



Establishing an Office in Bermuda

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Preface

This publication has been prepared for the assistance of those who are considering establishing an office in Bermuda. 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 publication.

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TABLE OF CONTENTS

1.	INTRODUCTION	4
1.1.	Immigration	4
1.2.	Incentives for Job Makers Act	6
1.3.	Employment Contract	6
1.4.	Payroll Tax	7
1.5.	Social Insurance	8
1.6.	National Pension Scheme	9
1.7.	Health Insurance	10
1.8.	Directors and Officers Liability	10
2.	BANKING AND FOREIGN CURRENCY	11
3.	PROPERTY	11
3.1.	Accommodation	11
3.2.	Special Provisions Applicable to Exempted Undertakings	12
3.3.	Rental Accommodation	12
3.4.	Land Tax	12
4.	MISCELLANEOUS	12
4.1.	Arriving in Bermuda	12
4.2.	Home Help	13
4.3.	Pets	13
4.4.	Consular Representation in Bermuda	13
4.5.	Transport	13
4.6.	Schools	14

1. INTRODUCTION

Bermuda has long been recognised as a robust, sophisticated and secure place to do business. Bermuda is the oldest self-governing British Overseas Territory with a stable infrastructure. It has for many years been at the forefront of international finance and wealth management business. Bermuda's advantageous geographical location makes it an attractive choice for establishing an office and a home.

1.1. Immigration

The Bermuda Immigration and Protection Act 1956, as amended (the "**Immigration Act**"), governs immigration matters in Bermuda. For those wishing to work in Bermuda, the Immigration Act provides that a non-Bermudian, who is not married to a Bermudian, requires a work permit to be gainfully employed in Bermuda. There are different types of work permits which are issued by the Department of Immigration¹.

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 "**exempted 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 as well as eight consecutive days on the Bermuda Government Job Board. Each 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, person married to a Bermudian or person who is the holder of a Permanent Resident's Certificate has responded to the advertisement and five business days have elapsed after the last insertion of the advertisement, then an exempted undertaking may apply to the Department of Immigration for a work permit to employ a non-Bermudian. Where there is a Bermudian applicant, an employer who makes an application to employ a non-Bermudian must give reasons for not employing the Bermudian. The requirement to advertise can usually be waived in the case of exempted 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 application which supplies personal information on the proposed employee. In addition to the application, three 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 any valid visas or permanent resident card must also be submitted. A medical certificate and a certified proof of nationality are required for all dependants.

¹ Fees relating to work permits are available upon request.

The policy of the Department of Immigration allows sponsored dependants of a work permit holder to reside in Bermuda. Upon application, sponsored dependants may be given permission to reside with the work permit holder and seek employment provided the total remuneration thresholds are met.

Employers may apply for standard work permits of one, two, three, four or five years. Standard work permits are for jobs that are in the open, special or restricted category².

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 30 days. Extensions can be obtained for a further period of 30 days by submitting a Visitor Extension Application. The periodic work permit holder shall not be in Bermuda for more than a total of 180 days per calendar year. 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 30 days). Similarly, temporary permits may be granted for the purpose of employing persons for specific jobs for a period not exceeding six months from the date of issue.

A short term work permit may be granted to allow an employee to work in Bermuda for periods of up to six months and an employer can apply for an extension up to a maximum of six months. A short term work permit can be granted for any type of work, outside of the closed categories, but the position must be advertised first, subject to certain exemptions.

An exempted company that is new to Bermuda may apply for a new business work permit which allows the employer to receive automatic approval of work permits, without the need to advertise, for the first six months after obtaining the first new business permit. New business work permits can be issued for one, two, three, four or five years. At the end of the new business work permits, the employer must apply for standard work permits.

One year global entrepreneur work permits (GE Permit) are granted in respect of certain work activities including business planning, seeking appropriate government or regulatory approval(s), meeting compliance, financial requirements or raising capital. They are available to exempted or local companies.

A person employed by a global company in another jurisdiction may apply for a global work permit to transfer to the Bermuda office without the need to advertise. Global work permits may be granted for one, two, three, four or five years.

A Fintech company that is new to Bermuda may apply for a Fintech business work permit which allows the company to receive automatic approval of up to five Fintech business work permits for the first six months after obtaining the Fintech business work permit. The requirement to advertise is waived. Fintech business work permits can be issued for one, two, three, four or five years.

If a work permit has been approved, but the employer has not received the work permit for an incoming employee, then a landing permit may be obtained from the Department of Immigration. The original

² They are not allowed for closed category jobs; please contact us for more information about the different job categories.

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 by law to repatriate the non-Bermudian and any dependants residing in Bermuda.

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.

1.2. Incentives for Job Makers Act

The Incentives for Job Makers Acts modify certain concessions offered to important businesses that are considered critical to the economy of Bermuda. A business may qualify as such if it employs at least 10 persons with Bermudian status, has persons with Bermudian status employed at all levels in the company, subject to the availability of suitably qualified Bermudians, provides entry-level positions for persons with Bermudian status and has programs in place for developing and promoting persons with Bermudian status.

Senior executive employees of such businesses who are exempted from the work permit provisions of the Bermuda Immigration and Protection Act 1956 may apply for permanent residency after ten years. The Acts also reduce the application fee for such senior executive employees.

In acknowledging that there is not a one size fits all model, the Economic Development Act 1968, as amended, further allows for discretion to provide for smaller companies and newly incorporated companies that may not have as many staff but are still making a tangible and significant contribution to Bermuda. In fact, account can be taken of relevant factors such as:

- (a) the size of the company;
- (b) the significance of the company to the economy of Bermuda;
- (c) the existing or likely economic situation in Bermuda;
- (d) the protection of local interests; and
- (e) generally, the interests of the community as a whole.

1.3. Employment Contract

The Employment Act 2000, as amended (the “**Employment Act**”), provides minimum standards of employment, including procedures and notice periods for the termination of employment. Most of the provisions of the Employment Act apply only to ‘employees’, being 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 their relationship with that person more closely resembles that of an employee than an independent contractor and (c) who works at least 15 hours a week and (d) does not fall into any of the excepted categories, being casual workers, part-time employees, students, temporary workers and voluntary workers (as defined in the Employment Act).

A statement of employment must be provided to employees setting out various required particulars set out in the Employment Act, for example, among other things, a description of the job and the gross wage payable. The statement of employment can be provided as a separate document or the required particulars can be incorporated into a contract of employment. As of 1 June 2021, casual workers, part-time employees, students, temporary workers and voluntary workers must also be provided a statement of employment but this requirement does not entitle such persons to any entitlements that they would not otherwise be entitled to under the Employment Act given that they are not “employees”.

As of 1 June 2021, the Employment Act also contains obligations relating to having in place a policy statement against bullying and sexual harassment. Such policy must comply with the provision of the Employment Act and, among other steps the employer must take, must be provided to employees on the commencement of their employment.

Non-compliance with the provisions of the Employment Act relating to statements of employment and the policy statement against bullying and sexual harassment can result in civil penalties. It is therefore important to get employment documentation in order.

The Employment Act also covers such matters as benefit and leave entitlements, disciplinary measures and severance pay.

1.4. 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 payroll-related tax in respect of persons employed in Bermuda.

Under the Payroll Tax Act, employers and self-employed persons in Bermuda are subject to payroll tax calculated as a percentage of total ‘remuneration’ (discussed further below).

The Payroll Tax Act defines remuneration broadly. It includes, for example:

- (a) any wages, salary, leave pay, commission, fee, bonus, perquisite or allowance;
- (b) any money paid under a profit-sharing scheme;
- (c) any money or other thing of value paid or given to an employee or ex-employee in connection with the permanent termination of his employment on account of redundancy or otherwise;
- (d) any amount paid with respect to him to a retirement or provident fund, scheme or society, or under a health insurance scheme;
- (e) the value of any meals, board, lodging or other benefit of any kind whatever whether provided in cash or otherwise than in cash;
- (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, or the assignment, release by him of, a right to acquire shares or stock in a body corporate, being a right

arising out of services rendered by him (whether in the capacity as director or otherwise) 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 Health 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. If an employer wants to benefit from such tax relief, it must make an Application for Approval to the Office of the Tax Commissioner.

Payroll tax is payable in respect of employees, deemed employees and self-employed employees. The Payroll Tax Act sets out definitions for each of these categories. Broadly, an employee includes anyone who, whether by way of manual labour or otherwise, renders services to another person under a contract of service or apprenticeship and where they work more than 16 hours in each calendar month of a tax period. Depending on the nature of the relationship, this may include gardeners or domestic staff employed by non-Bermudians and Bermudians alike. It may also include directors in certain circumstances.

Payroll tax is divided into (i) an ‘employer portion’, which is charged on the remuneration paid to each employee at a rate based primarily on the size of the employer’s annual payroll and (ii) an ‘employee portion’, which is charged on the remuneration of each employee (or deemed employees) at rates which vary with the remuneration of the employee (or deemed employee). Any amount of remuneration that exceeds \$1,000,000 per annum, whether or not such remuneration is paid in respect of one or more tax periods, shall be disregarded for the purpose of payroll tax thereby acting as a cap.

The employer is directly responsible for paying both the employer portion and the employee portion, but may deduct the cost of the employee portion from remuneration paid to the employee in each tax period (the employer is always responsible, however, for the employer portion). Some employers pay the employee portion of payroll tax on the employee’s behalf (without deducting it from their salary) as an additional benefit.

An employer must register with the Tax Commissioner’s office as soon as 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. A local bank account is required to pay payroll tax.

For a limited time, and to incentivise the relocation of and creation of new jobs in Bermuda, the Payroll Tax Act provides qualifying employers ‘new hire relief’ in respect of qualifying employees hired between 1 April 2024 and 31 March 2026 (otherwise than as a result of a merger or acquisition involving the employer). Employers wanting to benefit from new hire relief must fill out an application form. If approved, the employer will not be liable to pay the employer portion of the qualifying employee’s payroll tax for each of the tax periods between 1 April 2024 and 31 March 2026. The employee portion is still payable.

1.5. Social Insurance

Pursuant to the Contributory Pensions Act 1970, as amended (the “**Contributory Pensions Act**”), every employer is required to pay social insurance contributions in respect of each employee. Social insurance

is divided into (i) an employer contribution and (ii) an employee contribution. The employer may deduct the employee portion from the employee's salary. As at 1 June 2021, the full contribution rate is \$71.84 (\$35.92 each for the employer and employee contributions). Some employers pay the employee contribution of social insurance on the employee's behalf (without deducting it from their salary) as an additional employee benefit.

Payment is required on all employees over the age of 18 who are gainfully employed in Bermuda for a period of more than four hours per week.

Eligibility for pension payments arises after 65 years of age. If a person continues in employment after the age of 65, the employer must only continue to pay the employer portion (the employee portion is no longer required).

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 at the Government Administration Building with a list of their employees and their social insurance numbers. The Social Insurance Department will bill employers directly (monthly in arrears) for the amounts due in respect of their employees.³

1.6. National Pension Scheme

Every employer in Bermuda who employs a Bermudian or employs 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 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 by a trustee approved by the Pension Commission, separate from the assets of the employer. Vesting of employee contributions must occur within one year 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.

³ Social Insurance rates available upon request.

The National Pension Scheme (Occupational Pensions) Amendment Act 2019 extends the requirement to provide a pension plan to all employees meeting the eligibility criteria (irrespective of nationality), with the exception of a person granted permission under the Bermuda Immigration and Protection Act 1956 to engage in gainful occupation in Bermuda for less than an aggregate period not exceeding twelve months. However, the implementation of this particular amendment has been postponed and a new implementation date has not yet been provided. Employers should obtain advice if intending to distinguish between employees on the basis of their nationality when putting in place pension benefits.

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

1.7. Health Insurance

Health insurance is mandatory for all employees in respect of whom the employer is liable to pay social insurance contributions pursuant to the Contributory Pensions Act. Section 20 of the Health Insurance Act 1970, as amended (the “**Health Act**”) requires every employer to enter into and maintain a contract of health insurance with a licensed insurer providing not less than the full standard health 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. Some employers pay the full cost of an employee’s medical insurance, or a portion greater than the minimum 50% cost, as an additional employee benefit.

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.

Health 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 Health 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 Health 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 Health Insurance Premium scheme.

1.8. 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 or she 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, exempted undertakings are designated non-resident for exchange control purposes. Non-Bermudian employees of exempted 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 persons resident in Bermuda for exchange control purposes.

3. PROPERTY

3.1. Accommodation

A non-Bermudian wishing to acquire property in Bermuda must obtain a licence from the Minister responsible for Immigration. A non-Bermudian (other than someone with a Permanent Resident's Certificate) can purchase a freehold property with an Annual Rental Value ("**ARV**") at least equivalent to the minimum established by the Government from time to time. Currently the minimum ARV is set at \$126,000.00. The ARV is determined by the Land Valuation Office from time to time (the ARV is a notional value and does not indicate the amount of rent a property would achieve if let on the open market).

Non-Bermudians may acquire multi-unit dwellings provided they are already owned by non-Bermudians and subject to one of the units having an ARV of, or in excess of, \$126,000.00. Non-Bermudians are not permitted to own more than two residential properties (whether a house, apartment or condominium) at any one time, with the exception being that a non-Bermudian will be permitted to purchase a third property on condition that the individual disposes of the original property within twelve months (or such longer period up to a maximum of three years as the Minister may approve) of the issuance of the licence for the third property.

A non-Bermudian may be permitted to acquire a "hotel residence" which is property intended for private residential use that was constructed as part of a hotel development. Non-Bermudians may also be permitted to acquire tourist accommodation (that is, accommodation within the grounds of a hotel). In general, non-Bermudians are not allowed to sub-divide land and are 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 ARV in excess of the minimum and the portion divided for sale being sold to a Bermudian.

Certain non-Bermudians (being Permanent Resident Certificate holders, holders of residential certificates and individuals with a close Bermuda "nexus" (such as the non-Bermudian parent or child of a Bermudian)) may be permitted to acquire a condominium regardless of its ARV.

For more information on acquiring a property in Bermuda, please request a copy of our publication entitled "[Acquiring Property in Bermuda](#)".

3.2. Special Provisions Applicable to Exempted Undertakings

An exempted undertaking may acquire a freehold interest in property in Bermuda required for its business subject to obtaining prior consent from the Minister of Economic Development. It can also take a lease of such property for a term not exceeding 50 years without any need for consent.

An exempted undertaking with a physical presence in Bermuda may acquire and hold residential freehold or leasehold property (being a property held under leases for terms of up to 999 years granted at a premium) provided that the freehold property in question has a minimum ARV of \$126,000 and a leasehold property has a minimum ARV of \$25,800. An exempted undertaking may also lease any property, regardless of its ARV, for a term not exceeding 21 years. In both cases, the property must be required in order to provide accommodation or recreational facilities for the exempted undertaking's 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. Land Tax

All homeowners and long-term tenants are required to pay Land Tax in March and September of each year on the specified date in the demand note issued by the Tax Commissioner. A long term tenant, for the purposes of Land Tax, includes leaseholds where the term of the lease is three years or more. Therefore, the lessee is deemed to be the owner of the property and will be billed directly. It will be the lessee's responsibility to pay the Land Tax for those years. The Land Tax charged on each property is in accordance with the property's ARV. The ARV rate is based on a seven band sliding scale beginning with a tax rate of 0.80% and a maximum of 50% depending on the dollar value. Failure to pay on the specified due date will result in the accumulation of interest on the amount owing at 7% per month.

4. MISCELLANEOUS

4.1. Arriving in Bermuda

Customs duties may be imposed on intending residents when they first arrive on the Island and may 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 generally be assessed at 25% of the estimated value of any other items (subject to a modest duty-free allowance). A further wharfage charge of 1.25% 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 visited a country which has suffered a recent outbreak of cholera, small pox, or yellow fever. Please note that travellers to Bermuda must follow

COVID-19 quarantine requirements. Please contact us for specific details about COVID-19 quarantine requirements and other COVID-19 regulations in Bermuda.

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 Environment and Natural Resources. 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, 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 Environment and Natural Resources. 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 one month old. Licences must be applied for in person at the Department of Environmental and Natural Resources. All animals may be subject to a customs import duty of up to 25% of the animal's true value.

4.4. Consular Representation in Bermuda

The following countries have consular representations in Bermuda:

Austria	Belgium	Canada	Denmark
Finland	France	Germany	Ghana
Ireland	Italy	Jamaica	Luxembourg
Mexico	Netherlands	Norway	Portugal
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 approximately \$20,000. School uniforms are worn and 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

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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