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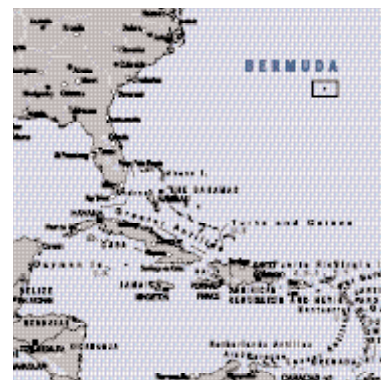
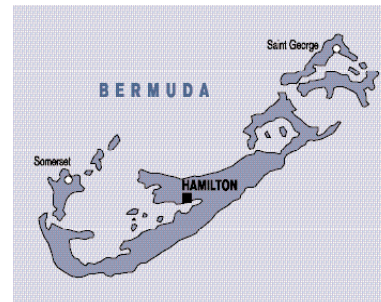
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The Bermudan Investment Business Act 2003

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The Investment Business Act 2003 (the IBA 2003) was recently passed by the Bermuda legislature and became operative on January 30 2004. The IBA 2003 repealed the Investment Business Act 1998 (the IBA 1998) and substituted in its place a new and more refined regime for regulating investment business in Bermuda.

The IBA 2003 is the result of the continuing process of the Bermudan government to adapt Bermuda's regulation to international standards. This process included consultation with industry participants in Bermuda to refine the investment business regulatory regime so it more accurately reflects the commercial realities of the Bermudan marketplace. The consultation process lasted almost three years and is a further example of the public-private partnership which has made the Bermudan marketplace so successful.

Summary of differences between IBA 2003 and IBA 1998

Similar to the IBA 1998, the IBA 2003 provides that any person carrying on investment business in or from Bermuda must hold a licence issued by the Bermuda Monetary Authority (the BMA), unless they qualify for exemption from this requirement.

However, the IBA 2003 makes several regulatory enhancements and refinements to Bermuda's investment business regulatory regime.

Requirement for physical presence

The IBA 2003 clarifies that entities with no physical presence in Bermuda will not be subject to the requirement to obtain an investment business licence. This is achieved by specifying what constitutes carrying on investment business in or from Bermuda. A person carries on investment business in or from Bermuda only if that person carries on such business from a place of business in Bermuda (in other words, that person occupies premises and employs staff) or if they engage in an activity deemed to be carrying on investment business in or from Bermuda pursuant to an order made by the minister of finance. It is worth noting that no such orders have yet been made.

Enforceability of agreements made in contravention of the IBA 2003

The IBA 2003 expressly provides that an agreement entered into by a person in the course of carrying on investment business in contravention of the requirement to obtain a licence under the IBA shall be enforceable by all parties to that agreement.

Exclusions from the scope of the IBA 2003

The IBA 2003 clarifies the activities excluded from the definition of investment business, among which are:

- certain activities carried on between members of the same group, firm or joint enterprise;
- certain activities carried on for the purposes of, or in connection with, the sale of goods or the supply of services;
- operating employee share or savings schemes;
- a sale of a body corporate involving the disposal and acquisition of at least 50% of the voting rights, or where the object of the transaction is to acquire day-to-day control of the affairs of the body corporate;
- certain activities carried on by a trustee or personal representative, provided additional remuneration is not received for doing so; and
- general advice given in a periodical publication or broadcast.

Introduction of a regime regulating unsolicited calls

The IBA 2003 also establishes an unsolicited calls regime, which will become effective once regulations have been made by the minister of finance. The IBA will prohibit persons from entering into an investment agreement with an individual in the course of or in consequence of an unsolicited call made on that person. It is expected that licensed persons will be permitted to make unsolicited calls pursuant to the regulations.

Other regulatory changes

Some of the other regulatory enhancements and refinements included in the IBA 2003 include:

- increased ability to police unlicensed entities;
- increased reporting requirements for licensed entities;
- increased powers of censure and investigation of licensed entities; and
- information gateways provided to the BMA in limited circumstances.

Like the IBA 1998, the IBA 2003 is administered by the BMA, Bermuda's independent central regulator.

Exemptions from licensing requirement

Pursuant to the Investment Business (Exemptions) Order 2004, exemptions from the requirement to be licensed are available to persons providing investment services to sophisticated investors or a limited number of investors, similar to those previously in the IBA 1998. Importantly for Bermuda's insurance/reinsurance marketplace, all persons registered under the Insurance Act 1978 (all classes of insurance/reinsurance companies as well as insurance managers, insurance brokers and insurance agents) are exempted from the requirement to be licensed in respect of investment activities carried on in connection with their business.

Conclusion

The Bermudan legislature's passing of the IBA 2003 further consolidates Bermuda's position as one of the world's premier offshore jurisdictions. It represents Bermuda's continued maintenance of international standards of regulation while encouraging commerce through a common-sense approach to regulation.

Corporate and commercial

Recommended firms

Appleby Spurling Hunter

Conyers Dill & Pearman

Attridge-Stirling & Woloniecki

Cox Hallett Wilkinson

EY Law Hollis & Co

Mello Jones & Martin

Milligan-Whyte & Smith

Appleby Spurling Hunter

After its merger with Cayman firm Hunter & Hunter on April 1 2004, Appleby Spurling & Kempe became Appleby Spurling Hunter, and in doing so consolidated its position as the largest company in the Bermudan financial law market. The merger gives the newly created firm a presence in London, Hong Kong, the Cayman Islands and the British Virgin Islands, and expands its number of lawyers to 430.

In a deal completed in October 2003, the firm prepared Crown Corporation Limited for its \$350 million listing on London's Alternative Investment Market. The risk financing of the FIFA World Cup was also completed in October 2003 in a deal worth more than \$1 billion. The client in this case was Credit Suisse First Boston. Warren Cabral from the firm's London office was involved in both deals.

The firm also advised in the bankruptcy case concerning Global Crossing Limited, a deal that involved the issue of \$200 million of notes and \$225 million of shares. It followed Chapter 11 proceedings in the US, and was the largest corporate restructuring of a formerly public, but now incorporated, Bermudan company to be undertaken in joint US/Bermuda proceedings. Peter Bubenzer, Judith Collis and Alison Dyer-Fagundo worked on the deal.

The firm was also involved in the Bank of Bermuda-HSBC Holdings amalgamation. The deal was valued at \$1.3 billion and involved the amalgamation and then secondary listing of HSBC on the Bermuda Stock Exchange. The Appleby Spurling Hunter team included Alex Erskine, Timothy Counsell, Bela Halasz and also Shaun Morris, who heads the corporate and commercial practice.

Key contact partners

Cameron Adderley

Tonesan Amisshah

Judith Collis

Jennifer Fraser

Leading lawyer

Kenneth Robinson

Conyers Dill & Pearman

With offices in the British Virgin Islands, Cayman Islands, Hong Kong, London and Singapore, and its headquarters in Bermuda, Conyers Dill & Pearman has 70 associates and 27 partners. The firm is also a member of the global law network Lex Mundi.

The firm has been adding to its ranks, with associate Ben Adamson joining the insolvency team, headed by Narinder Hargun. The corporate and commercial team has also been augmented, with Guy Cooper and Anita Hewey joining from law school and Tim Shepherd and Mary Ward coming over from Linklaters. The team is headed by the respected operator John Collis.

Leading lawyer

John Collis

EY Law Hollis & Co

Under managing partner Wendell Hollis, EY Law Hollis & Co has six lawyers dedicated to corporate and commercial work. The firm's corporate team is headed by Julie Stanton. The firm is part of the Ernst & Young alliance, which gives it access to the accountancy firm's global network of over 2,800 lawyers.

Key contact partners

Wendell Hollis

Julie Stanton

Milligan-Whyte & Smith

At Milligan-Whyte & Smith, name partners Orlando Smith and John Milligan-Whyte run a full-service legal practice, and focus on private client work involving trusts and estates. The firm has recently acted for the lead lender in the refinancing of an international hotel group, as well as for a telecommunications company in provisional liquidation and Chapter 11 proceedings.

In 2002, the firm advised on the \$270 million sale of Global Crossing to a Chinese state-owned enterprise, in the first deal of its kind in China. In 2003, Milligan-Whyte Smith formed China Bermuda Management to serve Chinese companies. The firm also became affiliated with Siway and Seaway in Shanghai and is in talks concerning further affiliations in Beijing.

Key contact partner

Orlando Smith

Other notable firms

Cox Hallett Wilkinson has a total of 15 lawyers and covers the full gamut of practice areas: banking, capital markets, project finance, insolvency and mergers and acquisitions. The firm is also a member of Meritas, the global network of

mid-size law firms, and is the only member firm in Bermuda. Recommended for its corporate insolvency practice, **Attride-Stirling & Woloniecki** boasts 10 lawyers, of whom Rod Attride-Stirling is seen as especially experienced. At **Mello Jones & Martin**, Peter Martin specializes in securitization, while Andrew Martin concentrates on the insolvency practice. Brenda Lehman deals with the company's banking work in this small but specialist firm.