



## Ownership of Bermuda Companies – Change to the 60/40 Rule

Bermuda's statute law on companies is contained in the Companies Act 1981 (**Companies Act**). Bermuda companies fall into two principal categories:

1. 'local companies', which are usually incorporated by Bermudians to trade primarily in Bermuda; and
2. 'exempted companies', which are usually incorporated by non-Bermudians for the purpose of conducting business outside of Bermuda.

Local companies are subject to the '60/40 rule', which requires local companies to be '*controlled*' by Bermudians. '*Control*' is defined as the percentage of Bermudian directors, and the percentage of its shares beneficially owned by Bermudians, in the company being not less than 60% in each case.

Local companies can be exempted from the 60/40 rule by obtaining a licence (pursuant to section 114B of the Companies Act) from the Minister responsible for the Companies Act (**Minister**). When considering an application for a Section 114B licence, the Minister takes into account:

1. the economic situation in Bermuda and the due protection of persons already engaged in business in Bermuda;
2. the nature and previous conduct of the company and the persons having an interest in the company whether as directors, shareholders or otherwise;
3. any advantage or disadvantage which may result from the company carrying on business in Bermuda; and
4. the desirability of retaining in the control of Bermudians the economic resources of Bermuda.

As of 2012, a local company may be exempted from the 60/40 rule if its shares are listed on a designated Stock Exchange and the company conducts business in a material way in a 'prescribed industry', or if the company is a wholly owned subsidiary of such a listed company. The prescribed industries are capital-heavy and include, *inter alia*, telecommunications, energy, insurance, hotel operations, banking, or international transportation services (by ship or aircraft).

The Companies Act restricts an exempted company from carrying on business in Bermuda, unless it has been granted a licence (pursuant to section 129A of the Companies Act) by the Minister, who will form a view as to whether or not the granting of such a licence is in the best interests of Bermuda.

There are certain activities that are expressly excluded from the requirement for a licence, including:

1. doing business with other exempted undertakings (e.g. exempted companies, permit companies, exempted partnerships and exempted unit trust schemes) in furtherance of the business of the exempted company that is being conducted outside Bermuda;

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2. dealing in securities of exempted undertakings, local companies, or partnerships; and
3. carrying on business as manager or agent for, or consultant or advisor to, any exempted company or permit company which is affiliated (whether or not incorporated in Bermuda) with the exempted company or an exempted partnership in which the exempted company is a partner or, in the case of mutual funds, selling or distributing their shares in Bermuda.

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