTSE 100 and Fortune 500 companies. Working with leading local and international firms, Conyers advises on highly complex multi-jurisdictional projects.

Affiliated companies (Codan) provide a range of trust, corporate secretarial, accounting and management services.

Founded in 1928, Conyers has 600 staff, including more than 150 lawyers.

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