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Establishing an Office in Bermuda

Foreword

This memorandum has been prepared for the assistance of those who are considering moving to Bermuda and establishing an office on the Island. It deals in broad terms with the requirements of Bermuda law and it is not intended to be exhaustive but merely to provide information which we hope will be of use to our clients. We recommend that our clients seek legal advice in Bermuda on their specific proposals before taking steps to implement them.

Copies of the Bermuda Immigration and Protection Act 1956 and any other legislation referred to herein are available upon request.

References to "\$" mean Bermuda dollars which should be considered on par with the United States dollar for the purposes of this memorandum.

This memorandum has been prepared on the basis of the law and practice in Bermuda as at the date set out below.

Conyers Dill & Pearman

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1. EMPLOYMENT ISSUES

1.1 Immigration

The Bermuda Immigration and Protection Act 1956, as amended, provides that a non-Bermudian who is not married to a Bermudian requires a work permit to be gainfully employed in Bermuda. The main consideration in granting a work permit is whether there is a suitably qualified Bermudian for the position. An employer that makes an application to employ a non-Bermudian for a position must, when there is a Bermudian applicant, give satisfactory reasons for not employing the Bermudian. The Department of Immigration cannot compel the employer to hire a Bermudian but can prevent the employer from hiring a non-Bermudian by refusing to grant a work permit.

The policies applicable to the granting of work permits are substantially the same for local employers and exempted companies, permit companies and exempted partnerships (collectively the “**exempt undertakings**”). Unless the position to be filled is that of the president, chief executive officer, or other very senior employee, the first step in seeking a work permit is to advertise the position in a box advertisement appearing on three separate dates in a daily newspaper. The advertisement must include the name, address and telephone number of the employing undertaking, a brief description of the position to be filled, the qualifications required of an applicant and notice of the deadline for applications. If no suitably qualified Bermudian or person married to a Bermudian has responded to the advertisement and five business days have elapsed after the last insertion of the advertisement, then an exempt undertaking may apply to the Department of Immigration for a work permit to employ a non-Bermudian. The requirement to advertise can usually be waived in the case of exempt undertakings where: (i) the beneficial owner wishes to run the undertaking; (ii) there is proprietary information and the prospective permit holder is an existing employee or has specific expertise required for the job; and (iii) where there is a clear demonstrable benefit to Bermuda and Bermudians.

The application for the work permit must be accompanied by a completed questionnaire which supplies personal information on the proposed employee. In addition to the questionnaire, four passport photographs, a full size chest x-ray, a medical certificate, at least two personal character references and previous employment references, notarised copies of any professional qualifications or academic degrees held by the proposed employee, a notarised copy of a current passport, and a certified copy of proof of nationality must also be submitted. A medical certificate and a certified proof of nationality are required for all dependants, and a full-size chest x-ray is required for all dependants over 11 years of age.

The majority of work permits are granted for a period of one year. However, in the case of senior personnel and specialists it may be possible for a three or five year work permit to be obtained.

The normal policy of the Department of Immigration is to decline to grant work permits to employees who have more than two dependent children. However, each work permit application for an exempt undertaking will be considered on its merits.

A periodic work permit may be granted to allow an employee to work in Bermuda from time to time during the period of the permit's validity. Overseas companies can be issued a 'blanket' periodic permit, enabling any representative of the overseas company to come and work in Bermuda for a period of 21 days. However, extensions can be obtained on application for a period not exceeding six months. An individual person can also be issued a periodic work permit, and in such cases that person may stay and work in Bermuda for the period specified in that permit (usually 21 days). Similarly, temporary permits may be granted for the purpose of employing persons for specific jobs for a period not exceeding three months from the date of issue.

A part-time permit may be granted for a period of one year or less in respect of persons engaged in domestic or household activities not exceeding nine hours per week.¹

¹ Fees relating to work permits are available upon request.

If a work permit has been approved, but the employer has not received the work permit for an incoming employee, then a landing permit must be obtained from the Department of Immigration. The original landing permit can be presented to the immigration officer at the airport by the employer when the employee arrives.

An employer of a non-Bermudian is required to guarantee, should the need arise, the cost of repatriation of the non-Bermudian and any dependants residing in Bermuda. This may be accomplished by requiring the non-Bermudian worker and any dependants to have a return ticket valid for the period for which they will be employed or resident in Bermuda or by the employer giving written statement to the Department of Immigration to honour the guaranty to repatriate. The employee and dependants who have had their repatriation guaranteed by the employer are permitted to land in Bermuda on a single ticket basis as indicated on landing permits and work permits.

When work permit holders leave Bermuda on business or holiday, they should carry their work permits. This will ensure a smooth passage through Bermuda Immigration on return to the Island.

As a general rule, most work permit holders are subject to term limits. Most employees will not be granted a further work permit if they have already been issued permits for a period of six years. Application can be made for an extension of a further three years in appropriate cases. Beyond that, only those who qualify as 'key' employees are eligible for further permissions. In addition, certain categories of occupations are exempt from the six to nine year term limits on work permits, including senior executives, managers with global responsibility, senior financial posts, actuaries, specialist attorneys, brokers, investment traders and analysts, and senior IT managers and engineers.

1.2 Employment Contract

The Employment Act 2000, as amended (the “**Employment Act**”), applies where an employer in Bermuda enters into an employment contract with a person (a) who is employed wholly or mainly in Bermuda for remuneration under a contract of employment or (b) who performs services wholly or mainly in Bermuda for another person for remuneration on such terms and conditions that his relationship with that person more closely resembles that of an employee than an independent contractor. Where such a relationship exists, a statement of employment must be provided to the employee setting out, among other things, a description of the job and the gross wage payable. The Employment Act also covers such matters as disciplinary measures, severance pay and overtime. For a more comprehensive discussion of the Employment Act, please request a copy of our publication entitled, “Employment Law in Bermuda.”

1.3 Payroll Tax

The Payroll Tax Act 1995, as amended (the “**Payroll Tax Act**”), and The Payroll Tax Rates Act 1995, as amended (the “**Rates Act**”), apply a salary-related tax in respect of persons employed in Bermuda.

Employers are required to report on employees’ actual remuneration up to a maximum of \$750,000 per annum per employee. The tax rate applicable is 14% and a maximum of 5.25% may be deducted from an employee’s remuneration and applied toward the tax payment.

The Payroll Tax Act defines remuneration to include the following:

- (a) leave pay, commissions, gratuity, bonuses, and allowances;
- (b) money paid under a profit sharing scheme;

- (c) any money or other thing of value paid to an employee in connection with the termination of his employment on account of redundancy or otherwise;
- (d) any money paid with respect to him to a retirement or provident fund or under a hospital or health insurance scheme;
- (e) the value of any meals, board, lodging or other benefit of any kind whatever;
- (f) the rental value of any place of residence provided rent free or the difference if provided at less than the rental value; and
- (g) any gain obtained by the employee upon the exercise by him of a right to acquire shares or stock in a body corporate being a right arising out of services rendered by him to that body corporate.

With regard to item (d) above, payments made with respect to an employee under the Contributory Pensions Act 1970, as amended, the Hospital Insurance Act 1970, as amended, or under an approved health insurance, hospital, life insurance or retirement scheme are not, for the purposes of the Payroll Tax Act, remuneration. Further, the cost of passage to or from Bermuda at the beginning or end of a period of employment in the Island is likewise not deemed to be remuneration.

Employment tax is payable in respect of gardeners or domestic staff employed by non-Bermudians and Bermudians alike. In such circumstances, if the employer's payroll is less than \$200,000 per annum, the tax payable is 7.25% of remuneration and the amount recoverable from the employee remains the same at 5.25% with rates being slightly different if the employer is an exempt company.

An employer must register with the Tax Commissioner's office as soon as he or it becomes chargeable to payroll tax by completing the prescribed form. Payment of payroll tax must be made quarterly and be accompanied by a return which is to be filed with the Tax Commissioner. The payment process must be completed by the 15th of the month following the end of each quarter.

1.4 Social Insurance

Every employer is required to pay social insurance contributions on behalf of each employee, half of which may be deducted from the employee's salary. Payment is required on all employees over the age of 16 who are gainfully employed in Bermuda for a period of more than four hours per week. Eligibility for pension arises after 65 years of age.

In the case of non-Bermudian employees, if they are resident for more than six months or intend to work in Bermuda for more than six months their employer must contribute. If they intend to reside in Bermuda for less than six months, but in fact remain longer, they will be required to contribute retrospectively. Non-Bermudians who leave the country before the age of 65 are not eligible for a contributory pension, but on reaching 65 may apply to receive their contributory old age gratuity which is a refund of the total contributions paid into the scheme on their behalf.

All employers must provide the Social Insurance Department (the "**Department**") at the Government Administration Building with a list of their employees and their social insurance numbers. The Department will bill employers directly (monthly in arrears) for the amounts due in respect of their employees.²

1.5 National Pension Scheme

Every employer in Bermuda who employs a Bermudian or a husband or wife of a Bermudian is required to provide a pension plan for such Bermudian or such husband or wife of a Bermudian employed by the employer in accordance with the National Pension Scheme (Occupational Pensions Act) 1998, as amended (the "**Pensions Act**"). The Pensions Act is detailed and specialist advice should be obtained particularly if a pension plan is to be tailored to the specific requirements of an individual employer. Alternatively a number of insurance companies and other

² Social Insurance rates available upon request.

pension plan providers on the Island have developed pension plan structures designed to comply with the provisions of the Pensions Act.

Essentially, the Pensions Act permits a pension plan to be designated as a defined benefit or a defined contribution plan. Mandatory contribution levels are set out in the Pensions Act. Each pension plan must be administered by an administrator and the pension plan documentation must comply with detailed provisions contained in the Pensions Act. Each pension plan must be registered with the Pension Commission within certain time limits. Assets of the pension plan are required to be received and held in a distinct fund, separate from the assets of the employer. Vesting of employee contributions must occur within two years after commencement of membership in the plan. A member of the pension plan who terminates employment may have his pension fund assets transferred to a pension fund of the new employer.

A detailed memorandum of the provisions of the Pensions Act is available upon request.

1.6 Health Insurance

Health insurance is mandatory for every worker in Bermuda regardless of whether they are employed or self-employed. Section 20 of the Hospital Insurance Act 1970, as amended (the “**Hospital Act**”) requires every employer to enter into a contract of hospital insurance with a licensed insurer providing not less than the full standard hospital benefit in respect of every employee and the non-employed spouse of every employee.

The payment of the premium for the health insurance is the employer’s responsibility; however, half of the premium may be recovered by deduction from the employee’s salary. Self employed persons must pay the whole premium. Employers are required to pay half the premium for the non-employed spouses of their employees.

Non-Bermudians gainfully employed in Bermuda for less than six consecutive months or residing in Bermuda for less than six consecutive months are exempt from these requirements.

Hospital insurance must be contracted for through a licensed insurer. There are several licensed insurers in Bermuda from whom minimum health insurance can be obtained. It is also possible to apply to the Insurance Officer of the Department of Health to have an insurer approved as a licensed insurer. If the Minister of Finance's requirements are met, the insurer's contract with the employer will be recognised as satisfying Section 20 of the Hospital Act and a licence will be issued.

Alternatively, an application for approval of a proposed scheme may be made to the Insurance Officer. An approved scheme is designed to discharge the employer's obligations under the Hospital Act. Generally, a minimum of 100 employees is required before an application for the Minister of Finance's consideration of an approved scheme can be made. However, the Minister of Finance can use his discretion to give approval to a scheme which applies to less than 100 employees.

Health insurance can also be obtained from the government Hospital Insurance Premium scheme. Employers may request exemption from the requirement to provide health insurance for part time employees working less than 45 hours per month.

1.7 Directors and Officers Liability

Directors and officers of any company obliged to make pension or tax remittances in Bermuda may be held personally liable for sums that were due to be remitted during their term of office. Proceedings may be taken against persons who were directors or officers at the time of a failure to remit, even if they are no longer in office. The legislation imposing this liability is retroactive, and its reach goes back 20 years. The failure to collect and remit the sums described above is a strict liability matter, meaning that a director or officer may be found liable even if he had no intent to

breach the law, or even any knowledge (or the means to have the knowledge) that the law was breached.

It is therefore of obvious importance for all employers in Bermuda to establish and maintain proper and effective procedures for the collection and remittance of tax and pension contributions, and for directors and officers of companies with staff in Bermuda to be regularly assured that the company's obligations are being met.

2. BANKING AND FOREIGN CURRENCY

Generally, exempt undertakings are designated non-resident for exchange control purposes. Non-Bermudian employees of exempt undertakings are considered to be "non-resident" for exchange control purposes and as such are not subject to the few remaining exchange controls applicable to Bermudians.

3. PROPERTY

3.1 Accommodation

Only certain properties in Bermuda are available for purchase by non-Bermudians. Every property in Bermuda has an annual rental value ("ARV") upon which its liability to land tax is based. Currently, only houses with an ARV in excess of \$153,000, and condominiums, located in a designated development, with an ARV of over \$32,400 that are already owned by non-Bermudians, are available for purchase by other non-Bermudians.

A non-Bermudian purchaser requires a licence from the Bermuda Government to make such a purchase. The fee for the licence is 22% of the purchase price in the case of a house and 15% in the case of a condominium. For more information on acquiring a property in Bermuda, please request a copy of our publication entitled "Acquiring a Residence and Property in Bermuda", or please view it at www.conyersdill.com.

3.2 Special Provisions Applicable To Exempt Undertakings

While an exempt undertaking cannot, under current policy, have a freehold interest in property in Bermuda it can take property by way of lease (a) for a term not exceeding 50 years on land required for its business and (b) with the consent of the Minister of Finance for a term not exceeding 21 years in order to provide accommodation or recreational facilities for its officers or employees.

3.3 Rental Accommodation

There are many real estate agents who can assist with finding rental accommodation. A listing of agents and typical prices for various types of rental accommodation can be provided upon request.

3.4 Office Space

As mentioned above, an exempt undertaking cannot own an office building although it can, in certain circumstances, own up to 40 percent of the shares in a local company which owns such a property. Exempt undertakings can, however, acquire a lease to occupy the building for its business for a period of up to 50 years.³

3.5 Land Tax

Land Tax is charged on property in accordance with the property's ARV. The person who is generally liable for the payment of this tax is the owner of the property. However, if the property is leased for a period of three years or more, the lessee is deemed to be the owner of the property for the purposes of Land Tax and is billed directly. The lessee is then liable to pay the land tax for those years.

³ An estimate of average cost of office space in the City of Hamilton can be provided upon request.

3.6 Office Staff, Furniture and Equipment

Employment agencies in Bermuda can assist with finding secretaries and support staff. A list of these agencies and a list of companies which specialise in providing security services, office furniture, furnishings and equipment can be provided upon request.

4. MISCELLANEOUS

4.1 Arriving In Bermuda

Customs duties are imposed on intending residents when they first arrive on the Island and will cover certain belongings which either accompany them or are shipped into the Island at some later date. Books, clothes and other items that are deemed to be used may be imported without being subject to any charge. Duty will be assessed at 35% of the estimated value of any other items (subject to a modest duty-free allowance). A further wharfage charge of 1.01% will be added to the appraised total value of the items imported.

Generally speaking, no vaccinations are required to enter Bermuda. However, it is advisable to be inoculated if within two weeks before arriving in Bermuda you have visited a country which has suffered a recent outbreak of cholera, small pox, or yellow fever.

The importation and/or possession of either firearms or ammunition is an offence which is severely punished. Similarly, the importation and/or possession of drugs or obscene materials is illegal.

4.2 Home Help

Employment agencies can assist in finding nannies, housekeepers and gardeners, should they be required.

4.3 Pets

There are no quarantine facilities in Bermuda. Therefore, any new resident intending to bring any pets should obtain a permit to import such animals from the Bermuda Department of Agriculture and Fisheries. The proper documentation concerning the animal in question is required and failure to obtain and present such documentation will result in the animal's immediate return to the port of embarkation.

In accordance with the Dogs Act 1978, as amended and the Dogs Act 2008, a person cannot keep a dog in Bermuda unless they are over 18 and hold a dog licence for each dog which they own. There is a prohibition on keeping more than two dogs without the consent of the Director of the Department of Agriculture. There is at present a ban on the importation of certain breeds of dogs.

A dog licence is not required on importation if it is intended that the dog will be exported within 28 days from the date of its importation. Further, a licence is not required for a dog which is less than four months old. Licences can be obtained from the Postmaster General.

4.4 Consular Representation In Bermuda

The following countries have consular representations in Bermuda:

Austria	Belgium	Canada	Chile
Denmark	Finland	France	Germany
Ireland	Italy	Jamaica	Luxembourg
Netherlands	Norway	Spain	Sweden
Switzerland	United States		

4.5 Transport

Bermuda residents are restricted to the ownership of one car per household. The notion of a company car does not exist in Bermuda. In light of the aforementioned restriction, an alternative means of transportation may be necessary and motorcycles ranging from 50cc to 150cc are available to satisfy this need. Bermuda driving licences are required for any motorized vehicle other than cycles rented from local liveries. In the case of a car, it is advisable to book a lesson with a local driving school as they will arrange a test appointment and allow their car to be used for the purpose of taking the driving test. If prior to living in Bermuda a no claims bonus was in effect with an overseas insurance company, it may be transferred and applied by a local insurance company which can result in up to a 60% reduction in the cost of the annual premium.

4.6 Schools

Schooling is compulsory from the age of five to 16 in Bermuda. Regardless of whether schools are public or private schools they must conform to internationally accepted standards of care and education. Private and government schools are available on the Island. The annual fees for private schools can vary from just over \$11,000 to almost \$15,000. The schools insist on the wearing of uniforms. The academic year runs for approximately 40 weeks from early September until late June with breaks for Christmas (two weeks), Easter (two weeks) and summer (ten weeks). The following is a list of the private schools in Bermuda available for children aged five to 18:

- Bermuda High School (girls only)
- Saltus Grammar School
- Warwick Academy
- Somersfield Academy
- The Bermuda Institute
- Mount Saint Agnes

It should be noted that space is extremely limited in the above-named private schools and a place cannot be guaranteed.

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.

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