



10 things to know about lending in Bermuda

By Keira Petty, Corporate Attorney

1. Why Bermuda?

Bermuda is home to a diverse group of industries including asset managers, (re)insurers, captive managers, lawyers, accountants, brokers, and partnerships. It is a leading financial centre, recognised as a preferred domicile by many international businesses. Bermuda is highly regarded for its standards of regulation, compliance and infrastructure. The Bermuda Monetary Authority has a first class reputation, is accessible and responsive and is willing to innovate. Bermuda is on the OECD “White List” demonstrating its commitment to upholding the OECD and G20 group’s international tax standards.

As a British Overseas Territory, Bermuda’s legal system is based on the common law of England and Wales. The court system is very proficient and responsive. Bermuda’s currency is fixed to the US dollar at a one-to-one ratio and both currencies circulate in the jurisdiction equally.

Bermuda’s has a well-developed aviation register utilised by multi-national companies and high-net-worth individuals, with over 700 aircraft currently registered.

Our international shipping registry, established in 1789, is a Category 1 member of the prestigious Red Ensign Group, supporting a worldwide portfolio of vessels. Bermuda’s registered fleet includes container ships, bulk carriers, offshore vessels, large cruise ships, oil, gas and chemical tankers, and cruising and mega-yachts.

2. Does Bermuda have requirements to deduct withholding tax? What taxes are levied in Bermuda?

There are no withholding taxes, income taxes or capital gains taxes on individuals in Bermuda.

Exempted companies can apply for an assurance from the Ministry of Finance granting an exemption, until 28 March 2035, from the imposition of tax under any applicable Bermuda law on profits, income, capital asset gain or appreciation, or any tax in the nature of estate duty or inheritance tax. The exemption does not relieve persons resident in Bermuda from the payment of customs duty or land taxes.

There are no taxes, stamp or documentary taxes payable in connection with the execution, delivery, performance or enforcement of loan facility agreements or the transactions contemplated thereunder in the case of exempted companies.

3. Do lenders need to be licensed in Bermuda?

Lenders do not need to be licensed, qualified, registered or otherwise entitled to do business in Bermuda in order to enforce their rights under a transaction document, including the exercise of any remedies thereunder.

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4. Will lenders be deemed to be doing business in Bermuda when entering into transaction documents?

A lender will not be deemed to be resident, domiciled or carrying on business in Bermuda by reason only of the execution, performance and/or enforcement of any facility agreement or related security.

5. Can an international bank obtain a mortgage over Bermuda property?

An overseas company (which, for this purpose, includes an exempted company) can hold a mortgage over land in its corporate name. If the sum secured exceeds BD\$50,000, the overseas company must obtain consent from the Minister of Finance. If the overseas company takes title to the property as part of its enforcement process, it must sell the land within 5 years of taking possession. The Minister of Finance's approval is also required by an overseas company to enter into a mortgage or charge over land, as the company is considered a restricted person under the Bermuda Immigration and Protection Act 1956, unless the company is either licensed under the Banks and Deposit Companies Act 1999 or is a non-resident insurance undertaking under the Non-Resident Insurance Undertaking Act 1967.

6. Is the role of agent and/or trustee recognised under Bermuda law?

Both concepts are well recognised in Bermuda.

7. Are there any adverse consequences for a borrower obtaining loan facilities from an international bank?

Many international banks regularly provide loan facilities to companies incorporated in Bermuda. The bank's jurisdiction makes no difference whatsoever to the borrower.

8. Will Bermuda courts enforce a contract governed by a foreign law?

The choice of a foreign law as the proper law to govern a facility agreement or related security document is a valid choice of law under Bermuda law and would be recognised, upheld and applied by the courts of Bermuda as the proper law in proceedings brought before the Bermuda court, provided that:

- (a) the point is specifically pleaded;
- (b) such choice of law is valid and binding under such foreign law; and
- (c) recognition would not be contrary to public policy as that term is understood under Bermuda law.

9. Bermuda has a sophisticated registration system

Registration of security in Bermuda is similar to the practice in England, except that the Bermuda Companies Act does not provide any sanction for failure to register on a timely basis. It is neither compulsory nor necessary to register or record security to ensure the validity or enforceability of the obligations of a company that its security documents. However, to the extent that any of the security documents create a charge over assets of a company, it may be desirable to register them in the Register of Charges maintained by the Registrar of Companies to ensure the priority in Bermuda.

Charges over the assets of Bermuda companies (other than real property in Bermuda or a ship or aircraft registered in Bermuda) wherever situated, and charges on assets situated in Bermuda (other than real property in Bermuda or a ship or aircraft registered in Bermuda) which are granted by or to companies



incorporated outside Bermuda, are capable of being registered in Bermuda in the office of the Registrar of Companies pursuant to the provisions of Part V of the Companies Act.

There is no time limit within which registration of a charge must be effected. However, in the event that questions of priority fall to be determined by reference to Bermuda law, any charge registered pursuant to the Companies Act will take priority over any other charge which is registered subsequently in regard to the same assets, and over all other charges created over such assets which are not registered. A filing fee is payable to the Accountant General in respect of each registration, currently BD\$603.00 per charge.

10. Is stamp duty payable on transactions involving exempted companies?

The Stamp Duties (International Business Relief) Act 1990 abolished stamp duty on most documents (including loan and security documents) that are executed by international businesses, which includes exempted and overseas companies (except on instruments involving Bermuda property).

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