



('PERMIT') OVERSEAS 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 in Bermuda or, more usually, a branch office.

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 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 (\$1,995 or, for insurers, open ended mutual funds and companies engaged in "finance business", \$4,125) becomes payable annually thereafter, on or before 31st March. If the permit company is engaged in the business of managing unit trust schemes, there will be an additional fee of \$2,905 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 28th March 2016.

This Guide should not be used as a substitute for professional legal advice. Before proceeding with any of the matters detailed here, persons are advised to consult with a lawyer.