

CONYERS

A photograph of a modern glass skyscraper with a grid-like facade, reflecting the sky and surrounding environment. The building is set against a clear blue sky. In the foreground, there is a paved plaza with a pattern of light and dark tiles. A semi-transparent blue rectangle is overlaid on the left side of the image, containing the title text.

Continuing Requirements of the Companies Act of Bermuda

Preface

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

Before proceeding with the incorporation of a company in Bermuda, persons are advised to consult their tax, legal and other professional advisers in their respective jurisdictions.

Persons considering establishing companies to carry on insurance or investment fund business should request separate publications prepared by the Firm on these topics.

Conyers Dill & Pearman

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1. INTRODUCTION

The Companies Act 1981 of Bermuda (the “Companies Act”) imposes continuing obligations on all types of companies. This publication focuses on the ongoing obligations of ‘ordinary’ Bermuda exempted companies. Those companies which carry on business as trust companies, banks, investment providers (including fund managers), insurance companies, insurance managers, fund administrators and most investment funds are subject to additional regulation governing those activities, details of which are available on request.

The main requirements of the Companies Act are summarised below.

2. CORPORATE RECORDS

A Bermuda company must maintain at its registered office in Bermuda the following:

- (a) its register of members;
- (b) its register of directors and officers (including the resident representative, if appointed);
- (c) signed minutes of all directors’ and members’ meetings (including written resolutions, if any) wherever held (theses should include any documents tabled and/or approved at these meetings);
- (d) such accounting records as will enable the directors and the resident representative (if appointed) to ascertain with reasonable accuracy the financial position of the company at the end of each three month period; and
- (e) its beneficial ownership register, unless exempted under the Companies Act.

A Bermuda company must file with the Registrar of Companies (the “Registrar”) a list of directors containing the names and addresses of its directors and must notify the Registrar of any change in such directors within 30 days of such change. This information, as well as the register of members and register of directors and officers, are available for public inspection.

A Bermuda company having a share capital must file extracts of certain of its bye-laws with the Registrar and must file extracts of any amendments to such bye-laws within 30 days of the amendment. This information is not available for public inspection.

Additionally, certain information regarding the beneficial owners of a Bermuda company that falls within the scope of the Companies Act must be filed with the Bermuda Monetary Authority (“BMA”). The BMA must be notified of any changes to such information within 14 days of the company becoming aware of or is notified of a change. This information is not available for public inspection.

Furthermore, it is typical for the minute book of the company to contain the following:

- (a) certificate of incorporation;
- (b) memorandum of association;

- (c) bye-laws;
- (d) annual declaration (relating to principal business activities, type of relevant activity (if any), financial year end date and government fees);
- (e) copies of share certificates; and
- (f) tax exemption undertaking from the Bermuda Government (if an exempted company).

3. ADMINISTRATION

Each Bermuda exempted company is required to have at least one director and a secretary. A secretary of an exempted company may be an individual or a company. A director of an exempted company may be an individual or any type of legal person (including any company or association or body of persons, whether corporate or unincorporate). For practical reasons, it is most common for the office of director to be filled by an individual or a company.

To satisfy the residency requirement contained in the Companies Act, an exempted company must have either a director or secretary or resident representative who is ordinarily resident in Bermuda.

Directors of a company who are not also shareholders of the company are, on written request, entitled to attend and be heard at any general meetings of the company.

4. SHARE TRANSACTIONS

In most circumstances, the transfer of the beneficial interest in shares of the company, or the issue of shares of the company to a new shareholder requires the prior approval of the BMA. There are some exceptions, for example investment fund companies, companies whose shares are listed on an appointed stock exchange, and certain other companies for which specific exemptions are issued. Applications for approval will normally be handled by the secretary.

5. PUBLIC RECORDS AND FILING REQUIREMENTS

The following records of a Bermuda company are available for public inspection at the office of the Registrar:

- (a) the memorandum of association of the company and any amendments thereto;
- (b) the certificate of incorporation;
- (c) the notice stating the registered address of the company;
- (d) the list of directors;
- (e) the register of charges of the company; and
- (f) any prospectus filed with the Registrar.

On the occurrence of the following events a notice should be sent to the Registrar. There are generally statutory time constraints for the notification to be filed. These are indicated in brackets below.

- (a) Increase in the authorised share capital of the company (30 days);
- (b) Change of currency denomination of the company's shares (30 days);
- (c) Cancellation of shares resulting in the diminution of the company's authorised share capital (30 days)
- (d) Reduction of a company's share capital (30 days)
- (e) Alteration of the Memorandum of Association (between 21 and 51 days after the resolution approving the alteration; under certain conditions the 21 day waiting period can be waived);
- (f) Change of location of the Registered Office (no specific deadline; change takes effect upon filing);
- (g) Change in directors (30 days); and
- (h) Amendment to certain of its bye-laws.

Any change in directors or officers must also be reflected on the register of directors and officers, which is kept at the registered office, within 14 days.

A change of the company's name requires the prior consent of the Registrar.

Insurance companies and investment funds have additional filing requirements and specific advice should be sought for those types of companies.

6. BYE-LAW FILING REQUIREMENTS

Under the Companies Act, every Bermuda company having a share capital must file with the Registrar the information that the company is required to include in its bye-laws relating to the:

- (a) transfer of shares and the registration of estate representatives of deceased shareholders;
- (b) duties of the secretary to the company; and
- (c) number of members required to constitute a quorum at any general meeting of the members of the company.

Every Bermuda company must also file with the Registrar any amendments to any such bye-laws within 30 days of the amendment.

7. BENEFICIAL OWNERSHIP REGISTER

All Bermuda companies, except those that are exempted from the relevant part of the Companies Act, must establish and maintain a beneficial ownership register at their registered offices (or at such other place in Bermuda convenient for inspection by the Registrar). In connection with this obligation, each such company is required to take reasonable steps to identify any individual who is a beneficial owner

of the company and all relevant legal entities in relation to the company, as well as updating its beneficial ownership register no later than 14 days after the company is notified of any change of beneficial ownership.

7.1. **Who must comply and who is exempted?**

The following companies and any subsidiary of such companies are exempted:

- A company (wherever incorporated) whose shares are listed on the Bermuda Stock Exchange or an overseas stock exchange designated by the Minister of Finance;
- An overseas company;
- A financial institution as defined in the Third Schedule to the BMA Act 1969;
- Any other type of company or entity that is exempted by the Minister by order made by him.

7.2. **What information is required?**

The beneficial ownership register must include the minimum required information in respect of every registrable person. A registrable person means an individual beneficial owner or relevant legal entity.

7.3. **Who is a beneficial owner and a relevant legal entity?**

An individual is a beneficial owner of a company if he or she owns or controls more than 25% of the shares, voting rights or interests in the company through direct or indirect ownership or failing that, if he or she has control over the company by other means. Where neither applies, the individual who holds the position of senior manager of the company is considered to be the beneficial owner.

A relevant legal entity in relation to a company is any legal entity or legal arrangement that would be a beneficial owner of the company if it were an individual.

7.4. **Offences and penalties**

Significant criminal and civil penalties where a company and /or an individual is guilty of an offence apply for non-compliance with the beneficial ownership requirements of the Companies Act. Additionally, where the company's bye-laws allow, or on application to the Court, shares may also be subject to restrictions, including on transfers, voting rights and other interests.

It is a defence for the company and/or officer to show that they took reasonable steps to identify beneficial owners for the purposes of the legislation.

8. **SEAL**

A company may, but is not required to, have a Common Seal and one or more duplicate seals for use in any place inside or outside Bermuda.

9. COMPANY MEETINGS

A company must hold an annual general meeting of its members in each calendar year unless this requirement is waived by resolution of the members. A member may appoint a proxy, who need not be a member (unless the company's bye-laws otherwise provide) to vote in his or her stead. Audited financial statements must (unless waived by all members and all directors) be laid before the company in general meeting. Where the company has waived annual general meetings, the company must still make the audited financial statements available to members within 12 months of the end of the company's financial year (unless waived by all directors and members). When annual general meetings have been waived, any member may, by notice given to the company before 30 September in any year, trigger the calling of an annual general meeting for that calendar year.

10. ANNUAL REQUIREMENTS

An annual declaration must be submitted to the Bermuda Government on or before January 31st of every year together with the prescribed fee.

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

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