

# 2012: A YEAR IN REVIEW

## THRONE SPEECH

A brief summary of the 2012 Parliamentary Agenda

- The *Incentives For Job Makers Act 2011*, providing work permit exemptions and permanent residence to eligible job creators, was introduced
- A ten-year work permit was introduced at a cost of \$20,000.00 for key positions
- A major overhaul of Immigration legislation, which dates from 1956, was promised for the year
- “A new form of residency” to tourists who invest in Bermuda was introduced

Continued on next page....

Looking retrospectively at 2012, there were several interesting developments in the legal arena. We provide this as a summary with a view to what 2013 may have in store.

### Amendments to the Companies Act 1981

2012 amendments to the Companies Act 1981 give a company the ability to opt out of holding the annual general meeting. Also, the Act now allows for the minimum number of directors to be set at one and a director can be a corporate entity. In order for a company to take advantage of these amendments, the current bye-laws need to be reviewed and possibly amended. [Read more](#)

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*Did you know? Internet access to debates in Parliament – both live and a Hansard record – was set up by the Legislature and is now available at [www.parliament.bm](http://www.parliament.bm)*

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### 60/40 ownership rule relaxed

With effect from 27th July, 2012 the 60/40 rule was abolished in the case of certain “prescribed industries”, namely telecommunications, energy, insurance, hotel operations, banking and international transport services (by ship or aircraft), provided that the business is being carried on “in a material way” and the company is listed on the Bermuda Stock Exchange, or if the company is a wholly-owned subsidiary of such a listed company. [Read more](#)

### The Corporate Service Provider Business Act 2012

The Corporate Service Provider Business Act 2012 (the “Act”) is anticipated to commence operation on 1 January 2013. The Act widely defines the activities that constitute “corporate service provider business”, specifying that such activities must be carried out *for profit*. Significantly, the Act provides that an individual shall not be deemed to be in the corporate service provider business merely by virtue of being a director of one or more companies. This legislation will also largely eliminate the current practice of “double-vetting” – whereby both the Bermuda Monetary Authority and the corporate service providers vet potential owners of Bermuda companies and partnerships - thereby improving the jurisdiction’s efficiency. [Read more](#)

### Enhancement of the Bermuda Monetary Authority’s Enforcement Powers

Amendments to the Insurance Act 1978, the Banks and Deposit Companies Act 1999, the Investment Business Act 2003 and the Trusts (Regulation of Trust Business) Act 2001 were enacted this year, culminating in the following new enforcement powers being incorporated into the regulatory regimes of the insurance, investment business, trust and banking sectors: (i) civil penalties, (ii) public censure, (iii) prohibition

orders, (iv) injunctions and (v) publicity of enforcement actions. [Read more](#)

### Tax information exchange agreements (“TIEAs”)

In the course of 2012, Bermuda entered into tax information exchange agreements (“TIEAs”) with Turkey, Korea, Malaysia, Italy, Qatar, the Seychelles, Singapore and Brazil, enhancing Bermuda’s reputation for transparency and raising the total number of TIEAs in force to 38.





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### ***TMX Group Invests in the Bermuda Stock Exchange***

*In late December 2011, TMX Group Inc., represented by MJM, purchased a 16% minority interest in the Bermuda Stock Exchange ("BSX") and became one of the largest shareholders of the BSX, with the CEO of the TMX Group joining the BSX Board of Directors. [Read more](#)*

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### **...THRONE SPEECH CONTINUED**

- Continued efforts to try to attract business, capital and visitors from the Gulf Cooperation Council region (following official visits to Dubai, Abu Dhabi and Qatar) were announced
- The 60/40 ownership rule for Bermuda companies was relaxed following a review of the *Companies Act 1981* to allow access to foreign direct investment
- A new *Hotel Concession Act* was promised "to include a broader range of concessions for tourism investors..."
- *The Proceeds of Crime Act 1997* was amended to give police greater powers to seize cash and property reasonably suspected to be the proceeds of crime
- Government promised a new *Human Rights Act* to fight discrimination based on age and sexual orientation  
[Read more](#)

### **The Land Title Registration Act 2011 (the "Act")**

The Land Title Registration Act 2011 (the "Act") will eliminate the need for title deeds to evidence ownership of land in Bermuda. All information relevant to ownership of real property in Bermuda will be kept on a central register with the Land Title Registry Office ("LTRO"). The provisions of the Act are not yet effective but are anticipated to be brought into force in mid January 2013. The Rules and Regulations of the Act have yet to be provided but are expected to be circulated soon. [Read more](#)

### **Bermuda Immigration and Protection Amendment Act 2012 ("the BIPA Act")**

The Bermuda Immigration and Protection Amendment Act 2012 ("the BIPA Act") has removed the condition for a non-Bermudian spouse of a Bermudian to require a licence to acquire land in Bermuda. [Read more](#)

### **Special Purpose Insurers and Insurance Linked Securities**

Bermuda's reinsurance industry continues to supply innovative solutions to the market, including the development of special purpose insurers, many of which fund their insurance liabilities through insurance linked securities ("ILS") such as catastrophe bonds. Starting at zero in 2009, Bermuda now has more than 35 listed ILS structures (approximately one third of the global market) with an aggregate capitalisation of more than \$5 billion and is emerging as a centre of the global ILS business. [Read more](#)

### **Introduction of the "specified jurisdiction fund" by the Investment Funds Amendment Act 2011**

The Investment Funds Amendment Act 2011 came into force on 18 December 2011 and amends the Investment Funds Act 2006, creating the "specified jurisdiction fund" as a new class of investment fund. [Read more](#)

### **Insurance regulatory update**

On 31 December 2011, amendments to the Insurance Act 1978 (the "Act") and new rules relating to solvency and capital requirements for Bermuda insurers became effective. With Solvency II regulatory standards slated to be implemented in the EU, Bermuda's desire to maintain and enhance its position as the world's third largest reinsurance centre has caused the BMA to devote substantial efforts through 2012 to having Bermuda achieve Solvency II EU equivalence. However, with repeated delays in the EU's implementation of Solvency II, the BMA announced in November 2012 that it will delay implementing Solvency II rules on group capital for an undetermined time. [Read more](#)

### **Telecom Reforms through the Regulatory Authority Act 2011 and Electronic Communications Act 2011**

In 2011 telecommunications reforms were approved to create an independent regulatory authority and discontinue the policy of segmented licensing in favour of a unified license which allows industry players to offer telecommunications services such as bundling of TV, internet and phone services in Bermuda. Telecommunications reform was necessary given the convergence of technologies in recent years. The Government emphasized that if they fail to reform the regulation of telecommunications in Bermuda, they will fail to meet the expectations of consumers, both commercial and residential. The new independent Regulatory Authority will be governed by a Board consisting of three Commissioners and the Chief Executive Officer and the reforms, unanimously adopted by Parliament, will be implemented in various stages in 2013.

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*Bermuda laws are available online at*  
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## 2012 CASES OF NOTE

### MJM wins case for Mailboxes Unlimited

The Customs Tariff Act 1970 was amended with effect from 1 April 2012 to increase the duty rate on all “personal items” to 25%. Also, tax relief was introduced for “business end-use” importers entitling them to pay the tax rates as specified under the First Schedule of the Act (CPC4000). In a Supreme Court decision, the Chief Justice ruled that Mailboxes Unlimited Ltd is a “business” and entitled to end-use relief. Alan Dunch and Jennifer Haworth of MJM acted for Mailboxes. In response to this case, the Customs Tariff Amendment (No. 2) Act 2012 was tabled when Parliament resumed in November 2012. However, Parliament was dissolved one week later, so we will have to wait for the election outcome to see if the bill is tabled once more. [Read more](#)

### Driving while using a hand-held device

In June of this year, two years after its enactment, the first challenge to Regulation 44 of the Motor Car (Construction, Equipment and Use) Regulations 1952 took place as a driver sought to appeal their conviction and sentence. The Regulation makes it an offence to use a hand-held device while driving any vehicle, save a fire truck, ambulance or police car (regulation 46). This case reviewed whether using an iPod, although not being held at the time of the offence, was considered to be hand-held and “in use”. The judge concluded it was. [Read more](#)

### Failing to Make a Splash from a Springboard Injunction

In March of this year the Chief Justice declined to grant springboard relief pending trial (to prevent former employees conferring a competitive advantage on a competing business through the misuse of their former employer’s confidential information) on the first occasion that the issue had fallen to be decided in Bermuda. [Read more](#)

### In The Matter of Sea Containers Ltd

Orders are routinely made to empower joint provisional liquidators (“JPL’s”) to seek assistance from foreign courts in aid of provisional liquidation proceedings. In this matter, JPL’s had been appointed to monitor the restructuring of a company under the management of its board of directors. The JPL’s sought to have certain claims asserted by UK based employees (pursuant to a group pension scheme) finally determined by the English Courts. This case examined the jurisdictional basis upon which letters of request can be granted to JPL’s, seeking the assistance of a foreign court. [Read more](#)

### Re Gerova Financial Group, Judgment, 6 July 2012 / Ruling on Costs and Substitution, 19 March 2012

In a continuation of this hotly contested winding up Petition, the company asserted in a second hearing this year that the Petition ought to be dismissed on grounds of improper collateral motives utilized by the petitioning creditor. The Bermuda Court held that the “clean hands” approach adopted in equitable discretionary relief cases should be adopted where the Court is considering whether or not to exercise its discretion to grant a winding up order where abuse of process is alleged. [Read more](#)

### ERG Resources LLC v Nabors Global

This concerned an application to set aside an injunction obtained by the plaintiff preventing the defendant from disposing of certain shares. The substantive action concerned specific performance of a share purchase agreement. [Read more](#)

*This note has been prepared for informational purposes only, and is not legal advice. Please contact us if you require advice on matters covered in the above summary.*

## MJM BARRISTERS & ATTORNEYS

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CORE PRACTICE AREAS:

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LITIGATION | PROPERTY  
PRIVATE CLIENT**

Each practice area is led by a Director who is recognized as a leading practitioner in his respective field of specialization.

MJM recently became the designated Bermuda law firm within **Globalaw**, a network of independent law firms with more than 4,500 attorneys in cities worldwide providing clients of its members with reliable, business-focused international legal resources. [Read more](#)

**Chambers Global** has recognized the following MJM Lawyers as “**Leaders in their Field**” for **2013**:

**\*Alan Dunch for Dispute Resolution**

**\*Andrew Martin for Dispute  
Resolution**

**\*Peter Martin for  
Corporate & Finance**