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PREFACE

This is the Twenty Fifth Edition of the Guide which was first produced by us in 1954 for the information of our clients and professional colleagues. This edition takes account of the significant changes brought about by the Companies Amendment Act 2006.

This Guide is divided into three parts:

1. Exempted Companies
2. Permit Companies
3. General Information

Under the heading of General Information, we have dealt with such matters as continuance and discontinuance, registration of charges, exchange control, prospectuses, amalgamations and other topics.

This Guide is concerned primarily with “exempted companies” and “permit companies”; no reference has, therefore, been made to those provisions of the Companies Act 1981 which regulate the carrying on of business by local companies in Bermuda. Broadly speaking, local companies are required to have at least 60% of their issued share capital beneficially owned by Bermudians. Exempted companies are formed primarily for the benefit of non-residents of Bermuda, to enable such persons to carry on business outside Bermuda or with other exempted undertakings in Bermuda. “Exempted”, in relation to an exempted company, implies exemption from, inter alia, the requirement that at least 60% of the equity be beneficially owned by Bermudians.

All references in this Guide to “dollars” or “$” are to Bermuda dollars. There is parity between the Bermuda dollar and the United States dollar.

It is recognised that this Guide will not completely answer detailed questions which clients and their advisers may have. It is intended to provide a sketch of Bermuda’s legal and regulatory environment in relation to exempted and permit companies. The Guide is, therefore, designed as a starting-point for a more detailed and comprehensive discussion of the issues.

Appleby
Hamilton, Bermuda
February 2007
1. **EXEMPTED COMPANIES**

a. **Introduction**

Bermuda’s statute law on companies is contained in the Companies Act 1981 (the “Companies Act”). Until 1970, it was only possible to incorporate a limited liability company in Bermuda pursuant to a private Act of the Legislature. In 1970, the concept of incorporation by registration was introduced. Nearly all companies are now incorporated by registration, although incorporation pursuant to a private Act is still available and must be used where the general statute law will not accommodate the proposed structure, internal organisation or method of operation of the entity. This ability, with necessary philosophical limitations, to design a private Act to meet some or all of the special needs of a company is a feature not commonly found in other jurisdictions.

b. **Classification**

Bermuda companies fall into two principal categories: companies incorporated by Bermudians to trade primarily in Bermuda and companies incorporated by non-Bermudians for the purpose of conducting business outside Bermuda. This Guide is concerned only with the latter kind of company. Companies falling into this category are known as “exempted companies” and are so-called because they are exempted from those provisions of Bermuda law which stipulate that at least 60% of the equity must be beneficially owned by Bermudians. Permit companies (i.e. overseas companies which have received a permit to carry on business in or from within Bermuda) are dealt with in Part 2 of this Guide.

In general terms, the Companies Act restricts an exempted company from carrying on business in Bermuda, except to the extent that it is so authorised by its constitutional documents and has been granted a licence by the Minister of Finance (the “Minister”) who will form a view as to whether or not the granting of such a licence is in the best interest of Bermuda. Having said that, there are certain activities which are expressly excluded from the requirement for a licence. Such activities include: doing business with other exempted undertakings (i.e. exempted companies, permit companies, exempted partnerships and exempted unit trust schemes) in furtherance of the business of the exempted company which is being conducted outside Bermuda; dealing in securities of exempted undertakings, local companies or partnerships; carrying on business as manager or agent for, or consultant or advisor to, any exempted company or permit company which is affiliated (whether or not incorporated in Bermuda) with the exempted company or an exempted partnership in which the exempted company is a partner or, in the case of mutual funds, selling or distributing their shares in Bermuda.

The Companies Act makes provision for, among other things, the incorporation of single shareholder companies. The reader should therefore be aware that, in this
Guide, references to shareholders also embrace the sole shareholder of such a company.

c. Procedure for Incorporation

i) By Registration

The first step in the registration procedure is the reservation of a name with the Registrar of Companies (the “Registrar”). Note that a company may apply for registration of a secondary name, in a foreign language and non-roman script, to be used in addition to its primary name. The application to form a company is then submitted to the Bermuda Monetary Authority (the “Authority”). The application will supply the name of the proposed company, the nature of its intended business and the proposed ownership of the company.

Concurrently, approval is sought from the Authority for the intended beneficial ownership, details of which are confidential. Personal Declarations signed by the beneficial owners must be supplied, unless the owners are already sufficiently well known to the Authority or are public companies (in which case a copy of the latest annual report will be required).

The Memorandum of Association of the company (the “Memorandum”) is submitted to the Registrar. The Memorandum will state, amongst other things: the share capital of the company and its division into shares of a specified par value; whether the liability of the shareholders is limited or unlimited; and the objects (ie business purposes) and powers of the company. Companies may be incorporated with unrestricted objects and the powers of a natural person. The Memorandum can also specify the period, if any, fixed for the duration of the company, or the event, if any, upon which the company is to be dissolved.

The consent of the Minister of Finance (“the Minister”) to incorporation is required only in respect of companies which engage in so-called restricted activities, e.g. investment business; trust business, mutual fund business, deposit taking and money services. The Minister will require information that demonstrates that the company has adequate knowledge and experience available to it. The Minister may, at his discretion, grant or refuse his consent and need not give any reason for his decision.

Ordinarily, an incorporation that requires only the approval of the Registrar can be accomplished in 24 to 48 hours. Where the consent of the Minister is required, the time needed is usually three to five working days from the date that the Bermuda attorneys have received all necessary information relating to the proposed company, and all Personal Declarations from the proposed beneficial owners. However, in the event of a genuine emergency, in cases
where the consent of the Minister is required, a procedure is available to permit incorporation within two to four days.

**ii) Pursuant to a Private Act of the Bermuda Parliament**

This procedure is relatively straightforward and not as costly as might be expected. Corresponding to the registration procedure, it is necessary to reserve the proposed name with the Registrar and to advertise the proposed incorporation by means of a Private Bill Notice in a Bermuda newspaper. The principal hurdle to be surmounted, in practice, is the review of the Bill by the Joint Standing Committee on Private Bills, whose favorable report will invariably ensure a smooth passage for the Bill through the legislative process.

The Bill (which, when enacted, is known as the Incorporating Act) corresponds to the Memorandum of a registered company and will set out, amongst other things, the proposed objects and powers of the company. In addition, provisions will be embodied which address any special features of the proposed company.

After the Bill has been enacted (the process usually having taken six to eight weeks), the company is incorporated by the filing of a Memorandum, signed by at least three persons who are normally nominees resident in Bermuda. Once incorporated, the company is subject to the provisions of its own Incorporating Act read together with the general company law of Bermuda.

It should be noted that this ability to petition the Legislature (for a private Act which modifies or waives the requirements of some public statute or creates provisions which have statutory force where they do not presently exist) is not restricted to applicants seeking incorporation, but is also available to registered companies. This may be important when incorporation must take place at a time when the Legislature is not in session.

**d. Organisation**

We have now reached the point where the company is in being. The company will at this time receive an exchange control designation from the Authority (see 3.c of this Guide) and will on the date on which the Memorandum is filed with the Register of Companies have made the first payment of the annual government fee (see 1.e of this Guide), as this fee must be paid.

Whichever method of incorporation has been adopted, the signatories to the Memorandum are the provisional directors of the company who act as such until the first board of directors is elected. The provisional directors will have subscribed to the bye-laws of the company (which govern the company’s internal organisation, management and administration, see 1.g.iv of this Guide), will allot the share capital
and will convene the so-called “statutory meeting”, which is deemed to be the first annual general meeting of the shareholders of the company.

At the statutory meeting, the shareholders will confirm the bye-laws, elect the first board of directors and appoint auditors. The first board of directors meets immediately following its election for the purposes of, amongst other things, electing the company’s officers for the ensuing year, fixing the company’s financial year-end, opening bank accounts, establishing the company’s registered office and dealing with other matters necessary to put the company in a position to commence business (for example, in the case of an insurance company, appointing insurance managers and taking steps to secure registration of the company under the Insurance Act 1978).

e. Taxation

In Bermuda there are no taxes on profits, income or dividends, nor is there any capital gains tax, estate duty or death duty. Profits can be accumulated and it is not obligatory to pay dividends.

The Bermuda Government has enacted legislation under which the Minister is authorised to give an assurance to an exempted company, permit company, exempted partnership or exempted unit trust scheme that “in the event of there being enacted in these Islands any legislation imposing tax computed on profits or income or computed on any capital asset, gain or appreciation, then the imposition of any such tax shall not be applicable to such entities or any of their operations”. In addition, there may be included an assurance that any such tax “and any tax in the nature of estate duty or inheritance tax, shall not be applicable to the shares, debentures or other obligations” of such entities. This assurance may be for a period ending not later than 28 March 2016; the assurance is applied for as a matter of routine by this firm and is invariably granted for the full period. There is an application fee of $152.

The only “tax” imposed on an exempted company (so long as it does not have an office with employees in Bermuda) is an annual government fee, the first payment of which is made immediately upon incorporation and subsequent payments of which are made in January of each year.

Annual government fees are payable as follows:

i) Where the “assessable capital” (ie in the case of a joint stock company, its authorised share capital and share premium account; in the case of a mutual company, its reserve fund; in the case of a mutual fund, its authorised capital) is:

1) $0 - $12,000 $1,870
2) $12,001 - $120,000 $3,820
ii) Where the company’s business includes the management of any unit trust scheme, $2,595 is payable in respect of each unit trust scheme managed as at the first day of each calendar year. Lower levels of fees apply for foreign sales corporations.

The fee for the year of incorporation is reduced by 50% if the company is incorporated after 31 August. The fee payable under i) is determined by reference to the company’s assessable capital on incorporation for the year of incorporation and the company’s assessable capital on 31 August in the preceding year for subsequent years. Provision is made for the conversion of the assessable capital into Bermuda dollars for the purpose of determining the applicable fee.

f. Change of Name, Alteration of Objects, Limited or Unlimited Liability

A change of name, a change of objects and a change from limited to unlimited liability require a resolution of the shareholders passed at a general meeting of the company. In the case of a change of name, the change is effective upon filing the prescribed documentary evidence with the Registrar. This is also true of an alteration of a company’s objects. However, unless an affidavit can be sworn and filed to the effect that the two directors swearing the affidavit do not know of any specified person who can make an application to the Court for an annulment, there is a 21 day waiting period following the passing of the shareholders’ resolution before the filing can be made.

It should be mentioned that no company may be registered with a name, or seek to change its name to a name which, in the opinion of the Registrar, is undesirable. There are certain specific restrictions on the choice of name for a company. For instance, the name may not be identical to, or closely resemble, that of another company incorporated in Bermuda; nor may it contain the words “Chamber of Commerce”, “Royal”, “Imperial”, “Municipal”, “Chartered”, “Cooperative” or “Building Society”.

g. General

i) Share Capital

Bermuda companies are no longer subject to any general requirements with respect to minimum share capital. However, a company which writes insurance for its own account is required to have a minimum authorised and
issued share capital of at least $120,000, all of which must, prior to the company’s registration as an insurer, be fully paid in cash or marketable securities (for more detailed information, see the “Appleby Guide to the Insurance Act 1978”).

On an insolvent winding-up, a shareholder of an exempted company (being a limited liability company) is liable for up to, but not exceeding, the amount then remaining unpaid on his shares. It is also possible to incorporate companies whose shareholders’ liability is unlimited.

The authorised capital of a company may be increased by resolution of the shareholders in general meeting if authorised by the company’s bye-laws. Subject to observing the prescribed procedures, a company may also reduce its share capital. Any exempted company may, if so authorised by its bye-laws and the shareholders in general meeting, divide its shares into several classes and attach thereto any preferential, deferred, or special rights, privileges or conditions; consolidate and divide its share capital; subdivide its share capital; make provision for the issue and allotment of nonvoting shares; cancel authorised but unissued shares; and change its currency denomination. In addition, a company may issue preference shares which, if authorised by its bye-laws, are redeemable at the option of the company and which, if authorised by its Memorandum, are redeemable at the option of the holder. Further, the Companies Act confers on a company, if so authorised by its Memorandum or bye-laws, the power to purchase its own shares and to acquire and hold its own shares as treasury shares. It is also clear that a subsidiary has the power to purchase shares of its parent.

Ordinarily, where a person is acquiring or is proposing to acquire shares in a company, it is not lawful for the company or any of its subsidiaries to give financial assistance, directly or indirectly, to that person for the purpose of that acquisition before, or at the same time as, the acquisition takes place, or to offset his liabilities after the event. However, this rule is relaxed if there are reasonable grounds for believing that the company is, and would after the giving of such financial assistance, still be able to pay its liabilities as they become due. In addition, the rule may be relaxed in certain other situations, subject to meeting tests set out in the Companies Act.

Companies are prohibited from issuing bearer shares. It is not possible to have shares with no par value.

The Minister is empowered to make regulations enabling title to securities to be evidenced and transferred without a written instrument. Paperless trading is also permissible when transfers are effected through any mechanism required or permitted by a stock exchange which has been approved by the Minister.
ii) Directors

The business of a company is managed by its board of directors and the first board of directors is elected at the statutory meeting of the shareholders. The term of office of a director generally runs from one annual general meeting to the next; however, the bye-laws may provide for longer terms and retirement by rotation.

Any individual may be appointed an alternate director by, or in accordance with, a resolution of the shareholders, or by a director in such manner as may be provided in the bye-laws. An alternate director has all the rights and powers of a director except that he cannot attend or vote at a meeting otherwise than in the absence of the director to whom he has been appointed an alternate. The shareholders may, at any general meeting, increase the maximum number of directors and, if provided for in the bye-laws, fill, or authorise the directors to fill, any vacancies created. Should a vacancy occur on the board, the remaining directors may fill such a vacancy. Directors, upon written request deposited at the registered office of the company, are entitled to receive notice of any general meeting of the company, and to attend and be heard at any such meeting.

Subject to contrary provisions in the company’s bye-laws, the shareholders of a company may, at a special general meeting convened for that purpose, remove a director and appoint another person in his place.

The Companies Act requires that an exempted company have two individuals, ordinarily resident in Bermuda, who serve either:

1) one as secretary and one as resident representative, or
2) one as secretary and one as director, or
3) both as directors

of that company.

A company whose shares are listed on an “appointed stock exchange” (eg New York, London or Toronto) may appoint a corporate resident representative instead of meeting the above requirements. The resident representative has prescribed duties and obligations under the Companies Act. Corporate directors are not permitted.

Board (and shareholder) meetings may be held by telephone. The Board may also act by unanimous written resolution.
The duties of a company’s officers (which term includes directors) have been codified in the Companies Act and are broadly reflective of the position at common law. Every officer, in exercising his powers and discharging his duties, must:

“1) act honestly and in good faith with a view to the best interests of the company; and
2) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances”

A company is permitted, either by contract or in its bye-laws, to indemnify its officers against, or to exempt them from, any liability attaching to them by reason of their office, other than in respect of fraud or dishonesty. A company may purchase and maintain insurance for the benefit of its officers.

Our associated company, Appleby Corporate Services Ltd., offers corporate administrative and resident representative services.

iii) Officers

A company must have a secretary and, where applicable, may appoint a resident representative. Other officers (who may or may not be directors), such as a treasurer and an assistant secretary, are optional. Officers are appointed by the board of directors.

iv) Bye-Laws

The bye-laws of a company govern its internal organisation, management and administration. They are a private document, subject neither to governmental review nor to public inspection. Their adoption and amendment is a two-stage process in the sense that the directors may adopt and amend bye-laws. However, such adopted or amended bye-laws must be submitted to a general meeting of the company and are operative only to the extent that they are approved at such meeting.

The bye-laws must provide for, amongst other things: the holding of an annual general meeting in each year, an audit of the accounts of the company once in every year, the transfer and transmission of shares, and the quorum for general meetings.

In addition, the bye-laws may regulate such matters as the allotment of shares, the payment for shares, the declaration and payment of dividends, the duties and responsibilities of the company’s officers, the calling of and voting at meetings, and the conduct of the affairs of the company generally.
v) Dividends

A company may not declare or pay a dividend if the directors have reasonable grounds for believing that the company is, or will after the payment, be unable to pay its liabilities as they fall due, or that the realisable value of the company’s assets will fall below the aggregate of its liabilities, its issued share capital and share premium accounts. The Companies Act enables distributions to be made out of contributed surplus (in broad terms, donated cash or other assets).

vi) Proxies; Written Resolutions

Shareholders may attend general meetings in person (or, if a company, through the medium of its duly authorised representative) or be represented by proxy. A proxy-holder may exercise multiple voting rights where he represents different shareholders, whether voting on a show of hands or on a poll. Only another director may act as a director’s representative at board meetings.

The directors may act by unanimous written resolution in lieu of a meeting. Except where the Companies Act requires a meeting, the shareholders may act by written resolution signed by the shareholders who represent such majority of votes as would be required to pass a resolution in general meeting, to do anything which may be done by resolution in general meeting.

vii) Records

Every company must have a registered office in Bermuda, which may not be a post office box. The register of shareholders, containing the prescribed particulars of the company’s shareholders, must be kept at the registered office of the company or (after giving notice to the Registrar) at some other convenient place in Bermuda, for inspection. Provision is made for the keeping of branch registers outside Bermuda by companies (i) whose shares are traded on an “appointed stock exchange” or (ii) whose shares have been offered to the public pursuant to a prospectus filed with the Registrar or (iii) which are subject to the rules or regulations of a competent regulatory authority. Except when the register is permitted to be closed (for up to 30 days in the aggregate in each year), the register must be open for inspection by members of the public without charge. The Companies Act makes provision for mutual insurance companies and mutual fund companies to limit access to their shareholder registers.

Every company must maintain a register of directors and officers at its registered office, stating the name and address of each director and officer of
the company. This register is open for inspection by members of the public without charge.

Every company is required to maintain proper records of account, which are usually kept at its registered or principal business office. If, however, such records are kept at some place outside Bermuda, there must be kept at an office of the company in Bermuda “such records as will enable the directors or a resident representative to ascertain with reasonable accuracy the financial position of the company at the end of each three month period”. Where the company is listed on an appointed stock exchange, the relevant period for such financial information is six months rather than three.

A company is free to select the generally accepted accounting principles and the generally accepted auditing standards of a country other than Bermuda for the preparation and audit of its accounts, but the principles and standards selected must be expressly identified in the financial statements and auditor’s report.

viii) Auditors

The Companies Act contemplates that every exempted company will appoint an independent representative of the shareholders as its auditor, and that audited financial statements, prepared in accordance with generally accepted accounting principles, will be placed before the shareholders at each annual general meeting. Such presentation can, however, be deferred for up to 90 days or such longer period as the shareholders may agree upon.

ix) Investments

Except for restrictions on its ability to invest and deal in Bermuda real property (ie land in Bermuda), an exempted company is free to acquire, hold and deal in all types of investments.

x) Employment of Personnel

Although the majority of exempted companies have no employees in Bermuda, many do have their own offices and staff here. All persons other than Bermudians require the permission of the Minister of Labour and Home Affairs to seek or take up employment in Bermuda. This Minister will allow the employment of skilled and experienced non-Bermudian personnel (particularly at the senior executive level) where it can be demonstrated that there are no Bermudian resources available.
2. PERMIT COMPANIES

An overseas company, that is to say a company incorporated outside Bermuda, which seeks to “engage in or carry on any trade or business in Bermuda” may only do so with a permit issued by the Minister. The overseas company may be looking to establish its principal business office or, more usually, a branch office in Bermuda.

Whether an overseas company requires a permit is frequently a question of fact to be determined in the light of those activities which are, or are intended to be, carried on, by or on behalf of the company, in or from Bermuda. An overseas company will be deemed to be engaging in, or carrying on, a trade or business in Bermuda if it occupies premises in Bermuda, or if it makes known by way of advertisement, or by an insertion in a directory, or by means of letterheads, that it may be contacted at a particular address in Bermuda, or if it is otherwise seen to be engaging in, or carrying on, a trade or business in or from Bermuda on a continuing basis. An overseas company will not be deemed to be carrying on business in Bermuda simply because meetings of its officers or shareholders are held in Bermuda, or because the company acquires, holds and deals in all types of securities issued or created by a Bermuda entity.

An overseas company with a permit issued by the Minister is known as a “permit company”. The application procedure, which normally takes from three to five days to complete, corresponds roughly to the procedure relating to the incorporation of an exempted company. The intention to apply must be advertised in a local newspaper, specifying the company’s name and the trade or business which it proposes to engage in or carry on in Bermuda. The application, with prescribed supporting documents (certified copies of the company’s constitutional documents, its latest audited financial statements and, where appropriate, personal and financial references for the directors and beneficial owners of the company), will provide the prescribed particulars of the company, including the name and address of its proposed principal representative in Bermuda and of its proposed local bankers. The application must also disclose the reason for requiring a permit as opposed to forming an exempted company; exchange control prohibition and tax disadvantage, amongst other reasons, have been accepted in this context.

Generally, a permit company will be carrying on its business, and will only be allowed to do so, in the same manner as an exempted company, (ie outside Bermuda) from a place of business within Bermuda, or with other exempted undertakings. It is subject to many of the provisions of the Companies Act which govern companies incorporated in Bermuda; for example, those relating to prospectuses required in connection with public offerings.

A permit company must appoint and maintain a principal representative in Bermuda and give notice to the Registrar of the prescribed particulars of its principal representative. If any of these particulars are altered, details must be given to the Registrar within 21 days. If it has not already done so on its application for a permit, a permit company is required, upon receipt of its permit, to provide certain information to the Registrar, including a list of persons resident in Bermuda who are authorised to accept, on its behalf, service of process and any notices required to be served on it. That list would ordinarily include the principal
representative. The permit granted by the Minister is a public document open to inspection.

A permit company must keep, at the principal place in Bermuda from which it carries on business, “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”. However, if the records of the company’s acts and financial affairs are kept at some place outside Bermuda, there must 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. In neither case are these records required to be filed with any governmental or other authority in Bermuda (except in the case of a permit company which is registered as an insurer under the Insurance Act 1978).

A permit company may not commence its business in or from Bermuda until it has made the first payment of the annual government fee. The fee ($1,780 or, for insurers, open ended mutual funds and companies engaged in “finance business”, $3,685) becomes payable annually thereafter, on or before 31 March. If the permit company is engaged in the business of managing unit trust schemes, there will be an additional fee of $2,595 in respect of each scheme managed. Where a permit is issued after 31 October in any year, the appropriate fee payable for that year is reduced by 50%.

A permit company, like an exempted company, may apply to the Minister for an assurance exempting it from future taxation, for a period ending not later than 28 March 2016 (see 1.e. of this Guide).

3. GENERAL INFORMATION

a. Continuance and Discontinuance

A company incorporated outside Bermuda may apply to the Authority to be continued in Bermuda as an exempted company, provided the applicant can demonstrate that it has obtained all necessary authorisations required under the laws of the country in which it was incorporated to enable it to effect the migration to Bermuda. The result of continuance in Bermuda is that the foreign company becomes a company to which the Companies Act and any other laws of Bermuda apply, as if it had been incorporated in Bermuda on the date of its registration. The foreign company must, within one month after the date of registration of the memorandum of continuance, pay the appropriate fee payable as an exempted company. Continuance of a foreign company as an exempted company means that, amongst other things: the property of the foreign company continues to be the property of the company; the company continues to be liable for the obligations of the foreign company; and any existing cause of action, claim or liability to prosecution in respect of the foreign company is unaffected.

A discontinuance procedure is available to any exempted company in Bermuda which may make application to the Minister for consent to be continued in another
country or jurisdiction outside Bermuda, as if it had been incorporated under the laws of that other country or jurisdiction. This assumes, of course, that such other country or jurisdiction can and will accept the importation of the Bermuda company.

b. Registration of Charges

The Companies Act established a system of registration with respect to charges created by a Bermuda-incorporated company over its assets. The system also extends to charges on property in Bermuda, which are created or acquired by a company incorporated outside Bermuda, whether or not it is a permit company. For the purposes of the Act a “charge” includes any interest created in property by way of security, including any mortgage assignment, pledge, lien or hypothecation.

The Registrar maintains the Register of Charges. Registration is not compulsory; nor is it necessary in order to ensure the validity of a charge. Registration does, however, govern the relative priority of charges created on or after 1 July 1983 (the date upon which the Companies Act came into effect). A charge registered on or after this date will have priority over an unregistered charge in respect of the same subject matter.

There is a government fee for registering a charge: $294 where the charge secures a principal amount of $1,000,000 or less, and $515 where the principal amount secured exceeds $1,000,000.

c. Exchange Control


Generally, exempted undertakings are designated by the Authority as “non-resident” for exchange control purposes, which means that they are free to deal in any currency of their choosing, other than “resident” Bermuda dollars.

The Authority has the responsibility for vetting, on a strictly confidential basis, the proposed beneficial ownership of business enterprises with a foreign ownership component, and any changes in such ownership. Thus, the consent of the Authority must be obtained before any shares or other securities of an exempted company can be issued or transferred. The information to be supplied will correspond to that given at the time of making application to incorporate a company (see 1.c.i. of this Guide.). A general permission with respect to the issue and transfer of securities would ordinarily be given in the case of a public offering (on the basis of a prospectus supplied to the Authority for informational purposes, to be filed thereafter with the Registrar) or, subject to certain conditions, of a private offering made to institutional investors.
d. Prospectuses

Any permit or exempted company which offers shares to the public must first publish a prospectus, signed by or on behalf of all of the directors, and file a copy of it with the Registrar. The prospectus must be certified by an attorney, either as containing the particulars prescribed by the Companies Act or as having been received or otherwise accepted by an appointed stock exchange or “competent regulatory authority” (for example Securities and Exchange Commission, USA), in which case it is exempt from the Companies Act prospectus disclosure requirements. Offerings to sophisticated investors of listed securities, which, under the rules of the stock exchange on which the shares are listed do not require the preparation and filing of a prospectus (or where an application has been made for such a listing), are also exempted. Further exemptions apply where a company is subject to the rules and regulations of a competent regulatory authority and those rules do not require the preparation and filing of a prospectus. For those companies which continuously offer their shares to the public (such as mutual funds), there is a requirement for the issue of a new prospectus or supplementary particulars on the occasion of any material change in the prospectus particulars.

The Minister has the discretion to direct that some or all of the prospectus requirements of the Companies Act shall not apply to a proposed offering of shares.

e. Listing on the BSX

Any exempted company or foreign company can use the facility of the Bermuda Stock Exchange (the “BSX”) for raising capital and trading securities. All listing applications for prospective issuers must be sponsored by one of the BSX’s trading members and specific listing regulations must be complied with. Trading memberships are available to international brokers who meet the BSX requirements, which include a minimum capital requirement and a requirement to incorporate a subsidiary in Bermuda as an exempted company. Our associated company, Reid Listing Services Limited, can act as a listing sponsor for certain listing applications.

f. Amalgamations

Amalgamations (pursuant to which, by operation of law, two or more companies limited by shares amalgamate and continue as one company) are governed by specific provisions of the Companies Act. The companies to be amalgamated may include foreign companies, provided the foreign law permits such cross-border amalgamations. The amalgamated (“surviving”) company may be an exempted company or a foreign company. Where the amalgamating companies are in a close relationship with one another (ie as holding company and subsidiary or as subsidiaries of the same holding company), there is available a “short form amalgamation” procedure. The Companies Act contains other provisions for facilitating the reconstruction of companies (pursuant to a scheme of arrangement
between a company and its shareholders or creditors) with the sanction of an order of the Court.

g. **Winding-up**

The winding-up or liquidation of a company may be enforced by the Court or may be commenced voluntarily. Voluntary windings-up may be made by the shareholders, where a company is solvent, or by its creditors, where the company is insolvent. An automatic winding-up of a company may be provided for in its Memorandum, creating a company of limited duration. In the case of insolvency, a compulsory winding-up may be ordered by the Court upon a petition presented either by the company itself or by any creditor, including any contributory or contingent or prospective creditor, or by all those parties, together or separately. The compulsory winding-up provisions of the Companies Act have been extended to include permit companies and non-resident insurance undertakings. The Court may also order that the company be reinstated to a position prior to its liquidation or returned to liquidation; in either case the company will be deemed to have continued in existence as if it had not been dissolved. For more information on insolvent liquidations, see the “Appleby Guide to Insolvent Liquidations in Bermuda”.

h. **Limited Duration and Unlimited Liability**

A limited duration company may be constituted by providing in its Memorandum for a period to lapse, or for an event to occur, upon which the winding-up of the company will be automatically triggered. An unlimited liability company may be created by providing for the unlimited liability of its shareholders in its Memorandum.

i. **Banking Facilities**

There are four retail banks in Bermuda, namely, The Bank of N T Butterfield & Son Limited, The Bank of Bermuda Limited, Capital G Bank Limited and The Bermuda Commercial Bank. Each of these banks has a network of subsidiaries, affiliates and correspondent relationships throughout the world.

Under the Banks and Deposit Companies Act 1999 the incorporation of exempted companies which propose to engage in “banking business” is permitted.

j. **Accountants**

There are many firms of accountants in Bermuda available to provide accounting and consultancy services to exempted undertakings. All of the leading international firms have local affiliates. Appleby can provide such services through its associated company, Reid Management Limited.
For more specific advice on companies in Bermuda, we invite you to contact one of the following in the Corporate and Commercial Practice Group:

Judy Collis  
Corporate and Commercial Practice Group Head  
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Cameron Adderley  
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Appleby is one of the largest and most well respected offshore-based legal, fiduciary and administration service providers. With over 600 lawyers and staff, the organisation is uniquely positioned in the key offshore jurisdictions of Bermuda, the British Virgin Islands, the Cayman Islands, Jersey and Mauritius as well as the financial centres of London and Hong Kong.

The group provides sophisticated, specialised services primarily in the areas of: Corporate and Commercial, Litigation and Insolvency, Trusts and Property. Complementing our legal expertise are our service companies, Appleby Corporate Services, Appleby Trust and Reid Management.

Appleby's associated service companies provide clients with a range of supplementary services:

- **Appleby Corporate Services** provides corporate administration services to thousands of companies that have their registered offices in the offshore jurisdictions in which we are located.

- **Appleby Trust** consists of licensed trust companies in Bermuda, Cayman Islands, Jersey and Mauritius offering a comprehensive range of trust services. In Jersey, the group also provides employee benefits trusts, corporate and funds administration services.
Appleby Securities (Jersey) Limited acts as a listing sponsor for the Channel Islands Stock Exchange.

- **Reid Management Limited** provides professional management, consulting and accounting services and also acts as a listing sponsor for the Bermuda Stock Exchange.

Appleby is also a member of TerraLex, an international association of law firms; the World Services Group, a global multi-disciplinary network of service providers; and is represented in many of the major international legal organisations.

This publication is intended only to provide a summary of the subject matter covered. It does not purport to be comprehensive or to provide legal advice. No person should act in reliance on any statement contained in this publication without first obtaining specific professional advice.

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