

# **Investment Climate Statement 2011** **Hamilton, Bermuda**

## **Table of Contents**

• Background notes	p. 2
• Overview of Foreign Investment Climate	p. 2-4
• Conversion and Transfer Policies	p. 5
• Expropriation and Compensation	p. 6
• Dispute Settlement	p. 6-7
• Performance Requirements and Incentives	p. 7-8
• Right to Private Ownership and Establishment	p. 8-9
• Protection of Property Rights	p. 9
• Transparency of Regulatory System	p. 9-10
• Efficient Capital Markets and Portfolio Investment	p. 11-12
• Competition from State-Owned Enterprises (SOEs)	p. 12
• Corporate Social Responsibility (CSR)	p. 12
• Political Violence	p. 12
• Corruption	p. 13
• Bilateral Investment Agreements	p. 13-14
• OPIC and Other Investment Insurance Programs	p. 14
• Labor	p. 14
• Foreign-Trade Zones/Free Ports	p. 15
• Foreign Direct Investment Statistics	p. 15
• Web Resources	p. 16

1. Below is Consulate General Hamilton's 2011 Investment Climate Statement (ICS), an update of the 2010 ICS. Bermuda is an overseas territory of the U.K. and thus is not included in some third party sources, e.g. World Bank, Transparency International and MCC.

### **Background Notes**

2. Bermuda is a small group of islands, totaling approximately 21 square miles in size. This fact is never far from the conscious thought of the people who live on the islands. Bermudians are particularly sensitive to the concepts of retaining the land for the citizens of Bermuda, ensuring that Bermudians have preference with regards to employment, and that the assets of Bermuda benefit Bermudians.

Bermuda, an Overseas Territory of the United Kingdom, is a sophisticated and international entity. It is sophisticated in that its regulatory and legal systems adhere to high ethical and current standards and have their history grounded in UK law. Since 1684, the Crown has appointed a Governor who is responsible for external affairs, defense, and internal security. In other matters, he or she acts on the advice of the cabinet. Bermuda has its own written constitution, giving its elected cabinet government almost complete self-determination in conducting local affairs and Bermuda enacts its own legislation.

Bermuda is a major industry center for the world insurance and reinsurance market. With a Bermudian population of approximately 50,000 and an expatriate presence of roughly 15,000, Bermuda can be somewhat insular. This manifests itself in all facets of life: social, political and business. Most Bermudians are either related, know one another or at a minimum know someone who knows another.

### **Openness to and Restrictions upon Foreign Investment**

3. The Government of Bermuda (GOB) welcomes foreign direct investment and continually seeks to develop innovative new financial services and products that manage risk and facilitate the efficient flow of capital. Incorporating a company in Bermuda is a relatively straightforward, well regulated and efficient process.

Bermuda has a stable economy, democratic government, low personal and corporate taxes, close proximity to the United States with extensive air and communication networks, a good pool of skilled professionals, and its dollar is pegged to the U.S. dollar.

According to the Department of Statistics, the top five investment sectors in Bermuda are international business, financial intermediation, real estate and rental activities, business activities, and wholesale, retail trade and repair services. In 2010, 15,078 international companies were registered on the island, a decline of 314 companies or 2.0% less than the total at the end of 2009. In total, 743 new exempted companies were incorporated in 2010 compared to 711 in 2009 – representing an increase of 4.3%. The worldwide economic slump has slowed the pace of new companies coming to Bermuda.

The Companies Act 1981 and subsequent Company Amendment Acts predominantly affect foreign investment through acquisitions, mergers, takeovers, greenfield investments and the incorporation of companies.

Foreign investors should be aware of the 60/40 rule when doing business in Bermuda. To be classified as a “local company,” where one is able to conduct business with the local population, a company must meet the three requirements of the 60/40 rule whereby Bermudians: 1) are the beneficial owners of at least 60 percent of the shares in the company, 2) exercise at least 60 percent of the total voting rights in the company, and 3) make up at least 60 percent of the directors of the company.

Many insurance and reinsurance companies opt to become exempt companies. An exempt company is one that is incorporated by non-Bermudians and domiciled in Bermuda but is exempt from the 60/40 rule. Exempt companies may be 100% owned by non-Bermudians. The term “exempt” has nothing to do with the concept of taxation, only ownership. The tax system for both local and exempt companies is the same. Nor does the terminology imply that the companies are subject to any less supervision, regulatory oversight, or fiscal rules than are local companies. In general, exempt companies are precluded from doing business with other companies in Bermuda and may not own real property in Bermuda (with a few exceptions created by individual acts of the legislature). However, exempt companies may deal with other locally-based exempt companies without restriction and may buy their locally-needed necessities or services from local companies. Examples are the accounting, banking, legal, management and office supply services the exempt companies buy locally.

Overseas and resident investors may form partnerships under the Investment Business Act 2003. An overseas partnership is one that is governed by non-Bermudian law. Exempt partnerships and overseas partnerships must maintain an office and place of business in Bermuda and must appoint and maintain resident representatives on the island. These companies may also have places of business in Bermuda, as well as any other jurisdictions they desire.

The ownership distinction between local and exempt companies may be starting to narrow. Companies with ownership of more than 40 percent by non-Bermudians wishing to carry on business in Bermuda may apply on a case-by-case basis to the Ministry of Finance for a license pursuant to the exemption provisions under 114B of the Companies Act. Many hotels and telecommunications companies fall into this category. In recent years, the Ministry of Finance removed the 60/40 ownership restrictions as they apply to three of the island’s four banks. A factor contributing to the decision to grant those waivers may have been Bermuda’s desire to be in compliance with Organization for Economic Cooperation and Development (OECD) guidelines that seek to eliminate separate regulatory regimes for local and international companies. There is some indication that the insurance industry and financial services sector may also enjoy some liberalization in this regard in the future.

Bermuda scrutinizes who it will permit to engage in business in its country, and the vetting process undertaken in incorporating a business is straightforward, well regulated and efficient. The Bermuda Monetary Authority (BMA) is the integrated regulator of the financial services sector in Bermuda and screens all potential foreign investments. Depending on the type of business being established, the Ministry of Finance, Registrar of Companies and/or the Tax Commissioner’s Office may also become involved in the process. Because Bermuda seeks to distance itself from offshore jurisdictions that are considered tax or money laundering havens, the BMA has a list of criteria that companies must meet. At a minimum, the BMA requires: a copy of the company’s most recent financial statements, a detailed

business plan, the Memorandum and Articles of Association, equivalent documentation for non-incorporated bodies, copies of client agreements used or intended to be used for the business, personal questionnaires completed by all proposed institutional and/or individual controllers of the entity, a description of the group structure, an up-to-date chart for licensed institutions forming part of wider groups and a check for the application fee. By maintaining this standard, the BMA acts as the regulator for company incorporation. In October 2009, the BMA launched an automated e-filing and e-approval system for corporate registrations. The system enhances the existing process by improving the speed of processing applications, while maintaining the integrity of its application review procedures. Company incorporation may take as little as four weeks.

The BMA provides continuing supervision and regulation of all investment providers, which are required to submit regularly financial documentation and other information about their business. If this criterion has not been met or if there has been a failure to comply, then the BMA has the right to restrict or revoke the company's license. The BMA will notify the company, which then must initiate corrective action with the BMA within a period of 14 days. Under the Investment Business Act, the BMA may take several disciplinary actions: public censure, issuance of warning/ discontinuance notices, and, if required, winding up or dissolution of the company.

An investment provider that is aggrieved by a decision of the BMA may appeal the decision to a tribunal constituted in accordance with the Investment Business Act 2003, section 34. Bermuda's legal system, which has been in force since 1612, is based on English common law, and principles of equity as well as English statute law and the judicial system uphold the sanctity of contracts. Three courts preside in Bermuda: the Magistrates Courts, the Supreme Court and the Court of Appeal. The court of last resort in Bermuda's legal system is the Privy Council in London.

Generally, there is no discrimination against foreign investors at the time of the initial investment or after the investment is made. Bermuda does not have many privatization programs; however, foreign investors are generally not treated differently than local investors in nationalized projects. Interested parties are able to become involved once the project has been put up for tender in the Bermuda Sun (Official Gazette) where all relevant information is given. The Ministry of Public Works places its contract tendering system on its homepage for potential bidders to view. In 2009, the Bermuda Hospitals Board announced that it would adhere to Public-Private Partnership (PPP) Standards during the bidding process for redeveloping Bermuda's hospital.

Most franchises are generally not welcome in Bermuda; therefore, the GOB must give investors special permission to establish a franchise on the island. Franchise hotels are, however, an exception to this rule.

The outlook for the international business sector and financial services sectors remains strong. Although there has been some concern about the impact that proposed U.S. tax laws could have on Bermuda, for now this market remains open to potential investors.

## **Conversion and Transfer Policies**

4. The U.S. dollar is used and accepted in Bermuda side-by-side with the Bermuda dollar, which trades at par with the U.S. dollar. Both currencies are freely interchangeable and transferable without restriction; however, the BMA administers the Exchange Control Act 1972 (and regulations made there under) that states that no capital or exchange controls apply to non-residents or to the various forms of offshore entities (exempt or permit companies or partnerships), which are free to import and export funds in all currencies with a \$50,000 transfer limit. The BMA reviews all transfers on a case-by-case basis. No taxes apply to such transfers, and there is no withholding tax on interest, dividend or royalty payments. In practice, government consent is not required for Bermudians to hold foreign currency and assets. The regulations ensure the maintenance of local ownership and make sure that people coming in from other countries have been vetted and found credible and not at variance with world standards governing financial flows. In 2010, Bermuda passed the Foreign Currency Purchase Tax Amendment Act, legislation that doubled the foreign currency purchase tax from 0.5% to 1.0%. Businesses will now have to pay more tax on goods bought overseas and imported into Bermuda.

The BMA performs inspections prior to granting specific exchange control permission for the issue and transfer of registered securities in Bermudian companies to persons deemed non-resident for exchange control purposes. Additionally, the BMA must approve the issuance and transfer of securities of local and exempt companies unless listed on a stock exchange.

In December 2009, Bermuda passed The Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Amendment Regulations 2009 authorizing the BMA to oversee wire transfers. The regulations came into effect on January 13, 2010. The legislation requires financial institutions to verify the accuracy and completeness of the information on the payer/originator before transferring funds, require financial institutions to retain for a period of five years complete records on the payor/originator of the fund transfer, require financial institutions receiving wire transfers to maintain effective procedures to detect whether complete information on the payor/originator is received with the wire transfer and specify how the receiving institution should treat transfers with missing or incomplete information.

Generally, there are no major delays for remitting investment returns unless the entity needs approval from the BMA, which usually takes less than 60 days.

In March 2009, Bermuda updated the Revenue Act 1898 to strengthen the requirements relating to cross border transportation of currency and monetary instruments. The threshold for reporting is \$10,000. Mandatory declaration forms are used for all incoming passengers (regardless of point of embarkation) and for outgoing passengers to the U.S. For outgoing passengers to Canada and the U.K. there is a disclosure system in place.

### **Expropriation and Compensation**

5. Generally, there is no history or allowance for expropriation without just compensation in Bermuda, nor have there been any expropriatory acts towards U.S. investors in Bermuda. Expropriation is regulated by the Housing Loan Insurance (Mortgage) Regulations 1984 and the Municipalities Act 1923.

### **Dispute Settlement**

6. The Bermuda Monetary Authority is the primary entity involved in handling investment disputes in Bermuda. In relation to the large amount of investment business in Bermuda, dispute resolution is seldom required.

As an Overseas Territory of the United Kingdom, Bermuda's courts and legal system are based on the English legal system and are effective at enforcing property and contractual rights. The rules of practice and procedure are very similar to those of England and there is no government/authority interference in the court system. Bermuda has a lower court, Magistrates Court, and an upper court, the Supreme Court both of which could be involved in dispute settlement. There is an appellate court, the Court of Appeal, which is in session only at certain times of the year. There is also a procedure for appeals to the Privy Council of England and Wales. In addition, Bermuda has arbitration legislation, which may be invoked in certain circumstances.

With respect to international disputes, Bermuda enacted the Bermuda International Conciliation and Arbitration Act in 1993. In doing so, it adopted an internationally recognized arbitration code, the UN Commission on International Trade Law (UNCITRAL) model law of arbitration. The United Kingdom extended the 1958 UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("The New York Convention") to Bermuda in 1979, and Bermuda became a party in 1980. The result is that arbitration awards from other countries including the United States are readily enforceable in Bermuda, and vice versa. The Convention is attached as Schedule 3 to the 1993 Arbitration Act. Bermuda has not entered any reservations regarding its ratification of the New York Convention. The United Kingdom has also ratified and extended to Bermuda the Washington Convention on the Settlement of Investment Disputes between States and Nationals of other States (1965) ("ICSID Convention"), although Bermuda is not a party to any bilateral or multilateral investment treaties.

It is the current unwritten policy of the Ministry of Economy, Trade and Industry that arbitrators and foreign counsel travelling to Bermuda for the purposes of arbitration do not need work permits. The Department of Immigration does require advance notice of the presence of such individuals in the jurisdiction for the purpose of the arbitration.

Commercial arbitration in Bermuda has been directly linked with the growth of international companies, in particular insurance and reinsurance companies. Arbitration clauses can be found in many insurance and reinsurance contracts. Often, these contracts name Bermuda as the arbitral seat, although they sometimes provide for arbitration in other locations, including in London under New York substantive law (the so-called "Bermuda form"). Providing for arbitration in Bermuda pursuant to Bermudian

substantive and procedural law is becoming increasingly popular in lieu of “Bermuda form” arbitration clauses.

Bermuda has a bankruptcy law – the Bankruptcy Act 1989. The Supreme Court (a first instance court of unlimited jurisdiction) administers the winding up of companies. In Bermuda, the Companies Act 1981 and the Companies (Winding Up) Rules 1982 govern the winding-up of companies. Foreign money judgments can be enforced under Bermudian law either under statute or common law, depending upon the country in which the original judgment was obtained. Under the Judgments Reciprocal Enforcement Act 1958 (JRE), Bermudian courts will recognize and enforce foreign money judgments as if they had been originally obtained in Bermuda. The JRE follows the same procedure as the Foreign Judgments (Reciprocal Enforcement) Act (1933) of the United Kingdom. A foreign creditor may apply for the bankruptcy of an individual or for the winding-up of a company provided the creditor follows the procedures set out in the Bankruptcy Act 1989 and the Companies Act 1981, respectively.

### **Performance Requirements/Incentives**

7. There are no grants or incentives available to foreign or domestic investors interested in investing in Bermuda, except related to tourism and certain energy efficient goods and technologies. The Hotel Concession Act (1991) may provide full or partial relief from, or deferral of customs duty for, materials used in hotel renovations, and/or tax on land, occupancy, and payroll and/or lease requirements. Special development orders (SDO) may be granted on a case-by-case basis. The expanded version of the Temporary Customs Duty Relief Bill (2002) extends similar relief for restaurant renovations. In 2010, the GOB removed the import duty on many energy efficient goods and goods for use in harnessing power from renewable energy resources.

Bermuda’s low taxation incentives are applicable to Bermudian and non-Bermudian businesses alike. There is no income tax, profits tax, withholding tax, capital gains tax, capital transfer tax, estate duty or inheritance tax, VAT or sales tax in Bermuda, although there is duty on almost all goods imported into Bermuda. Annual government fees are imposed on businesses, and there is a payroll tax that both employers and employees pay, which was increased in 2010 from 14% to 16%.

The 60/40 rule can be seen as both a requirement and an incentive to do business in Bermuda. As previously stated, local companies (those that can conduct business with other local businesses in Bermuda) must adhere to the three requirements of the 60/40 rule whereby Bermudians 1) are the beneficial owners of at least 60 percent of the shares in the company, 2) exercise at least 60 percent of the total voting rights in the company, and 3) make up at least 60 percent of the directors of the company. Hence, most international companies opt to become exempt companies, thereby able to claim 100% ownership of their companies, maintain an offshore domicile and conduct business globally except with local Bermudian companies.

The BMA usually imposes minimum capital and regulatory requirements for exempt companies. These are found under the Statement of Principles of the agreement that is drawn up between the BMA and the investor. The Statement of Principles defines which assets the BMA accepts as liquid and applies a standard requirement for liquid assets to be at least equivalent to the total of three months’

expenditure, other than in the case of licensees who act neither as principal nor agent where only one month's expenditure must be maintained in the form of liquid assets.

The GOB requires investors to consider employing Bermudian workers where at all possible. To support this objective, Bermuda Immigration implemented two rules. The first rule states that companies must hire an equally qualified Bermudian or qualified spouse of a Bermudian before hiring a qualified foreign national. The second one pertains to a six year work permit rule under the Employment Act 2000, which states that foreign workers may work in Bermuda for up to six years unless their employers can demonstrate that they are "key employees," whereupon they may be permitted to work in Bermuda for up to nine years. These rules ensure that foreign nationals do not remain on the island for extended periods of time with the possibility of becoming permanent residents. The GOB's objectives are to encourage the training and eventual hiring of locals to fill senior management positions.

The Bermuda Customs Department is not aware of any discriminatory or preferential import or export policies affecting foreign investors, although the Bermuda Customs Tariff contains a number of preferential duty reliefs for certain local commercial activities (e.g. goods for the poultry and dairy industry). Investors do not have to purchase goods from local suppliers or export a certain percentage of output.

Because of Bermuda's small size, the GOB does not normally solicit investment in infrastructure.

#### **Right to Private Ownership and Establishment**

8. Commercial property ownership is a function of classification under the amended Companies Act pursuant to Section 114(b), where local companies are authorized to own property. Exempt companies, for the most part, may not own property, although they may lease commercial land for up to 50 years and residential property for their employees for up to 21 years. According to the Hotel Concession Act section 4 (h) "that notwithstanding the provisions of section 78 of the Bermuda Immigration Act 1956 and paragraph 12 of the First Schedule to the Companies Act 1981, a company may lease a hotel or residential unit for a period not exceeding 131 years with an option to renew for a similar period."

The residential housing market has historically been characterized by a shortage of affordable housing. Conscious of this shortage, the GOB enacted a law that states that non-Bermudians may only purchase one residential home from other non-Bermudians, and Bermudians may only sell to other Bermudians. Bermudians can purchase homes from anyone they wish. The goal over time in separating the two pools of housing is to decrease expatriate home ownership. Homes that can be sold to expatriates must have a minimum annual rental value (ARV) of \$153,000 (\$12,750 per month), thus further restricting expatriate purchases. The same policy applies to the expatriate purchase of condominiums, which must have a minimum ARV of \$32,400 (\$2700 per month). The ARV is not only the basis for taxation but also the basis for setting the threshold of value at which foreigners may purchase. As a practical matter, this limit protects approximately 95% of the island's homes from foreign purchase. In general, single family dwellings with price tags of less than \$5.5 million may be sold to Bermudians only, not foreign nationals. The Bermuda Immigration and Protection (Land Holding Charges) Regulations 2009, enacted in

December 2009, mandate that non-Bermudians must now pay a heavy 25% upfront purchase tax on homes and an 18% tax for condominiums.

The GOB has relatively few monopolies, among which are trash collection and ferry services. The government's postal service is in competition with private mail services; public education competes with private education; and the public bus service competes with taxis, local mini-bus services, and multiple-passenger airport buses. Competition among telecommunications companies is keen.

### **Protection of Property Rights**

9. The Acquisition of Land Act (1970), the Development and Planning Act (1974), and the Registry General protect and facilitate the acquisition and disposition of all property rights, such as land, buildings, and mortgages. Bermuda also has a land tax office and land valuations office. A system of land registration in Bermuda is planned but has not yet taken effect. Without this registration system, land owners must retain a Bermudian lawyer to research the history of the property and insure that a third party does not have a claim. Every time a piece of real estate in Bermuda changes hands it is recorded in a deed of conveyance or a mortgage.

Bermuda protects property rights through the Mortgage Registration Act 1786. The Book of Mortgages at the Registrar General's Office has details of all conveyances where mortgages are involved and all re-conveyances satisfying the mortgage. Bermuda banks are willing to lend approved buyers up to 80 percent of the appraised value of a house. With an average mortgage of 20 years, persons who are loaned \$400,000 for a \$500,000 house will pay a variable rate from 6.25% plus fees. A household would need to earn at least \$7,000 a month to qualify. Organizations that provide mortgages include local banks, Bermuda Savings & Loan, some local (Bermudian) insurance companies and some law firms' trust departments. Some of these organizations will lend to non-Bermudians. Terms range from 5-20 years.

There is adequate protection for intellectual property, patents, copyrights, trademarks and trade secrets. As an Overseas Territory of the United Kingdom, Bermuda is subject to the same treaties to which the UK is a party, including those concerning intellectual property rights. The island cannot enter into treaties separate and apart unless the UK expressly authorizes it to do so. The GOB adheres to two international agreements, the Copyright and Designs Act 2004 and the Berne Convention. Two acts regulate the rights and registration of intellectual property: the Trademarks Act 1974 and the Patents and Designs Act 1930. The GOB has taken steps to implement the WTO TRIPS agreement; however, it has yet to sign the World Intellectual Property Organization (WIPO) internet treaties.

### **Transparency of the Regulatory System**

10. Bermuda's legal, regulatory and accounting systems adhere to high ethical and current transparency standards. The legal and regulatory systems are grounded in UK law, while the accounting systems and auditing standards typically follow Canadian Generally Accepted Accounting Principles (GAAP). A Bermudian company may choose to follow the GAAP of any other jurisdiction, subject to full disclosure of its accounts. Bermuda is also a member of regulatory standard-setting bodies for banking (BASEL), insurance (International Association Insurance Supervisors -IAIS) and investment business (Financial

Services Authority –FSA). Bermuda is not considered an offshore financial centre as there is no distinction in how it regulates businesses operating in the local economy and those operating internationally from within Bermuda. The BMA continues to apply differentiated requirements involving lighter regulation when institutional and sophisticated investors are involved, with greater reliance on transparency and disclosure.

The Bermuda Monetary Authority continually strives to improve transparency in the regulatory regime and permits no unlicensed or unregistered entities to operate in the financial services sector. The BMA is the sole regulatory body for financial services and is responsible for the licensing, supervision, and regulation of financial institutions, including those conducting deposit-taking, insurance, investment, and trust business in Bermuda. There are separate regulatory acts that apply to each sector (e.g. trusts, deposit taking, investment business etc.). The GOB posts new laws and regulations in the Bermuda Sun (Official Gazette) for public comment.

The BMA regulates collective investment schemes (CISs), and fund administrators are regulated persons for the purposes of the Proceeds of Crime Act (POCA). To strengthen regulations, CISs, including hedge funds, are subject to the Investment Funds Act (IFA), which came into effect in January 2007. The IFA is the legal framework for regulating investment funds, which includes, in addition to mutual funds and trust units, other business vehicles that pool and manage investment monies.

The amended Investment Business Act (2003) enhances the regulatory powers of the BMA, granting the BMA stronger intervention powers and clarifying provisions, such as the BMA's ability to cooperate with foreign bodies. Other provisions include measures to strengthen criminal and regulatory penalties. The Investment Business Act also brought the Bermuda Stock Exchange (BSX) under the regulation of the BMA.

In 2008, Bermuda passed the Proceeds of Crime Regulations (Supervision and Enforcement) Act (2008), which designated the BMA as the supervisory body for securing compliance with the regulations by regulated entities. The BMA has recently increased its resources, including adding more staff, to handle its responsibilities.

In March 2009, the BMA issued Guidance Notes for AML/ATF Regulated Financial Institutions on Anti-money Laundering and Anti-terrorist Financing, outlining and interpreting the legal and regulatory framework, indicating good industry practices, and assisting institutions to design and implement systems and controls to limit AML/ATF risks to institutions. This was followed up by an AML/ATF market survey, which was designed to ensure that licensed entities are in compliance with the Proceeds of Crime Regulations.

Bermuda is a member of the Egmont Group of Financial Intelligence Units, in which information sharing is implicit. The BMA Amendment (No. 3) Act (2004) clarifies the power of the BMA to cooperate with other overseas authorities. Other laws also authorize the sharing of information with overseas regulators: the Banks and Deposit Companies Act (1999), the Trusts (Regulation of Trust Business) Act (2001) and the Investment Act (2003).

## **Efficient Capital Markets and Portfolio Investment**

11. The GOB's policies facilitate the free flow of financial resources to support the flow of resources in the product and factor markets. Bermuda has the third largest insurance market in the world, thus must stay on top of the latest insurance product innovations. Bermuda also has a commercially sensible regulatory regime, an international stock exchange, an established financial and legal services sector and a geographical position between the U.S. and European markets, all which make it a prime jurisdiction where the insurance world and capital markets converge. Institutional credit lines are normally arranged through U.S. or UK institutions. The Banks and Deposit Companies Act (1999) implements the Basel Committee's Core Principles for Effective Banking Supervision. Bermuda banks are compliant with the Basel II Accord. Bermuda's currency, the Bermuda dollar, is fixed or pegged 1:1 to the U.S. dollar. The Bermuda Monetary Authority (BMA), which has limited central bank powers, oversees Bermuda's currency. The BMA also facilitates portfolio investment but does not determine interest rates, which are set by the market and usually follow the FED (Federal Reserve) rates. Liquidity and solvency are important concerns for Bermuda's four banks as there is no monetary policy, no lender of last resort, no deposit insurance (although one is currently being developed per 2010 BMA business plan), and no implied guaranty.

Having its economy so intertwined with the U.S. has heavily influenced local capital restriction policies, driving these towards an open flow of capital. Bermuda does not have developed capital markets, as it is virtually part of the U.S. and other overseas markets. Credit is allocated on market terms and foreign investors are able to get credit on the local and international market. The private sector has access to a variety of credit instruments through the local banks. Many companies, particularly the large ones, maintain external banking relationships. Since Bermuda does not have a central bank and does not conduct a controlling monetary policy, it has no need to intervene in the markets.

Bermuda's banks are comparatively highly capitalized and hold significantly high quantities of liquid U.S. dollar assets on their balance sheets. Approximately two-thirds of their aggregate balance sheet consists of inter-bank placements or holdings of high quality marketable securities. Total assets for the two largest banks in Bermuda for 2009 were: Bank of Butterfield, \$9.6 billion and HSBC Bank of Bermuda, \$10.7 billion. Loans and advances account for less than 40 percent of total assets. The banks are required to meet a minimum capital ratio of 10 percent at the consolidated level but, in practice, the aggregate ratio exceeded 20 percent in 2009. In other matters, the banks follow the Bank of England model. They are required to maintain separately capitalized subsidiaries in order to conduct their trust business. Noteworthy in 2009 was the placement of the country's largest ever initial public offer (IPO) with Butterfield Bank raising \$200 million largely supported by Bermuda-based investors. Then in March 2010, Butterfield Bank received \$550 million of new capital from foreign investors, the Carlyle Group and Canadian Imperial Bank of Commerce (CIBC). This deal was completed before shareholders were notified or able to vote on this transaction. The injections of extra capital are to enable the bank to de-risk its balance sheets and work toward a quick return to profitability.

The U.S. Securities and Exchange Commission recognized the Bermuda Stock Exchange (BSX) as a "Designated Offshore Securities Market" in October 1996. Three years later the BSX became a full

member of the International Federation of Stock Exchanges. In 2005, the UK Financial Services Authority granted the BSX Designated Investment Exchange status. The BMA provides oversight of the BSX and its trading activity. The BSX introduced an electronic clearing, settlement and registration system designated as the Bermuda Securities Depository (BSD), which is also under the supervision of the BMA. The BSD was designed to facilitate more efficient trade settlement for BSX-listed securities by allowing book entry settlement rather than paper-based settlement. Some examples of companies listed on the BSX include: ACE Limited, Argus Group Holdings Limited, Bermuda Commercial Bank, Bank of Butterfield, HSBC Corporate Money Funds, Lines Overseas Management and Orbis.

### **Competition from State-Owned Enterprises (SOEs)**

12. Bermudian state-owned enterprises (SOEs) are active in the public transportation sector (buses and ferries), the healthcare system, electrical utility (BELCO), and the post office. The rest of the economy is in the hands of private enterprise. Public enterprise generally has easier access to market, credit, licensing and other business operations than private enterprises do in Bermuda and fall under the Bermuda Industrial Union.

These state-owned enterprises are required to provide financial information as necessary to the department heads, who then submit the financial information annually to the Auditor General. Governance of the SOEs are in a pyramid structure whereby a politically-appointed Minister heads the department, followed by a Permanent Secretary, the heads of each department, then the support staff. Generally, no boards of directors are affiliated with Bermuda SOEs; however, some departments may have advisory boards.

### **Corporate Social Responsibility (CSR)**

13. There is a general awareness of corporate social responsibility among both producers and consumers. There are many local and international companies domiciled in Bermuda that practice corporate social responsibility (CSR). Many firms become involved in philanthropic endeavors such as donating, volunteering, and fundraising for local and international causes. Many companies also have environmental programs in place that work on reducing their carbon dioxide emissions and building “green” office spaces and buildings.

Businesses may apply to the Minister of Economy, Trade and Industry for designation as a “Good Corporate Citizen.” This program identifies companies of good standing in Bermuda that support (via training, scholarships) and employ a fair number of Bermudians. If a company meets the criteria, the Minister may grant pending work permit applications permission-in-principle and fast-track them through the work permit process.

### **Political Violence**

14. There have been no recent incidents of political violence in Bermuda.

## **Corruption**

15. Bermuda has laws, regulations and penalties to combat corruption effectively and enforces them impartially. The Bermuda Criminal Code (1907) and the Proceeds of Crime Act (1997) make provisions for punishing corrupt practices in the area of investments, particularly for the offences of misleading statements and practices, market manipulation and insider dealing. The Parliamentary Election Act (1978) addresses giving bribes to (or accepting bribes from) a government official; the penalty under this act is \$1,000 or up to two years imprisonment or both. The Parliament Act of (1957) provides for a five-year imprisonment and/or up to \$84,000 in fines for the bribery of a member of the House of Legislature.

Most recently in 2010, several 2007/08 reports by both the current and former auditors general were published that found evidence of massive mismanagement of government funds and recommended that police investigate four cases of overspending and/or lack of oversight and poor internal controls. As a result of the Auditor General's report, the Ministry of Finance has asked the Bermuda police to investigate further. The Minister of Finance stated that "The Government is moving already to further strengthen tendering and procurement practices, including ensuring that there is the appropriately provided expertise to ensure proper scoping and design of capital projects to reduce subsequent change orders that are often the cause of cost overruns".

Keen to rise above any perceived impropriety associated with offshore centers, Bermuda continues to update its regulatory framework to meet international standards, including those of the International Monetary Fund (IMF) and those espoused by the Financial Action Task Force (FATF) and the Organization for Economic Cooperation and Development (OECD).

## **Bilateral Investment Agreements**

16. There is no bilateral investment treaty between Bermuda and the United States.

Bermuda has a bilateral taxation treaty with the U.S. signed on 11 July 1986 entitled "Convention between the Government of the United Kingdom of Great Britain and Northern Ireland (on Behalf of the Government of Bermuda) and the Government of the United States of America Relating to the Taxation of Insurance Enterprises and Mutual Assistance in Tax Matters." Under the U.S. - Bermuda Tax Convention Act, the United States agrees to waive for eligible Bermudian insurance companies any income and excise taxes on insurance premium income derived from the United States. An "eligible" company is defined as one a) whose "predominant business activity is the issuing of insurance, reinsurance, or annuity contracts and the investing of insurance reserves and other capital incident to the carrying on of the insurance business," and b) that does not operate as a permanent establishment in the U.S.

Bermuda has been added to the category "A" list of signatories to the IOSCO MMOU (International Organization of Securities Commissions Multi-lateral Memorandum of Understanding), which provides for mutual co-operation and the exchange of information among securities regulators. In June 2009, the BMA was approved as a signatory to the new Multi-lateral Memorandum of Understanding (MMoU)

established by the International Association of Insurance Supervisors (IAIS). The IAIS developed the MMoU to establish a formal basis for cooperation and information exchange between signatory regulators who supervise insurers with international, or cross border operations.

### **OPIC and Other Investment Insurance Programs**

17. Bermuda is an Overseas Territory of the UK and is not a member of OPIC or any other investment insurance programs.

Investors in Bermuda do not enjoy the same kinds of protections as provided by other jurisdictions such as the U.S. and should exercise their own “due diligence.” There is no deposit protection for owners of mutual funds or trusts, nor is there any central fund to reimburse investors. The BMA does, however, maintain as public information a register of all licensed investment service providers. Moreover, investment managers must be licensed pursuant to the Investment Business Act of 1998. Prior to licensing, the investment service must provide proof of adequate professional indemnity insurance. In 2006, the GOB passed the Investment Funds Act, which clearly outlines how public funds are regulated and defines the framework for non-public, institutionalized funds.

### **Labor**

18. Historically, a large part of the international business, hotel and hospitality, and construction workforce has come from overseas as there has been a lack of skilled qualified labor available in the island’s small population. This fact has become a political issue among Bermudians, the Bermuda Government and the business community seeking qualified skilled personnel. There have been some instances where a company has been forced to hire a Bermudian apprentice in lieu of a qualified foreign national. Regardless of this fact, Bermuda usually enjoys a comparatively low unemployment rate; it was 4.5% in 2010, up from previous years when it was as low as 2.1%.

The Bermuda Government requires investors to consider employing Bermudian workers where at all possible. To support this objective, the Bermuda Department of Immigration implemented two rules. The first rule states that companies must hire an equally qualified Bermudian or qualified spouse of a Bermudian before hiring a qualified foreign national. The second rule states that foreign workers may work in Bermuda for up to six years unless their employers can demonstrate that they are “key employees,” whereupon they may be permitted to work in Bermuda for up to nine years. These rules ensure that foreign nationals do not remain on the island for extended periods of time with the possibility of becoming permanent residents. The GOB’s objectives are to encourage the training and eventual hiring of locals to fill senior management positions. Thus, while limited work permits are issued to foreigners, there is a constant need on the part of corporations to prove that qualified Bermudians are unavailable to perform the job.

Although Bermuda continues to have labor disputes (covered under the Labour Disputes Act (1992)), the number of disputes has decreased in recent years due in part to the passage of fair labor laws favored by most Bermudians. The government-related labor force is highly unionized; labor relations can be adversarial and at times contentious, particularly in the public service sector and the hotel industry.

### **Foreign Trade Zones/Free Ports**

19. Bermuda has no free port or duty-free import zones.

### **Foreign Direct Investment Statistics**

20. There are few details available regarding foreign direct investment in Bermuda. In general, ownership in the Bermuda insurance sector is geographically diverse, but U.S. companies own approximately 60% of the active commercial insurers. Bermudian-owned and European-owned insurers represent approximately 20% and 15% of the market, respectively. Around one in three commercial insurers are publicly-listed companies, of which two-thirds were listed on U.S. exchanges. The insurance sector accounted for approximately 10% of the total employment of 40,213 in Bermuda in 2008. The growth in the insurance sector helped boost the market's total assets, which grew 7% in 2008. The combined assets of Bermuda's commercial and captive insurers were \$472.96 billion at year-end 2008 compared with \$442.24 billion a year earlier.

## Web Resources

- Bermuda Hospitals Board: [www.bermudahospitals.bm](http://www.bermudahospitals.bm)
- Bermuda Insurance Market: [www.bermuda-insurance.org](http://www.bermuda-insurance.org)
- Bermuda International Business Association [www.biba.org](http://www.biba.org)
- Bermuda Laws On-line [www.bermudalaws.bm](http://www.bermudalaws.bm)
- Bermuda Monetary Authority [www.bma.bm](http://www.bma.bm)
- Bermuda On-line: <http://bermuda-online.org>
- Bermuda Stock Exchange: [www.bsx.com](http://www.bsx.com)
- Business Bermuda: [www.businessbermuda.org](http://www.businessbermuda.org)
- Department of Statistics: <http://www.statistics.gov.bm>
- Government of Bermuda: [www.gov.bm](http://www.gov.bm)
- HSBC Bank of Bermuda: [www.bankofbermuda.bm](http://www.bankofbermuda.bm)
- Registrar of Companies: [www.roc.gov.bm](http://www.roc.gov.bm)
- The Royal Gazette: [www.theroyalgazette.com](http://www.theroyalgazette.com)