



ISSUE, TRANSFER, REDEMPTION AND PURCHASE OF SECURITIES

The Exchange Control Regulations 1973 and the Companies Act 1981 set out various provisions in relation to the issue, transfer, redemption and repurchase of securities.

Issues to and transfers of securities in Bermuda companies involving non-residents for exchange control purposes must, under the provisions of the Exchange Control legislation receive prior approval from the Controller of foreign Exchange (the CEO of the Authority) except where a general permission has been granted as set out in the Notice to the Public of June 2005.

1) Issue of Securities

- Normally common shares are issued although preference shares and in some cases redeemable preference shares may also be issued.
- Section 42A of the Companies Act 1981 makes provision for a company to purchase its own securities.
- Under the provisions of the Companies Act 1981 bearer shares are not permitted although shares may be registered in the name of a nominee. Subject to specific permission from the Authority (under the Exchange Control Act 1972), bearer certificates or coupons in respect of non-equity securities may be allowed.
- Where a company issues securities at a premium, the total amount of such premium must be kept in a separate account. This account can then be applied to certain expenses and payments made in relation to the securities.
- A Bermuda company may alter its share capital by issuing new shares, dividing or subdividing existing shares or by cancelling shares so long as the remaining share capital is not less than the minimum share capital required.

2) Transfer of Securities

A standard instrument of transfer must be issued and signed by or on behalf of the transferor and the transferee. The transfer must then be recorded on the securities register of the company. Under the provisions of the Exchange Control Act 1972 the issue or transfer of securities in an exempted company, and the issue or transfer of securities in a local company to or from non-residents of Bermuda for exchange control purposes requires specific permission from the Authority. In addition to general and specific background information, a Personal Declaration from each shareholder who holds more than 10% of the voting shares must be provided.

3) Redemption and Purchase of Securities

- If so authorised by its byelaws, a company may issue preference shares redeemable at the option of the company. If preference shares are to be redeemed at the option of the holder, a power to do so must be set out in the company's Memorandum of Association.

- Shares may not be redeemed if as a result of the redemption or repurchase, the remaining share capital of the company is less than the minimum authorised share capital.
- Redemption or repurchase of securities may only be paid for out of paid up capital, profits of the company available for dividend, or from the proceeds of a fresh issue of securities. Any premium payable on redemption may only be paid out of the company's share premium account, profits available for dividend or out of the contributed surplus account. (A Bermuda company may only pay dividends out of profits, but distributions to shareholders can be made out of any contributed surplus).

Exchange Control

Exchange Control is operated under the Exchange Control Act 1972 (and Regulations made there under) and is administered by the Authority.

Exempted companies, permit companies, exempted partnerships and permit partnerships are normally designated non-resident for exchange control purposes and are able to conduct their day-to-day operations free of exchange control formalities. Such undertakings are able to pay dividends, distribute capital, open and maintain bank accounts in any currency and to acquire assets and meet all liabilities without reference to the Authority.

SUMMARY OF GENERAL PERMISSIONS IN THE NOTICE TO THE PUBLIC OF 1 JUNE 2005

The general permissions outlined in PARTS I and II are subject to the conditions set out in PART III.

PART I – ALL COMPANIES (except Insurance Companies)

GENERAL PERMISSION IS GRANTED FOR:

- The issue and subsequent transfer of equity securities of the company from/to non-residents while such equity securities are listed on an appointed stock exchange or while the company is classified under the Investment Funds Act 2006.
- The issue and subsequent transfer of securities that are NOT equity securities of the company from/to non-residents. Permission conditional upon subsequent notification to the Authority.
- The issue and subsequent transfer of an equity security which is to be transferred to a nominee/registered holder of the equity security, where there is no change in beneficial ownership of the equity security - Permission conditional upon subsequent notification to the Authority.
- Equity securities to be issued or transferred to or among existing holders of equity securities of the company; to the extent that if the existing holder of the equity securities owns less than 10% of the equity securities and continues to own LESS THAN 10% of the equity securities after the issue/transfer. Permission conditional upon subsequent notification to the Authority.
- Equity securities to be issued or transferred between or among affiliated companies (as defined in the Companies Act 1981).

- The granting of any charge/security interest over the shares of a Bermuda company (and for subsequent transfer of any securities upon enforcement of such charge/security interest) to a licensed bank or other licensed lending institution in an Approved Jurisdiction. Permission conditional upon subsequent notification being provided to the Authority.

NOTE:-

Anyone seeking to acquire 10% or more of the equity securities of a company must seek the prior approval of the BMA. Once that permission has been granted that person may acquire up to 50% of the equity securities of the company without the prior approval of the BMA – permission conditional upon subsequent notification to the Authority. Prior permission of the BMA must be sought for that person to hold more than 50% of the equity securities of the company.

PART II - INSURANCE COMPANIES

GENERAL PERMISSION IS GRANTED FOR:

- The issue and transfer of equity securities of an insurance company from/to non-residents listed on an appointed stock exchange, while such equity securities are so listed.
- The issue and transfer of subsequent securities that are NOT equity securities of an insurance company from/to non-residents. Permission conditional upon subsequent notification to the Authority.
- The issue and transfer of an equity security which is to be transferred to a nominee/registered holder of an equity security where there is no change in beneficial ownership. Permission conditional upon subsequent notification to the Authority.
- Equity securities to be issued or transferred to or among any persons who hold equity securities of the company; to the extent that the existing holder of the equity securities owns less than 10% of the equity securities and continues to own LESS THAN 10% of the equity shares after the issue/transfer. Permission conditional upon subsequent notification to the Authority.
- The transfer of equity securities by an existing holder who owns between 10% and 20% of the same equity securities and continues to own not more than 20% of the equity securities after the issue/transfer. Permission conditional upon subsequent notification to the Authority.

NOTE:-

Anyone seeking to acquire 10% or more of the equity securities of a company must seek the prior approval of the BMA. Thereafter up to 20% of the equity securities may be issued or transferred to that holder without the prior approval of the BMA – permission conditional upon subsequent notification to the Authority.

PART III

The general permissions outlined in PARTS I and II are subject to the following conditions:

- In the case of all issues or transfers covered by the general permissions given in paragraphs 3, 4, 9, 10 and 11 or occurring in direct consequence of the exercise of enforcement of a charge or other security interest contemplated by paragraph 6, permission is conditional upon the Authority being notified in writing prior to or as soon as practicable after all such issues

- and transfers. In the event of breaches of this condition, the Authority may, by notice, exclude a company from the application of the general permission.
- The permissions in this notice have no effect whatsoever on the application of any other legislation or policy directive and do not derogate in any way from the statutory requirements or obligations of any person under any other legislation or policy directive, including but not limited to:-
 - policy directives of the Ministry of Finance pertaining to the ownership of shares of exempted companies by Bermudians, or,
 - provisions with respect to Controller or Shareholder Controller approval and/or notification requirements as set out in the Insurance Act 1978, the Trust (Regulation of Trust Business) Act 2001, the Investment Business Act 2003 and the Banks and Deposit Companies Act 1999.
 - The permissions in this notice are subject to change at any time.

NOTE:-

LOCAL COMPANIES- where a local company has not obtained a section 114B license pursuant to the Companies Act 1981, it shall not issue or transfer more than 40% of its equity securities to non-Bermudians.

PART IV

- Approved Jurisdictions:
 - Bermuda
 - USA
 - Canada
 - Australia
 - All EU countries
 - Hong Kong
 - Singapore
 - Norway
 - Switzerland
 - Japan
- Appointed Stock Exchange: Please refer to section 2 (9) of the Companies Act 1981
- Equity Security: a share of a company that entitles the shareholder to vote or appoint one (or more) director(s).
- "Securities" (includes "secondary securities" as defined under the Exchange Control Regulations 1973) has the meaning under Section 1 of the Exchange Control Act 1972.