

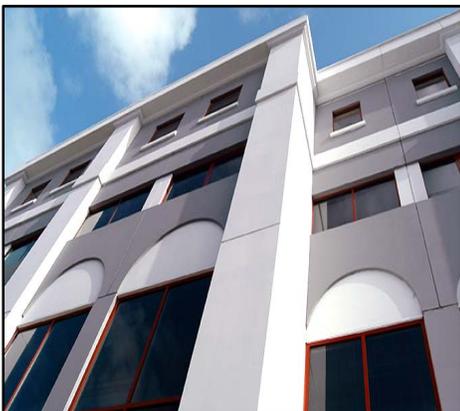
# 2014: A YEAR IN REVIEW

## 2014 THRONE SPEECH

### A brief summary of the Parliamentary Agenda

- Economic recovery will continue to be the national priority
- Government has promised to pursue a two-track strategy to grow the local economy, the primary aim being to invigorate the two principal engines of the economy: international business and tourism
- Changes in corporate law announced, including the creation of a new limited liability corporate vehicle, to be known as the Bermuda Limited Liability Company (LLC), with a view to making the Island more competitive chiefly in the private equity arena

*Continued on next page....*



2014, has had the effect of amending the Trustee Act 1975 to introduce a new section 47(A), giving the court jurisdiction to set aside the exercise of a fiduciary power, which has gone wrong, thereby enshrining in law the “Rule in Hastings-Bass”, referred to by Lord Neuberger in commentary as a “magical morning-after pill”. [Read more](#)

Looking retrospectively at 2014, there were several interesting developments in the legal arena. We provide this as a summary with a view to what 2015 may have in store.

### 2014 Proposed Amendments to Bermuda’s AML/ATF Legislation – Expansion of the Definition of Politically Exposed Persons

Changes in Bermuda’s Anti-Money Laundering and Terrorist Financing (“AML/ATF”) Legislation will be addressed in Parliament in order to bring the technical components into compliance with the 2012 Revised Financial Action Task Force (“FATF”) 40 recommendations (the “Recommendations”).

The recommendations, recommendation 12 in particular, include the requirement to identify domestic politically exposed persons as well as the directors and the officers of international organizations. It is proposed that Bermuda expand of the definition of a Politically Exposed Person (“PEP”) to include domestic PEP’s and the directors and officers of international organizations. It is further proposed that enhanced due diligence be carried out on those individuals that fall under the expanded definition of a PEP. [Read more](#)

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*Did you know? You can view Bermuda Acts and Regulations from 1993 onward on Bermuda Laws Online:*

<http://www.bermudalaws.bm/default.aspx>

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### Incentives for Job Makers

The Incentives for Job Makers Act 2013 came into operation in December and the Bermuda Immigration and Protection Amendment (No.2) Act 2013 came into force April 1, 2014. These two acts effectively introduced various changes to the Bermuda Immigration and Protection Act 1956 (“Immigration Act”) and the Economic Development Act 1968 (“EDA”) which sought to make it easier for companies to obtain work permit exemptions for certain senior executives and for certain senior executives to be eligible to apply for a Permanent Resident’s Certificate (PRC).

[Read more](#)

### Growth in new company registrations – Bermuda moving in the right direction

In a positive sign for Bermuda’s economy, Education and Economic Development Minister Dr. Grant Gibbons recently released results showing that the midyear total of new company registrations in 2014 stood higher than any midyear totals for the last five years. The total of 19,151 local and exempted entities on the register at the end of the second quarter of 2014 was bolstered by the registration of 308 new companies (268 international business related) during that period, a slight increase over the 303 new companies (250 international business related) registered during the same period in 2013. [Read more](#)

### Trustee Amendment Act 2014

The Trustee Amendment Act 2014 (the “Act”) which became operative on 29 July 2014, has had the effect of amending the Trustee Act 1975 to introduce a new section 47(A), giving the court jurisdiction to set aside the exercise of a fiduciary power, which has gone wrong, thereby enshrining in law the “Rule in Hastings-Bass”, referred to by Lord Neuberger in commentary as a “magical morning-after pill”. [Read more](#)



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### *Justice Today: Human Rights Since Emancipation*

*On July 10, 2014, the Centre for Justice presented a conference entitled “Justice Today: Human Rights Since Emancipation” which commemorated the 180 years that have passed since Emancipation in Bermuda.*

*Two MJM attorneys submitted papers to the Centre for Justice, Director Peter Martin and Litigation Attorney Kimberley Caines. Peter*

*Martin was invited to present at the conference, alongside a panel of local and overseas experts in the field of human rights and justice.*

[Read More](#)

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

- Reforms to immigration policies and practices announced
- Government proposes to spur negotiations for new hotel developments by enhancing the Hotel Concession Act to better assist tourism developers and investors, along with the introduction of gaming
- Plans for the development of Bermuda as the site for the prestigious America’s Cup announced
- Government has also promised to bring a halt to the unsustainable cost of government through strict spending controls, new efficiencies, contract negotiations and public reform

[Read more](#)

### **Bermuda’s new funds regime receiving international recognition**

There was further recent evidence that Bermuda’s revolutionary approach to updating its funds regime has attracted a great deal of interest and support from those working in this business sector. [Read more](#)

### **Corporate Landholding in Bermuda**

On 27 March 2014 the Government enacted the Companies Amendment Act 2014 (the “Amendment Act”) introducing new provisions to the Companies Act 1981 with regards to the ability of local and exempt companies to acquire land in Bermuda. An accompanying corporate landholding policy (the “Policy”) was issued to run alongside the Amendment Act to help clarify the objectives behind the changes in an effort to assist with the Ministers decision making when making an application for consent. [Read more](#)

### **Bermudian Status for PRC Holders**

The Supreme Court of Bermuda handed down its judgment in the matter of *The Minister for Home Affairs v Carne and Correia* on 2 May 2014. The fundamental result of this judgment is that under certain circumstances, holders of Permanent Resident Certificates (“PRC”) who have been resident in Bermuda prior to July 1989 can now apply for Bermudian Status – an application which Chief Justice Kawaley described as “one of the most significant applications that it is possible for an applicant to make” pursuant to the “beauty in the sleeping provisions” of Section 20B of the Bermuda Immigration and Protection Act 1956 (“BIPA”). [Read more](#)

### **Trustee (Special Provisions) Amendment Act 2014**

2014 also saw the introduction of the Trustee (Special Provisions) Amendment Act 2014 (the “Act”) which provides statutory clarity and certainty with respect to the powers settlors can reserve or grant over a trust without calling into question the validity of the trust structure. The powers enshrined in this legislation are expected to attract a wide class of settlors from both North America and Europe... [Read more](#)

### **2014 CASES OF NOTE**

#### **Privy Council Watch: The Singularis Holdings case and the Saad Investments case**

In the world of cross border insolvencies, two important judgments in the Privy Council have clarified three issues which have great significance, not just for Bermuda, but all offshore jurisdictions which have insolvency provisions based on the English model, whether 1948 Companies Act or Insolvency Act 1986. [Read more](#)

#### **In the Matter of an Application for Information about a Trust**

In its 2014 decision, the Court of Appeal considered Chief Justice Kawaley’s first instance 2013 decision to order the production of trust documents to a beneficiary notwithstanding that the trust deed contained an information control mechanism designed to prevent disclosure of financial information unless the Protector (who was also the principal beneficiary) consented. [Read more](#)

#### **The Relevance of International Legal Obligations Relating to Environmental Impact Assessments to Bermuda**

The United Kingdom (the “UK”) is party to many international treaty obligations but how far do these international treaty obligations extend to UK territories? This question was considered in the recent case of *BEST v Minister of Home Affairs* [2014] SC (Bda) 61 App (6 August 2014). Given the legal autonomy Bermuda has to the UK, this case raises an interesting legal issue. [Read more](#)

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*MJM’s Peter Martin is ranked a Leading Lawyer in the IFLR1000 for 2014*

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## MJM BARRISTERS & ATTORNEYS

IS ORGANIZED AROUND FOUR  
CORE PRACTICE AREAS:

**CORPORATE  
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 continued to be the designated Bermuda law firm within **Globalaw** and was further appointed to **Insuralex Global Insurance Lawyer's Group** this year. Insuralex is a world-wide network of independent insurance and re-insurance lawyers...[Read More](#)

**Chambers Global** has recognized the following MJM Lawyers as "**Leaders in their Field**" for 2014:

**\*Alan Dunch for Dispute Resolution**

**\*Andrew Martin for Dispute Resolution**

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

## TIEA requests under the International Cooperation (Tax Information Exchange Agreements) Act 2005

These two cases related to a request for exchange of information under the International Cooperation (Tax Information Exchange Agreements) Act 2005 (the "Act"). Bermuda has entered into over 30 Tax Information Exchange Agreements ("TIEAs") in recent times. With the increase in TIEAs has come an increase in requests from foreign governments. Consistent with the increase in such requests, the Bermuda courts have started to see a wave of judicial review challenges seeking to challenge the legality of TIEA requests under the Act. [Read more](#)

## Protective Costs Orders considered for the first time in Bermuda Courts

The 2014 matter involving the *Bermuda Environmental Sustainability Task Force ("BEST") and the Minister of Home Affairs* [2014] SC (Bda) 73 App (18 September 2014) raised interesting legal points as it relates to environment and planning law. However, a potentially obscure point was also raised in this case, which provides guidance as it relates to costs orders, namely the making of protective costs orders ("PCO") in Bermuda. [Read more](#)

## Can a Registered Office Resign?

In the case of *Abu Dhabi Commercial Bank PJSC v Algosaibi Trading Services Limited* [2014] SC (Bda) 71 Com (12 September 2014), the Chief Justice delivered an ex tempore judgment which clarified what the position is when a registered office purports to resign. [Read more](#)

## Important Court of Appeal Decision – Kader

An important decision came from the Court of Appeal this year relating to the issue of whether a party has submitted to the jurisdiction in proceedings outside of Bermuda. In *Kader Holdings Company Limited v Desarrollo Inmoniliario Negocios Industriales De Alta Tecnologia De Hermosillo, S.A. De CV* [2013] CA (Bda) 13 Civ (10 March 2014), the Court of Appeal reversed the Chief Justice's ruling of July 2013...[Read more](#)

## Staying Power

In September of this year we acted on a very significant international commercial dispute where the question arose as to whether proceedings in Bermuda would be stayed pending the determination of arbitral proceedings in Canada which would deal with the central question of whether a previous settlement agreement extended to the Defendant and whether the Defendant had a complete defence to the Claim. [Read more](#)

## Meeting matters: The Chairman's power of adjournment

The recent Bermuda case of *Oung James v Paladin Ltd* [2014] SC (Bda) 67 Com considered the procedural validity of an adjournment of a Special General Meeting (the "Meeting") by the exercise of the Chairman's general power to conduct the meeting. [Read more](#)

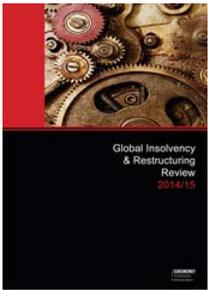
## Ribaroff v Williams & Others

In January this year we acted for the Plaintiff against five Defendants in a claim for damages for breach of a Sale & Purchase Agreement of a Bermudian fund management company. The Defendants were directors and shareholders of the fund management company and had negotiated a staged management buyout from the Plaintiff vendor. [Read more](#)

MJM Limited Appoints Fozeia Rana-Fahy as Director  
<http://bernews.com/2014/02/mjm-appoints-fozeia-rana-fahy-as-director/>

*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.*

## 2014 MJM LIMITED CONTRIBUTIONS TO PUBLICATIONS



Global Insolvency & Restructuring Review 2014/15



South Square Digest August 2014



STEP Journal: Bermuda Supplement 2014



The International Comparative Legal Guide to Private Client 2014 Edition



The International Comparative Legal Guide to Alternative Investment Funds 2014 Edition



The International Comparative Legal Guide to Lending & Secured Finance 2014 Edition



The International Comparative Legal Guide to Mergers & Acquisitions 2014 Edition



Getting the Deal Through – Telecoms and Media 2014 Edition



Getting the Deal Through – Securities Finance 2014



Getting the Deal Through – Restructuring & Insolvency 2014



Getting the Deal Through – Mergers & Acquisitions 2014



Practical Law Company Multi-Jurisdictional Guide to Dispute Resolution, Private Client and Finance

If you are interested in receiving a complimentary copy of one of our contributions to the above publications, please contact Agathe Holowatinc at [aholowatinc@mjm.bm](mailto:aholowatinc@mjm.bm).