

# Bermuda

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RISK & COMPLIANCE REPORT

DATE: January 2017

<b>Executive Summary - Bermuda</b>	
<b>Sanctions:</b>	None
<b>FAFT list of AML Deficient Countries</b>	No
<b>Higher Risk Areas:</b>	Not on EU White list equivalent jurisdictions Offshore Finance Centre
<b>Medium Risk Areas:</b>	Compliance with FATF 40 + 9 Recommendations Weakness in Government Legislation to combat Money Laundering
<p><b>Major Investment Areas:</b></p> <p><b>Agriculture - products:</b> bananas, vegetables, citrus, flowers; dairy products, honey</p> <p><b>Industries:</b> international business, tourism, light manufacturing</p> <p><b>Exports - commodities:</b> reexports of pharmaceuticals</p> <p><b>Exports - partners:</b> Australia 17%, US 14.8%, Indonesia 12.6% (2012)</p> <p><b>Imports - commodities:</b> clothing, fuels, machinery and transport equipment, construction materials, chemicals, food and live animals</p> <p><b>Imports - partners:</b> South Korea 46.2%, US 21%, Singapore 9.9%, China 7%, Turkmenistan 4.8% (2012)</p>	
<p><b>Investment Restrictions:</b></p> <p>The 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</p>	

regulated, and efficient process, and the GOB has recently announced its intention to streamline the process even further.

Foreign investors should be aware that Bermudians generally feel strongly about ensuring that the assets of Bermuda benefit Bermudians, guaranteeing Bermudians have first preference with regard to employment, and retaining real property for the citizens of Bermuda.

Foreign investors interested in doing business in Bermuda should be aware of the 60/40 rule. To be classified as a "local" or "non-exempt" company, and able to conduct business within the local economy, a company normally must meet the following three requirements: (1) Bermudians must be beneficial owners of at least 60 percent of the shares in the company; (2) Bermudians must exercise at least 60 percent of the total voting rights in the company; and (3) Bermudians must make up at least 60 percent of the directors of the company.

Companies with non-Bermudian ownership of more than 40 percent wishing to do business in the local economy generally must apply to the Ministry of Finance for a license pursuant to the exemption provisions of section 114B of the Companies Act. Many hotels and telecommunications companies fall into this category. In recent years, the Ministry of Finance waived the 60/40 ownership restrictions as they apply to three of the island's four banks. A factor contributing to this decision may have been an interest in complying with Organization for Economic Cooperation and Development (OECD) guidelines that seek to eliminate separate regulatory regimes for local and international companies. In 2012, the ownership distinction between local/non-exempt and exempt companies began to narrow even further. In July 2012, Bermuda amended the Companies Act to allow companies listed on the Bermuda Stock Exchange to apply for a license to seek foreign investment over and above the 40 percent maximum foreign ownership. The GOB hopes that relaxation of the rule will attract foreign investment, increase liquidity in the local market, and boost the economy.

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## Section 1 - Background

Bermuda was first settled in 1609 by shipwrecked English colonists headed for Virginia. Vacationing to the island to escape North American winters first developed in Victorian times. Tourism continues to be important to the island's economy, although international business has overtaken it in recent years. Bermuda has also developed into a highly successful offshore financial center. A referendum on independence from the UK was soundly defeated in 1995.



## Section 2 - Anti – Money Laundering / Terrorist Financing

### FATF status

Bermuda is not on the FATF List of Countries that have been identified as having strategic AML deficiencies

### Compliance with FATF Recommendations

The last Mutual Evaluation Report relating to the implementation of anti-money laundering and counter-terrorist financing standards in Bermuda was undertaken by the Financial Action Task Force (FATF) in 2008. According to that Evaluation, Bermuda was deemed Compliant for 9 and Largely Compliant for 10 of the FATF 40 + 9 Recommendations. It was Partially Compliant or Non-Compliant for 4 of the 6 Core Recommendations.

### Key Findings from latest Mutual Evaluation Follow-Up Report (2013):

Since Bermuda's second follow-up report of May 2011, the jurisdiction has enacted amendments to the Proceeds of Crime Act 1997 (POCA); the Revenue Act 1898 (RA), the Insurance Act of 1978 (IA), the Banks and Deposit Companies Act 1999 (BDCA), the Investment Business Act 2003 (IBA), and the Trusts (Regulation of Trust Business) Act 2001 T(RTB)A. Bermuda has also enacted new legislation in the form of the Corporate Service Provider Business Act 2012 (CSP Act). The CSP Act became law on January 1, 2013, and is intended to regulate corporate service provider business and also for protecting the interests of clients and potential clients of persons carrying on corporate service provider business. The CSP Act requires CSPs to be licensed with, and supervised by the BMA. This action ensures that a prudential and AML/ATF regime for CSPs, under the aegis of the BMA, similar to that which was already in place for the trust industry, will not only enhance the efficiency of the corporate formation process but is also consistent with international best practice standards for the sector.

By way of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Designation Order 2012, Bermuda, in August 2012, established a new supervisory authority in the form of the Barristers and Accountants Anti-Money Laundering and Anti-Terrorist Financing Board (the Board) for legal and accountancy service businesses i.e. "Regulated professional firms". Therefore "independent professionals" i.e. persons carrying on legal and accountancy service business have now been brought under the scope of the AML/ATF Regulations and are therefore "relevant persons" pursuant to r. 2(1) and 4(b) of the said AML/ATF Regulations. Also, during 2012, the Minister of Justice approved the Guidance Notes for the Accounting and Legal Sectors

As already described in the 1st follow-up report, Bermuda has implemented measures in many specific areas to address some of the gaps identified in its Detailed Assessment Report with respect to the Key, Core and other Recommendations and Special Recommendations. These measures have had the effect of significantly closing the gaps discerned in the MER. The measures detailed below were however taken since the 1st follow-up report.

### US Department of State Money Laundering assessment (INCSR)

Bermuda was deemed a 'Monitored' Jurisdiction by the US Department of State 2016 International Narcotics Control Strategy Report (INCSR).

Key Findings from the report are as follows: -

#### Perceived Risks:

Bermuda, a British Overseas Territory, is a major offshore financial center. It is the third largest reinsurance center in the world and the second largest captive insurance domicile. Bermuda is not considered a major drug transit country. To the extent money laundering occurs in Bermuda, it is believed to be principally related to the domestic drug trade. Money laundering proceeds are controlled primarily by drug trafficking organizations and domestic gangs, which have proliferated in recent years.

There is no significant black market for smuggled goods in Bermuda. There is no known money laundering/terrorist financing activity through free trade zones, or money or other value transfer services in Bermuda. However, there were cases where domestic criminals utilized the formal financial sector for money laundering purposes. Bermuda does not permit offshore banks. A foreign bank may establish a subsidiary as a Bermuda company with its own board of directors, but it may not establish a branch. Bermuda does not permit bearer shares, nor does it permit shell companies. Sports betting is legal, but online betting and casinos are not permitted; however, the Casino Gaming Act 2014, passed in December 2014, will permit casino gaming in future hotel developments, subject to the oversight of an independent gaming commission.

DO FINANCIAL INSTITUTIONS ENGAGE IN CURRENCY TRANSACTIONS RELATED TO INTERNATIONAL NARCOTICS TRAFFICKING THAT INCLUDE SIGNIFICANT AMOUNTS OF US CURRENCY; CURRENCY DERIVED FROM ILLEGAL SALES IN THE U.S.; OR ILLEGAL DRUG SALES THAT OTHERWISE SIGNIFICANTLY AFFECT THE U.S.: NO

#### CRIMINALIZATION OF MONEY LAUNDERING:

"All serious crimes" approach or "list" approach to predicate crimes: Combination approach  
Are legal persons covered: criminally: YES civilly: YES

#### KNOW-YOUR-CUSTOMER (KYC) RULES:

Enhanced due diligence procedures for PEPs: Foreign: YES Domestic: NO  
KYC covered entities: Banks, trustees, securities brokers and financial management firms, long-term insurance companies, money service businesses, insurance managers and brokers, fund administrators, investment fund operators, and independent legal advisers and accountants

**REPORTING REQUIREMENTS:**

Number of STRs received and time frame: 389: January 1 – November 17, 2015

Number of CTRs received and time frame: Not applicable

STR covered entities: All persons in the course of their trade, profession, business, or employment

**MONEY LAUNDERING CRIMINAL PROSECUTIONS/CONVICTIONS:**

Prosecutions: 13: January 1 – November 17, 2015

Convictions: 7: January 1 – November 17, 2015

**RECORDS EXCHANGE MECHANISM:**

With U.S.: MLAT: YES Other mechanism: YES

With other governments/jurisdictions: YES

Bermuda is a member of the Caribbean Financial Action Task Force (CFATF), a FATF-style regional body.

**ENFORCEMENT AND IMPLEMENTATION ISSUES AND COMMENTS:**

Effective April 1, 2014, the Customs Department became part of the Ministry of National Security, which supports collaboration among the various law enforcement agencies as they now are part of the same ministry. The Charities Act came into force on December 31, 2014, thereby bringing the charities sector under AML/CFT supervision. The Proceeds of Crime (Asset Retention) Amendment Act 2015 came into force in Bermuda on July 23, 2015. This act provides for Bermuda to retain 50 percent of funds repatriated at the request of another jurisdiction when the funds are deemed to be the proceeds of crime or from some form of unlawful conduct. The legislative framework for the regulation and supervision of corporate service providers (CSPs) has been passed by Parliament. CSPs will be supervised by the Bermuda Monetary Authority.

The majority of filed suspicious transaction reports (STRs) continue to show a trend of suspicious currency exchanges, with 75 percent of the STRs involving the exchange of Bermuda currency for a foreign currency, usually U.S. dollars. The Financial Intelligence Agency, Bermuda's financial intelligence unit, believes it is highly likely the reported cash exchanges are connected to Bermuda's drug trade. In 2015, cash seizures amounted to \$1,492,959 and forfeitures amounted to \$2,996,713. The Government of Bermuda works closely with international partners and the Bermuda Police Service continues to provide assistance to U.S. and other law enforcement agencies.

As a British Overseas Territory, Bermuda cannot sign or ratify international conventions. Instead, the UK, which is responsible for Bermuda's international affairs, may arrange to extend the ratification of any convention to Bermuda. The 1988 UN Drug Convention was extended to Bermuda in 1995. In 2014, two conventions were extended to Bermuda, the UN Convention Against Transnational Organized Crime and the International Convention for the Suppression of the Financing of Terrorism. The UN Convention Against Corruption (UNCAC) has not yet been extended to Bermuda; however, legislation has been reviewed and the necessary amendments will be made to ensure the articles of UNCAC are enshrined in the domestic legislative framework; this process is ongoing.

### **Current Weaknesses in Government Legislation (2013 INCRS Comparative Tables):**

According to the US State Department, Bermuda does not conform with regard to the following government legislation: -

**Record Large Transactions** - By law or regulation, banks are required to maintain records of large transactions in currency or other monetary instruments.

**International Terrorism Financing Convention** - States parties to the International Convention for the Suppression of the Financing of Terrorism, or a territorial entity to which the application of the Convention has been extended by a party to the Convention.

**States Party to United Nations Transnational Organised Crime Convention** - States party to the United Nations Convention against Transnational Organized Crime (UNTOC), or a territorial entity to which the application of the Convention has been extended by a party to the Convention.

**States Party to United Nations Convention Against Corruption** - States party to the United Nations Convention against Corruption (UNCAC), or a territorial entity to which the application of the Convention has been extended by a party to the Convention.

### **EU White list of Equivalent Jurisdictions**

Bermuda is not currently on the EU White list of Equivalent Jurisdictions

### **World Governance indicators**

[To view historic Governance Indicators Ctrl + Click here and then select country](#)

### **Failed States Index**

[To view Failed States Index Ctrl + Click here](#)

### **Offshore Financial Centre**

Bermuda is considered to be an Offshore Financial Centre

### **US State Dept Trafficking in Persons Report 2012 (introduction):**

Migrant workers are employed in Bermuda under a strict system of government work permits obtained by employers on behalf of the foreign workers. There were some reported cases of employers confiscating passports and threatening complaining migrant workers with having to repay the entire cost or the return portion of their airline tickets. Bermuda authorities and NGOs reported victims rarely lodge formal complaints out of fear of deportation. The Bermuda Industrial Union in 2009 began offering union protection to some migrant workers. There was one trafficking victim from Bermuda identified in the United States during the reporting period.

## International Sanctions

None Applicable

## Bribery & Corruption

Index	Rating (100-Good / 0-Bad)
Transparency International Corruption Index	N/A
World Governance Indicator – Control of Corruption	87

## Corruption and Government Transparency - Report by US State Department

Bermuda has a series of laws, regulations and penalties to combat corruption and, generally speaking, effectively enforces them. In 2012, Parliament passed the Good Governance Act 2012 to discourage financial abuse by ministers and members of the civil service and to protect whistleblowers. Under the Act, politicians who attempt to influence the award of government contracts could face a USD 10,000 fine and a year-long jail sentence. The penalties also apply to contractors and public officers found guilty of collusion. The Act also improved the transparency and accountability of government contracts, strengthened requirements for internal audits, and established an Office of Project Management and Procurement to strengthen oversight and control of government projects.

The Bermuda Criminal Code and the Proceeds of Crime Act provide for punishing corrupt practices in the area of investments, particularly for misleading statements and practices, market manipulation, and insider trading.

To distance itself from perceived impropriety often associated with offshore banking centers, Bermuda continues to update its regulatory framework to meet international standards, including those of the IMF, the Financial Action Task Force (FATF) and the OECD.

## Section 3 - Economy

Despite four years of recession and a public debt of \$1.4 billion, Bermuda enjoys the fourth highest per capita income in the world, about 70% higher than that of the US. The average cost of a single-family home in 2012 was \$1.1 million. Its economy is primarily based on international business and the provision of financial services to that sector, and to a lesser extent tourism. A number of reinsurance companies relocated to the island following the 11 September 2001 attacks on the US and again after Hurricanes Katrina, Rita, and Wilma in 2005, contributing to the expansion of an already robust international business sector. Bermuda's tourism industry - which derives over 80% of its visitors from the US - continues to struggle and has dropped in its relevant importance to the economy, although it is still important as a job creator. Bermuda must import almost everything. Agriculture is limited due to the small size of the island and Bermuda's industrial sector is small.

### **Agriculture - products:**

bananas, vegetables, citrus, flowers; dairy products, honey

### **Industries:**

international business, tourism, light manufacturing

### **Exports - commodities:**

reexports of pharmaceuticals

### **Exports - partners:**

Australia 17%, US 14.8%, Indonesia 12.6% (2012)

### **Imports - commodities:**

clothing, fuels, machinery and transport equipment, construction materials, chemicals, food and live animals

### **Imports - partners:**

South Korea 46.2%, US 21%, Singapore 9.9%, China 7%, Turkmenistan 4.8% (2012)

## Banking

Bermuda has a strong, well developed banking system due to the huge international business sector domiciled in Bermuda. There are four banks licensed to operate in Bermuda. There is one global bank (Bank of Bermuda/member of HSBC group), one regional bank (Butterfield Bank), and 2 local banks (Capital G and Bermuda Commercial Bank) available for financial services, products and advice.

They offer a wide range of commercial banking facilities including comprehensive investment, trust, financial management services and direct access to a variety of currency alternatives. The English common law rule of confidentiality prevails on all accounts. Accounts can be maintained in most foreign currencies. Bermuda's banking sector is closely monitored by the International Monetary Fund (IMF), international risk rating agencies and the Bermuda Monetary Authority (BMA). The BMA is the integrated regulator of the financial services sector in Bermuda, including monitoring anti-money laundering, which is deemed crucial to the ongoing financial reputation of the island.

Many banking transactions are done electronically and a majority of the population use Internet banking. Internet banking has become a common channel through which Bermudians perform cash transfers and pay for services.

### Stock Exchange

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 it became a full member of the International Federation of Stock Exchanges.

In 2005, the BSX was granted Designated Investment Exchange status by the UK Financial Services Authority. 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 of Companies, Bermuda Commercial Bank, Butterfield Bank, Deutsche Bank AG, HSBC Corporate Money Funds and Orbis.

### Executive Summary

The government of Bermuda (GOB) welcomes foreign direct investment (FDI). Bermuda's economy is almost wholly dependent on FDI deriving primarily from international business (IB) – principally insurance and reinsurance – with a small contribution from tourism. In the mid-1990s, IB overtook tourism to become Bermuda's economic foundation, and in 2012 it contributed directly and indirectly about 70% of total GDP, compared to tourism's 11.7%.

Bermuda's economy continues in distress after more than five years of recession. In 2012, GDP was USD 5.5 billion, down 4.9% from 2011. Continued job losses and business closures adversely affected production. The GOB expects overall GDP to have decreased again in 2013, estimating another 2-2.5% contraction. In March 2013, the GOB passed emergency legislation raising the debt ceiling from USD 1.45 billion to 2.5 billion and in July 2013 raised USD 750 million in a bond issue to cover operating deficits for the next three years. In December 2013 it launched another bond issue - but in Bermuda dollars - in the amount of USD 50 million.

In April 2013, Moody's placed the island's Aa2 government bond rating on review for a possible downgrade due to the steep rise in government debt and the prospect of further rises in the next two years. In June 2013, Fitch Ratings downgraded Bermuda's AA government bond rating to AA-, citing the lack of economic diversification and a narrow revenue base. In April 2014, Standard and Poor affirmed Bermuda's AA- credit rating with a negative outlook.

In an effort to reduce government funding in a faltering economy, in early 2014 the GOB announced plans to privatize, mutualize (a form of privatization in which employees are shareholders), and/or outsource non-core government functions and stated it would seek private partners to help fund redevelopment of the airport. Bermuda's sewerage system is also in desperate need of upgrading. There may be opportunities for FDI in these areas.

Bermuda's advantages include a stable, democratic government; low personal and corporate taxes; a pool of skilled professionals; close proximity to the U.S.; and extensive air and communication networks. Its currency, the Bermuda dollar, is pegged one-to-one to the U.S. dollar. As a UK Overseas Territory, Bermuda's legal system is grounded in UK law. Its legal, regulatory and accounting systems adhere to high ethical and transparency standards. It effectively and impartially enforces its laws to combat corruption and money laundering.

Bermuda law recognizes and enforces secured interests in property, both movable and real. The GOB's policies facilitate the free flow of financial resources in the product and factor markets, and the U.S. Securities and Exchange Commission recognizes the Bermuda Stock Exchange (BSX) as a "Designated Offshore Securities Market." There is a general awareness of corporate social responsibility among both producers and consumers. There have been no recent incidents of political violence in Bermuda, although there were several strikes and non-violent, labor-related marches on Parliament during 2013 and 2014.

### 1. Openness To, and Restrictions Upon, Foreign Investment

Under Bermuda's UK-based legal system, the island has its own written constitution. Its elected government enjoys almost complete self-determination in conducting local affairs and enacting its own legislation. The UK-appointed Governor is responsible for external affairs, defense, and internal security.

Bermuda is a major offshore financial center specializing in insurance, reinsurance, and financial services, colloquially and collectively known as "international business" (IB). The island is one of the top five reinsurance centers in the world, the largest captive insurance domicile, and a major center for the growing trade in investment-linked securities.

The GOB understands and welcomes the island's dependence on FDI. IB directly contributed 25.1% of GDP in 2012, and the Ministry of Finance and local economists generally agree that IB indirectly accounts for as much as another 45%, for a total of 70% of GDP. In 2013, the Association of Bermuda International Companies released survey results estimating that IB injected USD 1.47 billion into the island's economy in 2012, including salaries, taxes, rents, and services. (Note: While company registrations increased in 2013 and early 2014, the number of active IBs has dropped significantly, from 15,959 at the end of 2008 to 15,435 at the end of 2013, a loss of 572 companies.) By comparison, the direct impact of tourism in 2012 was 5.4% of GDP and 5.9% in terms of employment. The GOB estimates the direct and indirect contribution of tourism to GDP at 11.7%.

Bermuda's economy has been contracting for more than five years. As noted in the summary, the GOB sees privatization, mutualization (a form of privatization in which employees are shareholders), and/or outsourcing as a possible means to effect government cost-savings. In its 2014-15 budget statement, the GOB said it would look to privatize/mutualize/outsource non-core government functions such as airport operations, garbage collection, water and sewerage, highway maintenance, parks, conservations services, ship and aircraft registries and government health insurance. (Note: Generally speaking, the political opposition and Bermuda's labor union are skeptical about privatization-mutualization-outsourcing if not outright against it.) It also said it would seek private funding to help redevelop the airport (built by the U.S. during WW II), to include a new terminal building and reconstruction of the hurricane-damaged causeway that connects the airport to the main portion of the island. The island's antiquated sewerage system is also in need of modernization.

The Minister of Economic Development has broad discretion to approve privatization applications under the Companies Act 1981. The Ministry of Finance treats foreign and local investors equally when privatization opportunities arise. An informal March 2014 study conducted by the U.S. Consulate showed that nearly 60% of government contracts granted in 2013 went to U.S. firms, worth almost USD 18 million. The Bermuda Department of Project Management and Procurement publishes public tenders in the Royal Gazette (official gazette); information is also available on its website:

[http://www.gov.bm/portal/server.pt/gate/gateway/?open=512&objID=945&mode=2&in\\_hi\\_userid=2&cached=true](http://www.gov.bm/portal/server.pt/gate/gateway/?open=512&objID=945&mode=2&in_hi_userid=2&cached=true).

The Companies Act 1981 as amended is the principal statute governing the formation and operation of Bermuda companies and foreign investment. The Bermuda Monetary Authority (BMA) is the integrated regulator of the financial services sector in Bermuda. It provides rigorous vetting, supervision, inspection, and regulation of all financial institutions operating in

or from within the jurisdiction. It also assists other authorities in Bermuda with the detection and prevention of financial crime and develops risk-based financial regulations that it applies to the supervision of Bermuda's banks, trust companies, investment businesses, and insurance companies. The BMA also regulates the BSX.

For incorporation, the BMA requires at a minimum a copy of a 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.

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. Currently, company incorporation may take as little as four weeks. The Bermuda Business Development Agency is developing a concierge service to facilitate and expedite international company formation.

The BMA has the authority to restrict or revoke a company's license and, under the Investment Business Act, the options of public censure, issuance of warning/ discontinuance notices, or company dissolution. An investment provider may appeal the BMA's decision to a tribunal constituted on a case-by-case basis in accordance with the Investment Business Act.

Most IB companies are classified as exempt. The term "exempt" addresses ownership, not taxation; Bermuda's tax system applies equally to both local and exempt companies, a fact that the GOB emphasizes when responding to claims that Bermuda is a tax haven.

An exempt company may be 100% owned by non-Bermudians. Being exempt does not relieve exempt companies of the supervisory, regulatory, or fiscal rules governing local, non-exempt companies (more about non-exempt companies below). Exempt companies may not do business within the local economy, with a few exceptions created by individual acts of the legislature. They may, however, deal with other Bermuda-based exempt companies without restriction. Exempt companies may also buy their locally-needed supplies or services from local companies, such as accounting, banking, legal, management and office supply services.

An exempt company is exempt from the ownership regulations – otherwise known as the "60/40 rule" – governing local, non-exempt companies, which are permitted to do business within the local economy. To be classified as a local or non-exempt company, Bermudians must be beneficial owners of at least 60% of the shares in the company; exercise at least 60% of the total voting rights in the company; and make up at least 60% of the directors of the company.

In July 2012, in an effort to ease foreign ownership restrictions and boost the economy, Bermuda amended the Companies Act to allow companies listed on the BSX to apply for a license to seek foreign investment over and above the 40% maximum foreign ownership. Previously, foreign investors interested in doing business in Bermuda had to adhere to the

60/40 rule. Many hotels and telecommunications companies fall into this category, as do three of Bermuda's four banks. Compliance with Organization for Economic Cooperation and Development (OECD) guidelines that seek to eliminate separate regulatory regimes for local and international companies may have been a factor contributing to the decision to ease ownership restrictions. Some local businesses support relaxing the 60/40 rule to encourage FDI, increase liquidity in the local market, and boost the economy, while others oppose it out of concern that they might not be able to compete on a level playing field with majority foreign-owned businesses.

Overseas and resident investors may form partnerships under the Partnership Act 1902. Partnerships are either local or exempted and may be general or limited. A local partnership is composed of Bermudian partners only and is permitted to conduct business locally and abroad. If one or more of the partners in a partnership is not Bermudian, then the partnership is considered an exempted partnership and may only conduct business outside Bermuda from a principal place of business within Bermuda. An overseas partnership formed outside Bermuda may, through the BMA, apply to the Minister of Finance for a permit to operate in Bermuda or outside Bermuda from a place of business in Bermuda. These partnerships must appoint and maintain a resident representative on the island.

Bermuda strives to be innovative with new financial services and products. For example, in an effort to make Bermuda more competitive in the hedge fund management arena, the Investment Fund Amendment Act 2013 exempts certain hedge funds from authorization and supervision requirements, provides two new classes of exempt funds, and grandfathers currently-exempt funds. Exempt class A funds, which must be regulated by a recognized authority or have at least USD 1000 million in assets under management, are eligible for expedited registration. To encourage improvements in telecommunication, the Customs Tariff Amendment (No 2) Act 2013 gives full customs duty relief on the importation of goods, apparatus, and machinery imported by holders of integrated communications operating licenses to be used to build or maintain telecommunications network infrastructure.

Bermuda generally prohibits the establishment of foreign franchises, with the exception of franchise hotels. The Companies Act gives the Ministry of Economic Development the authority to grant investors special permission to establish a franchise on the island.

Because Bermuda is an overseas UK territory, it does not receive mention in many third party data information sources, such as the World Bank or Transparency International. Because it is not a member of the Organization for Economic Cooperation and Development (OECD), International Monetary Fund (IMF), or World Bank, it does not participate in any of those organizations' routine reviews. Bermuda is part of the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes (see <http://www.oecd.org/tax/transparency/>), so it is reviewed under this initiative. Neither the World Trade Organization nor the UN Committee on Trade and Development has reviewed Bermuda's investment policy.

**TABLE 1:** The following chart summarizes several well-regarded indices and rankings.

Measure	Year	Rank or value	Website Address

TI Corruption Perceptions index	2013	n/a	<a href="http://cpi.transparency.org/cpi2013/results/">http://cpi.transparency.org/cpi2013/results/</a>
Heritage Foundation's Economic Freedom index	2013	n/a	<a href="http://www.heritage.org/index/ranking">http://www.heritage.org/index/ranking</a>
World Bank's Doing Business Report "Ease of Doing Business"	2013	n/a	<a href="http://doingbusiness.org/rankings">http://doingbusiness.org/rankings</a>
Global Innovation Index	2013	n/a	<a href="http://www.globalinnovationindex.org/content.aspx?page=gii-full-report-2013#pdfopener">http://www.globalinnovationindex.org/content.aspx?page=gii-full-report-2013#pdfopener</a>
World Bank GNI per capita	2012	USD 104,590	<a href="http://data.worldbank.org/indicator/NY.GNP.PCAP.CD">http://data.worldbank.org/indicator/NY.GNP.PCAP.CD</a>

Bermuda has no economic citizenship program, but in part to recognize the contributions of key IB executives to past job creation, and in part to encourage new job creators to come to Bermuda, in 2013 it liberalized the Incentives for Job Makers Act 2011 to offer a form of permanent residency to those who create jobs for Bermudians and to give them residential property purchase rights not available to other non-residents. Further along these lines, in the spring of 2014 Parliament passed the Companies Amendment Act 2014 to allow individuals and local and exempt companies to purchase commercial and residential properties under specially defined circumstances.

## 2. Conversion and Transfer Policies

The U.S. dollar is used and accepted in Bermuda with the Bermuda dollar, which trades at par. Within Bermuda, both currencies are freely interchangeable and transferable without restriction. The Bermuda dollar, however, cannot be used outside Bermuda.

The BMA issues Bermuda's national currency and manages exchange control transactions. It administers the Exchange Control Act 1972 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.

The Exchange Control Regulations 1973 and the Companies Act 1981 regulate the issue, transfer, redemption, and repurchase of securities. For exchange control purposes, the BMA

must give prior approval for issues to and transfers of securities in Bermuda companies involving non-residents, except where general permission has been granted pursuant to the Notice to the Public of June 2005.

The Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Amendment Regulations 2009 gave the BMA the authority to oversee all wire transfers. The legislation requires financial institutions to verify the accuracy and completeness of the information on the payer/originator before transferring funds, retain complete records on the payor/originator of the fund transfer for a period of five years, and maintain effective procedures to detect whether complete information on the payor/originator is received with the wire transfer. The legislation specifies how the receiving institution should treat transfers with missing or incomplete information. In 2013, amendments to the act created an obligation to report suspicions of money laundering or terrorist financing and allowed civil proceedings before the Supreme Court for the recovery of property obtained through unlawful conduct.

In 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 USD 10,000. All incoming passengers (regardless of point of embarkation) must complete mandatory declaration forms. A disclosure system is in place for outgoing passengers to the U.S., Canada, and the UK.

The Foreign Currency Purchase Tax Amendment Act 2010 applies to the purchase of all non-local currencies, including the U.S. dollar. The foreign currency purchase tax doubled from 0.5% to 1% per transaction in 2010.

Bermuda is a member of the Caribbean Financial Action Task Force (CFATF), the regional equivalent of the Financial Action Task Force (FATF). It is listed as a "monitored" country under the 2013 International Narcotics Control Strategy Report (INCSR).

### **3. Expropriation and Compensation**

The Housing Loan Insurance (Mortgage) Regulations 1984 and the Municipalities Act 1923 regulate expropriation. There is no history of expropriation without just compensation in Bermuda. The GOB reports no expropriatory acts towards U.S. investors in Bermuda, although it does not keep a record of the nationality of individuals that sue the GOB.

### **4. Dispute Settlement**

Bermuda's legal system is based on English statutory and common law and principles of equity. The rules of practice and procedure are very similar to those of the UK. The system is generally effective at enforcing property, commercial and contractual rights.

There is no government interference in the court system. 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.

The Bankruptcy Act 1989, the Companies Act 1981, and the Companies (Winding Up) Rules 1982 govern bankruptcy and the winding-up of companies. The Supreme Court (the first instance court of general jurisdiction) administers the bankruptcy process. 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 aforementioned statutes.

Foreign money judgments can be enforced under Bermudian statutory or common law, depending upon the country in which the original judgment was obtained. Under the Judgments Reciprocal Enforcement Act 1958 (JRE), Bermudian courts generally recognize and enforce foreign money judgments as if they had been originally obtained in Bermuda. The JRE follows the same procedure as the UK Foreign Judgments (Reciprocal Enforcement) Act 1933.

Bermuda also has arbitration legislation. The Bermuda International Conciliation and Arbitration Act 1993 adopted the UN Commission on International Trade Law (UNCITRAL) model law of arbitration to handle international disputes. The UK 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. Bermuda has not entered any reservations regarding its ratification of the New York Convention. As a result, arbitration awards from other countries – including the U.S. – are readily enforceable in Bermuda, and vice versa. The UK 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"). Bermuda is not a party to any bilateral or multilateral investment treaties.

Under unwritten GOB policy, arbitrators and foreign counsel traveling to Bermuda for the purposes of arbitration do not need work permits. However, the Department of Immigration requires advance notice of their presence in the jurisdiction for the purpose of the arbitration.

The judicial system handles investment disputes unless the parties resort to arbitration, in which case the dispute process follows international arbitration law. Commercial arbitration in Bermuda is directly linked with the growth of international companies, in particular insurance and reinsurance companies. Many insurance and reinsurance contracts contain arbitration clauses, often naming Bermuda as the arbitral seat, although they sometimes provide for arbitration in other locations, including 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. The GOB has in the past considered attempting to make Bermuda a global center for arbitration cases.

## **5. Performance Requirements and Investment Incentives**

Bermuda is a low tax jurisdiction. It imposes no income tax, profits tax, withholding tax, capital gains tax, capital transfer tax, estate duty/inheritance tax, or VAT or sales tax. It does, however, impose customs duty on an ad valorem basis, generally on the transaction value of imported goods, and depending on whether it is for commercial or personal use. The most common customs duty rate is 22.25%, although luxury items such as boats and cars carry a higher rate, while most food items have a lower rate. The rate for accompanied personal goods of persons arriving in Bermuda by air or sea is 25% of the transaction value. The GOB also imposes annual fees on businesses, including a sliding payroll tax, of which employers pay two-thirds and employees one-third. For a breakdown of payroll tax rates, see

[http://www.gov.bm/portal/erver.pt/portal/server.pt?open=512&objID=275&&PageID=231418&mode=2&in\\_hi\\_userid=2&cached=true](http://www.gov.bm/portal/erver.pt/portal/server.pt?open=512&objID=275&&PageID=231418&mode=2&in_hi_userid=2&cached=true).

Bermuda has no discriminatory or preferential import or export policies affecting foreign investors. The GOB does not require investors to export a set percentage of output or to purchase goods from local suppliers, even though there are a number of preferential duty reliefs for certain local commercial activities (e.g., for the importation of energy efficient goods and renewable energy resources, hotel and restaurant renovations, etc.).

While the GOB does not require foreign investors to follow the “forced localization” of goods or technology, it encourages IB to support the economy by purchasing from local companies, such as those providing accounting, banking, legal, management, and office supply services. Since the world economic downturn of 2008-09, however, a number of IBs have restructured and re-domiciled, in some cases shifting IT, HR, and other administrative services to lower-cost jurisdictions, including Canada and the U.S.

The BMA imposes minimum capital and regulatory requirements on institutions licensed under the Banks and Deposit Companies Act 1999 and requires companies to file a liquidity return every quarter. The standard requirement is for liquid assets to be at least equivalent to the total of three months’ expenditure. This does not apply in the case of licensees who act neither as principal nor agent, in which case only one month’s expenditure must be maintained in the form of liquid assets.

With respect to research and development, the Bermuda Institute of Ocean Sciences (BIOS), a Registered Bermuda Charity and a U.S. 501(c) (3) not-for-profit research and educational organization, is a world-class ocean science research and education facility. BIOS performs research in many fields, including oceanography, marine biology, genetics and molecular biology, chemistry, air/environmental quality, optics, biogeochemistry, and climate change.

The Sargasso Sea Alliance, a partnership led by the Government of Bermuda in collaboration with scientists (including BIOS), international marine conservation groups, and private donors, works to protect the unique and vulnerable ocean ecosystem of the Sargasso Sea, which surrounds Bermuda. In March 2014, representatives from the governments of five countries and territories from around the Sargasso Sea, including the U.S., signed the “Hamilton Declaration on Collaboration for the Conservation of the Sargasso Sea,” a non-binding political statement that indicates signatories’ interest in voluntarily collaborating on efforts to conserve the Sargasso Sea.

For information about labor requirements and work permits, see the section entitled “Labor” below section 18.

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

In March 2014, the House of Assembly passed the Companies Amendment Act 2014 to allow local and exempt companies to purchase “restricted” properties – high-end residential properties with an annual rental value of more than USD 177,000 and some commercial properties if used for the operation of the business. Exempt companies may lease commercial land for up to 50 years and residential property for their employees for up to 21 years and local companies are permitted to own property. (Exception: The Hotel Concession

Act authorizes a company to lease a hotel or residential unit for a period not exceeding 131 years with an option to renew for a similar period.)

Except for trash collection and ferry services, the GOB has few government monopolies. The postal service competes with private mail services. Public education competes with private education. Public bus service competes with taxis, local mini-bus services, and multi-passenger airport buses.

In April 2013, the Regulatory Authority Act and the Electronic Communications Act came into effect, increasing competition and allowing providers to “bundle” wireless, internet, and television services. As a result, there is greater competition within the telecommunications industry than in the past. Bermuda currently has four categories of telecommunication companies: Class A providers, which are international service providers; Class B providers, which are fixed and wireless domestic service providers; Class C providers, which are internet service providers (ISP) providing DSL (broadband) and dial-up services; and Cable TV providers, which are Bermuda-based cable television companies authorized to provide limited telecommunication services. Because of Bermuda’s small size, the GOB does not normally solicit investment in infrastructure, although it has occasionally entered into public-private partnerships for large projects like the hospital.

## **7. Protection of Property Rights**

Bermuda law recognizes and enforces secured interests in movable and real property. The Registry General, the Land Tax Office and the Land Valuations Office regulate the acquisition and disposition of property, including land, buildings, and mortgages. The Land Title Registration Act 2011 moved Bermuda from a deeds-based property transaction to a parcel-based land registration system. Until the new registration system is implemented - expected in 2014 - land owners must retain a Bermudian lawyer to research the history of the property and ensure there are no third party claims. A deed of conveyance or a mortgage is recorded each time real estate changes hands.

Bermuda law provides adequate protection for intellectual property (IPR), patents, copyrights, trademarks, and trade secrets. These include the Patents and Designs Act 1930, the Trade Marks Act 1974 (as amended), and the Copyright and Designs Act 2004. As an Overseas Territory of the UK, Bermuda may not enter into international treaties independently unless the UK expressly authorizes it to do so and judges Bermuda’s implementing legislation to be compliant. The UK extended the right to Bermuda to join the Berne Convention for the Protection of Literary and Artistic Works, which requires its signatories to recognize the copyright of works of authors from other signatory countries (known as members of the Berne Union) in the same way it recognizes the copyright of its own nationals. In 2014, the GOB plans to conduct a legislative review of its Trademark Act to bring it in line with the World Trade Organization’s Trade Related Intellectual Property Rights (TRIPS) Agreement and the Madrid Protocol. Bermuda has yet to sign the World Intellectual Property Organization (WIPO) internet treaties.

For additional information about treaty obligations and points of contact at local IP offices, please see WIPO’s country profiles at <http://www.wipo.int/directory/en/>. The U.S. Commerce Department has positioned IP attachés in key markets around the world. You can contact IP attaché Christine Peterson who covers Bermuda at: <http://www.stopfakes.gov/contact> . To

view a list of local Bermuda attorneys, please go to:

<http://photos.state.gov/libraries/hamilton/19452/pdfs/lawyerslist2010B.pdf>

## **8. Transparency of the Regulatory System**

Bermuda's legal, regulatory and accounting systems adhere to high ethical and transparency standards. As noted previously, the legal and regulatory systems are grounded in UK law. 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 a member of regulatory standard-setting bodies for banking (via the Basel Committee on Bank Supervision), insurance (via the International Association of Insurance Supervisors or IAIS), and investment business (via the Financial Services Authority or FSA). In November and December 2013, Bermuda signed the Foreign Account Transaction Compliance Act (FATCA) Intergovernmental Model 2 Agreement with the U.S. to promote transparency on tax matters. At the same time, it concluded a FATCA-type agreement with the UK. Bermuda financial institutions will now automatically transmit FATCA information to the U.S. and UK.

The BMA is Bermuda's sole regulatory body for financial services, responsible for the licensing, supervision, and regulation of financial institutions conducting deposit-taking, insurance, investment, and trust business on the island. Bermuda continues to strengthen its anti-money laundering and anti-terrorism financing (AML/ATF) framework to ensure a high level of compliance with international standards. In 2013, the GOB amended the Proceeds of Crime Act to create an obligation to report suspicions of money laundering or terrorist financing and to allow civil proceedings before the Supreme Court for the recovery of property obtained through unlawful conduct.

The BMA's Guidance Notes for AML/ATF Regulated Financial Institutions on Anti-money Laundering and Anti-terrorist Financing outline and interpret the legal and regulatory framework, propose good industry practices, and assist institutions to design and implement systems and controls to limit AML/ATF risks to institutions. Bermuda laws and regulations do not distinguish between businesses operating in the local economy and exempt companies operating internationally from within Bermuda. Neither unlicensed nor unregistered entities are permitted to operate in the financial services sector.

Bermuda's Financial Intelligence Agency is a member of the Egmont Group of Financial Intelligence Units. It shares information with other agencies, within and outside Bermuda. The BMA Amendment (No. 3) Act 2004 clarified the power of the BMA to share information with other overseas authorities. Other laws that authorize the sharing of information with overseas regulators include the Banks and Deposit Companies Act 1999, the Trusts (Regulation of Trust Business) Act 2001, and the Investment Act 2003.

The Investment Business Amendment Act 2012, the Trust (Regulation of Trust Business) Amendment Act 2012, and the Banks and Deposit Companies Amendment Act 2012 regulate investment businesses, trusts, and banks in the areas of civil penalties, public censure, prohibitions against providing certain services, and publication of decisions. The Investment Business Act 2003 granted the BMA stronger intervention powers, including the

ability to cooperate with foreign bodies, while the Investment Business Investment Act 2012 brought the Bermuda Stock Exchange (BSX) under the regulation of the BMA. Other provisions provide for criminal penalties, e.g., the Banks and Deposit Companies Amendment Act.

The BMA regulates collective investment schemes (CIS). The 1997 Proceeds of Crime Act (POCA) and the 2006 Investment Funds Act (IFA) regulate fund administrators. CIS are also subject to IFA, which clarifies and codifies the current regulation of funds in order to strengthen Bermuda's position in the international funds market.

The GOB posts new laws and regulations in the Royal Gazette newspaper (the official gazette).

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

As noted above, Bermuda's currency, the Bermuda dollar, is pegged 1:1 to the U.S. dollar. Bermuda does not have a central bank, but the BMA issues and redeems notes and coins, supervises, regulates, and inspects financial institutions which operate in or from Bermuda, and generally promotes the financial stability and soundness of financial institutions. The BMA does not, however, determine interest rates, which are set by the market, regulated by the Ministry of Finance, and usually follow the Federal Reserve System rates.

Bermuda does not have developed capital markets and does not control monetary policy. Commercial credit lines are normally arranged through U.S. or other overseas institutions. 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 larger ones, maintain external banking relationships.

The Banks and Deposit Companies Act 1999 implemented the Basel Committee's Core Principles for Effective Banking Supervision. Bermuda banks are currently compliant with the Basel II Accord. In 2011 and 2013, the BMA published discussion papers on enhancing Bermuda's current regulatory framework for banks in line with Basel III and is now moving toward implementation.

Liquidity and solvency are important concerns for Bermuda's four banks as there is no monetary policy, no lender of last resort, and no implied guaranty. In July 2011, the GOB passed the Deposit Insurance Act, which lays out proposals for implementing a Deposit Insurance Scheme (DIS) for the Bermuda market; it has yet to be implemented. The DIS would provide insurance coverage to small depositors in banks and credit unions.

While Bermuda's banking system is generally sound, there has been a steady increase in the ratio of non-performing loans to capital. December 2013 statistics indicated that non-performing loan balances relative to total loans continued to grow steadily each quarter, rising to 11.7% during Q3 of 2013, up from 11.4% in Q2 and 10.2% from the same period in 2012.

Banking sector solvency remained high as capitalization improved slightly during Q3 of 2013. The aggregate risk asset ratio (RAR) rose to 21.8% in Q3 of 2013, up from 21.4% in Q2 of 2013. Overall, net capital levels rose by 1.3% and risk-weighted assets (RWAs) declined by 0.3% or

\$35.5 million. Since total assets of the sector remain virtually unchanged at 23.2 billion, the leverage ratio (equity to total assets) improved to 9.4%, up from 9.2% in Q2 2013.

Bermuda's banks are 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. Movements within asset categories were led by interbank deposits (up 7.4% or \$409.1 million), followed by investments (down 2.9% or \$232.4 million). The BMA's December 2013 Regulatory Update reported that total assets for the banking sector dropped by 1.6%, or \$383 million. Cash and deposits increased by 6.9%, from \$564.9 million in Q1 2013 to \$603.9 million in Q3 2013, while loans and advances decreased by \$8.0 million, from \$863.1 in Q1 2013 to \$862.3 in Q3 2013. Banks are required to meet a minimum capital ratio of 10 percent at the consolidated level, but the aggregate ratio exceeded 20% in 2013.

The U.S. Securities and Exchange Commission recognized the Bermuda Stock Exchange (BSX) as a "Designated Offshore Securities Market" in October 1996. In 1999, 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 employs the Bermuda Securities Depository (BSD) - an electronic clearing, settlement and registration system - under BMA oversight. The BSD was designed to facilitate more efficient trade settlement for BSX-listed securities by allowing book entry settlement rather than paper-based settlement. Currently, over 600 companies are listed on the BSX.

Protection from hostile takeovers falls under the Insurance Amendment Act 2013 and the Companies Act 1981. The Insurance Amendment Act is designed to improve insurance group supervision by requiring that certain material changes be reported to the BMA, such as amalgamation with another firm or acquisition of a controlling interest in a business. The Companies Act requires notification of shareholders of amalgamation agreements.

## **10. Competition from State-Owned Enterprises**

Bermuda has several traditional state-owned enterprises (SOEs) that compete with the private sector, including buses and ferries used in public transportation and the postal service. Governance of SOEs is hierarchical in structure and led by a politically-appointed Cabinet Minister. SOEs must provide financial information as necessary to the Minister, who submits the information annually to the Auditor General. Most SOE's are prohibited from having a board of directors but may have an advisory board.

Bermuda also has quasi-autonomous, non-governmental organizations (QUANGOs)/Public Authorities, established under their respective legislative incorporation acts. The GOB controls several other organizations either through the possession of shares or voting rights or by some other means. These organizations include the National Sports Center, Port Royal Golf Course, Ocean View Golf Course, Bermuda College, Bermuda Housing Trust, Bermuda Housing Corporation, Bermuda Land Development Corporation, West End Development Corporation, Bermuda Hospitals Board, Bermuda Health Council, the Regulatory Authority (telecommunications), Bermuda Tourism Authority, Bermuda Economic Development Corporation, Pension Commission, and parish councils.

Little information is available on sovereign wealth funds in Bermuda. The GOB has been actively pursuing Islamic finance since 2009, although so far there is no statistical information available to gauge whether those efforts have been successful. Anecdotal evidence suggests that Islamic finance business in Bermuda is minimal. Bermuda law is applicable to Islamic finance.

### **11. Corporate Social Responsibility**

The concept of corporate social responsibility (CSR) is strong in Bermuda, particularly among international companies.

### **12. Political Violence**

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

### **13. Corruption**

Bermuda has a series of laws, regulations and penalties to combat corruption and, generally speaking, effectively enforces them. In 2012, Parliament passed the Good Governance Act 2012 to discourage financial abuse by ministers and members of the civil service and to protect whistleblowers. Under the Act, politicians who attempt to influence the award of government contracts could face a USD 10,000 fine and a year-long jail sentence. The penalties also apply to contractors and public officers found guilty of collusion. The Act also improved the transparency and accountability of government contracts, strengthened requirements for internal audits, and established an Office of Project Management and Procurement to strengthen oversight and control of government projects.

The Bermuda Criminal Code and the Proceeds of Crime Act provide for punishing corrupt practices in the area of investments, particularly for misleading statements and practices, market manipulation, and insider trading.

To distance itself from perceived impropriety often associated with offshore banking centers, Bermuda continues to update its regulatory framework to meet international standards, including those of the IMF, the Financial Action Task Force (FATF) and the OECD.

### **14. Bilateral Investment Agreements**

There is no bilateral investment treaty or free trade agreement between the U.S. and Bermuda. There are, however, two bilateral taxation-related treaties – the 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 (Convention) (1986) and the “Tax Information Exchange Agreement” (TIEA) (1988). Under the latter, the U.S. agreed to waive income and excise taxes on insurance premium income derived from the U.S. for eligible Bermudian insurance companies, i.e., companies 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 that does not operate as a permanent establishment in the U.S.

Bermuda is on the category “A” list of signatories to the International Organization of Securities Commissions Multi-lateral Memorandum of Understanding (IOSCO MMOU), which

provides for mutual co-operation and the exchange of information among securities regulators. In June 2009, the International Association of Insurance Supervisors (IAIS) approved the BMA as a signatory to the Multi-lateral Memorandum of Understanding. The MMoU establishes a formal basis for cooperation and information exchange between signatory regulators who supervise insurers with international or cross border operations.

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

Bermuda is not a member of the Overseas Private Investor Corporation (OPIC) or any other investment insurance programs. There is no deposit protection for owners of mutual funds or trusts, nor is there any central fund to reimburse investors. However, the BMA restricts many investments to institutional investors or high net worth individuals, so-called "sophisticated" investors, who exercise their own due diligence. The BMA also maintains 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. The Investment Funds Act 2006 clearly outlines how public funds are regulated, defines the framework for non-public, institutionalized funds, and includes requirements for fund administrators.

#### **16. Labor**

Approximately 26% (7,353) of Bermuda's labor force is unionized, with the majority being members of the blue-collar Bermuda Industrial Union (BIU), the white-collar Bermuda Public Services Union (BPSU), and the Bermuda Teachers Union (BTU). With the economy still in decline, and in light of the GOB's proposal to reduce the size of the civil service through the privatization/mutualization/outsourcing of some government functions, the unions' principal focus is on job security. Generally speaking, the BPSU has been collaborative and moderate, seeking to improve worker skill sets and performance. The BIU has taken a more active approach, orchestrating several strikes and peaceful marches in 2013 and 2014, disrupting public transportation and other services. Both the BIU and the BPSU oppose privatization-mutualization.

Aggregate employment has dipped sharply because of the recession. While official government statistics put unemployment at 7-8%, local economists estimate it as closer to 12-14%. According to the National Economic Report 2013, nearly 5,700 jobs have been lost since the recession hit Bermuda in 2008 – 1,166 from 2012 to 2013 alone – a considerable number in an economy with an approximate total of 34,000 current jobs. The continuing rise in the numbers of people seeking public assistance bears that out. The GOB increased financial assistance from USD 16 million in FY 2005/06 to what it characterized as an "unprecedented" and "unsustainable" USD 50 million in FY 2013/14.

Third country nationals (TCN) fill positions all along the economic scale and in most occupations. They comprise approximately 22% of the total population and in 2013 held 29% of all jobs, compared to 32% in 2009. In the major occupational groups, the highest concentrations of jobs filled by TCNs were professional (41% or 2,661 jobs); service workers and shop/market sales workers (34% or 2,357 jobs); and senior officials and managers (32% or 2,064 jobs).

In recent years, IB companies have downsized and outsourced to less costly jurisdictions, including the U.S. and Canada. This has serious implications for the employment of Bermudians. The Bermuda Chamber of Commerce points out that for every one TCN work permit lost, five Bermudian jobs also disappear. The Association of Bermuda Insurers and Reinsurers also reports a direct correlation between TCN senior executives headquartered in Bermuda and employment opportunities for Bermudians.

Although the GOB and many Bermudians recognize the importance of TCNs to the island, the GOB generally espouses a Bermudianization/put-Bermudians-first employment policy that often creates political tension between and within the parties and among Bermudians at large. The situation is exacerbated by Bermuda's below-replacement level birth rate and its aging population.

In recognition of the key role IB and foreign investment play in the economy, particularly in terms of job creation for Bermudians, in January 2013 the GOB eliminated the controversial "term limits" policy, under which TCNs were allowed to work in Bermuda for no more than six years, or up to ten years if their employers could demonstrate they were "key employees." To reward and retain companies already in Bermuda, and to encourage new companies to establish themselves on the island, in December 2013 the GOB amended the Incentives for Job Makers Act (IJMA) 2011 to change from recruiting and retaining TCNs whose residence in Bermuda was critical to a company's remaining in Bermuda to those who were critical to jobs in general remaining on the island.

In February 2013, the GOB introduced special category work permits, including global work permits, which facilitate a global company's ability to transfer employees throughout their organization, including to Bermuda, and new business work permits. New business work permits allow exempt companies that are new to Bermuda to expedite up to five work permits for overseas recruits for senior executive positions.

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

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

#### **18. Foreign Direct Investment and Foreign Portfolio Investment Statistics**

There are few statistics available regarding foreign direct investment in Bermuda. In general, ownership in the Bermuda insurance sector is geographically diverse, but as of the end of 2011, U.S. companies owned approximately 62.7% of Bermuda's active commercial insurers. Bermudian-owned and European-owned insurers represented approximately 11.1% and 15.8% of the market, respectively. Approximately one in three commercial insurers is a publicly-listed company, of which two-thirds are listed on U.S. exchanges. According to the Coordinated Portfolio Investment Survey conducted by the BMA, the international business industry held \$439 billion in portfolio investment assets outside of Bermuda in 2012.

## Section 5 - Government

### Chiefs of State and Cabinet Members:

For the current list of Chiefs of State and Cabinet Members, please access the following - [Central Intelligence Agency online directory of Chiefs of State and Cabinet Members of Foreign Governments](#)

### Legal system:

English common law

### International organization participation:

Caricom (associate), ICC (NGOs), Interpol (subbureau), IOC, ITUC (NGOs), UPU, WCO

## Section 6 - Tax

### Exchange control

Exempted companies which can be entirely beneficially owned by non-Bermudians and who trade or operate from Bermuda, but not in Bermuda, are entirely exempt from any exchange controls. Exchange control regulations which have applied for some time to Bermudian local and/or Bermudian owned companies, are now being dismantled.

### Treaty and non-treaty withholding tax rates

Bermuda has exchange of information relationships with 79 jurisdictions through 4 DTCs, 38 TIEAs and 1 multilateral mechanism, Convention on Mutual Administrative Assistance in Tax Matters.

Jurisdiction	Type of EOI Arrangement	Date Signed	Date entered into Force	Meets standard	Contains paras 4 and 5	
Argentina	TIEA	22 Aug 2011	14 Oct 2011	Yes	Yes	
Aruba	TIEA	1 Sep 2009	1 Dec 2011	Yes	Yes	
Australia	TIEA	10 Nov 2005	20 Sep 2007	Yes	Yes	
Bahrain	DTC	22 Apr 2010	29 Jan 2012	Yes	Yes	
Belgium	TIEA	11 Apr 2013	not yet in force	Unreviewed	Yes	
Brazil	TIEA	29 Oct 2012	not yet in force	Yes	Yes	
Canada	TIEA	14 Jun 2010	1 Jul 2011	Yes	Yes	
China	TIEA	3 Dec 2010	3 Nov 2011	Yes	Yes	
Curaçao	TIEA	28 Sep 2009	not yet in force	Yes	Yes	
Czech Republic	TIEA	28 Jul 2011	not yet in force	Yes	Yes	
Denmark	TIEA	16 Apr 2009	25 Dec 2009	Yes	Yes	
Faroe Islands	TIEA	16 Apr 2009	9 Sep 2010	Unreviewed	Yes	
Finland	TIEA	16 Apr 2009	31 Dec 2009	Yes	Yes	
France	TIEA	8 Oct 2009	28 Oct 2010	Yes	Yes	
Germany	TIEA	3 Sep 2009	6 Jun 2012	Yes	Yes	
Greenland	TIEA	16 Apr 2009	22 Mar 2012	Unreviewed	Yes	
Guernsey	TIEA	23 Oct 2013	not yet in force	Unreviewed	Yes	
Iceland	TIEA	16 Apr 2009	2 Apr 2011	Yes	Yes	
India	TIEA	7 Oct 2010	3 Nov 2010	Yes	Yes	
Indonesia	TIEA	22 Jun 2011	not yet in force	Yes	Yes	
Ireland	TIEA	28 Jul 2009	11 May 2010	Yes	Yes	

Jurisdiction	Type of EOI Arrangement	Date Signed	Date entered into Force	Meets standard	Contains paras 4 and 5	
Italy	TIEA	23 Apr 2012	not yet in force	Yes	Yes	
Japan	TIEA	1 Feb 2010	1 Aug 2010	Yes	Yes	
Korea, Republic of	TIEA	24 Jan 2012	not yet in force	Yes	Yes	
Malaysia	TIEA	23 Apr 2012	4 Jun 1934	Yes	Yes	
Malta	TIEA	24 Nov 2011	5 Nov 2012	Yes	Yes	
Mexico	TIEA	15 Sep 2009	9 Sep 2010	Yes	Yes	
Netherlands	TIEA	8 Jun 2009	1 Feb 2010	Yes	Yes	
New Zealand	TIEA	16 Apr 2009	23 Dec 2009	Yes	Yes	
Norway	TIEA	16 Apr 2009	22 Jan 2010	Yes	Yes	
Poland	TIEA	25 Nov 2013	not yet in force	Unreviewed	Yes	
Portugal	TIEA	10 May 2010	5 Apr 2011	Yes	Yes	
Qatar	DTC	10 May 2012	not yet in force	Yes	Yes	
Seychelles	DTC	21 Jun 2012	19 Jul 2013	Yes	Yes	
Singapore	TIEA	29 Oct 2012	6 Dec 2012	Yes	Yes	
Sint Maarten	TIEA	28 Sep 2009	not yet in force	Yes	Yes	
South Africa	TIEA	6 Sep 2011	8 Feb 2012	Yes	Yes	
Sweden	TIEA	16 Apr 2009	25 Dec 2009	Yes	Yes	
Turkey	TIEA	23 Jan 2012	not yet in force	Yes	Yes	
United Kingdom	TIEA	5 Dec 2007	9 Dec 2008	Yes	Yes	
United States	DTC	11 Jul 1986	2 Dec 1988	Yes	No	
United States	TIEA	2 Dec 1988	2 Dec 1988	Yes	No	

## Methodology and Sources

### Section 1 - General Background Report and Map

(Source: [CIA World Factbook](#))

### Section 2 - Anti – Money Laundering / Terrorist Financing

	Lower Risk	Medium Risk	Higher Risk
<a href="#">FATF List of Countries identified with strategic AML deficiencies</a>	Not Listed	AML Deficient but Committed	High Risk
<a href="#">Compliance with FATF 40 + 9 recommendations</a>	>69% Compliant or Fully Compliant	35 – 69% Compliant or Fully Compliant	<35% Compliant or Fully Compliant
<a href="#">US Dept of State Money Laundering assessment (INCSR)</a>	Monitored	Concern	Primary Concern
<a href="#">INCSR - Weakness in Government Legislation</a>	<2	2-4	5-20
<a href="#">US Sec of State supporter of / Safe Haven for International Terrorism</a>	No	Safe Haven for Terrorism	State Supporter of Terrorism
<a href="#">EU White list equivalent jurisdictions</a>	Yes		No
<a href="#">International Sanctions UN Sanctions / US Sanctions / EU Sanctions</a>	None	Arab League / Other	UN , EU or US
<a href="#">Corruption Index (Transparency International) Control of corruption (WGI) Global Advice Network</a>	>69%	35 – 69%	<35%
<a href="#">World government Indicators (Average)</a>	>69%	35 – 69%	<35%
<a href="#">Failed States Index (Average)</a>	>69%	35 – 69%	<35%
<a href="#">Offshore Finance Centre</a>	No		Yes

### **Section 3 - Economy**

General Information on the current economic climate in the country and information on imports, exports, main industries and trading partners.

(Source: [CIA World Factbook](#))

### **Section 4 - Foreign Investment**

Information on the openness of foreign investment into the country and the foreign investment markets.

(Source: [US State Department](#))

### **Section 5 - Government**

Names of Government Ministers and general information on political matters.

(Source: [CIA World Factbook](#) / <https://www.cia.gov/library/publications/world-leaders-1/index.html>)

### **Section 6 - Tax**

Information on Tax Information Exchange Agreements entered into, Double Tax Agreements and Exchange Controls.

(Sources: [OECD](#) [PKF International](#))

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