

# 2017: A YEAR IN REVIEW



Looking retrospectively at 2017, there were several interesting developments in the legal arena. We provide this as a summary with a view to what 2018 may have in store.

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 summary below.

## **MJM LIMITED**

THISTLE HOUSE  
4 BURNABY STREET  
HAMILTON HM 11

P.O. BOX HM 1564  
HAMILTON HM FX  
BERMUDA

TEL 441.292.1345  
FAX 441.292.2277  
WEB [www.mjm.bm](http://www.mjm.bm)  
BLOG [www.bermudalawblog.bm](http://www.bermudalawblog.bm)



BARRISTERS  
& ATTORNEYS

## DID YOU KNOW?

Did you know that all of Bermuda's legislation is available online to download and read at [www.bermudalaws.bm](http://www.bermudalaws.bm)

### 2017 Throne Speech: A Brief Summary of the Parliamentary Agenda

A new Progressive Labour Party Government signalled its intention to build "a better and fairer Bermuda" by "ensuring social mobility and removing social inequality" through economic growth when its legislative agenda for the forthcoming parliamentary year was unveiled in the Speech from the Throne delivered on the opening of Parliament on Friday the 8th of September following the party's landslide election in July.

Describing Bermuda as the most expensive country to live in 2016, the new Government announced its priorities would be: reducing the cost of living; creating more jobs for Bermudians; and growing the Bermuda economy.

[Read More \[September 2017\]](#)

### New Bribery Act In Force

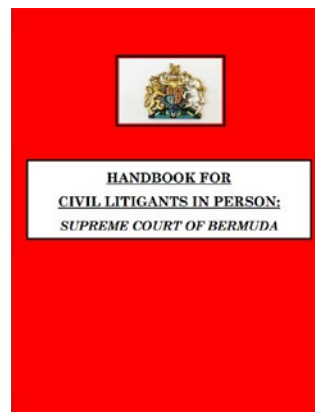
In December 2016, the legislature in Bermuda passed the Bribery Act 2016 (the "Act") which came into force on 1 September 2017. The Act is based on the UK Bribery Act 2010.

In the past, there were several separate laws dealing with bribery and corruption offences in Bermuda, such as the Criminal Code 1907 (Section 111 Official Corruption and Section 112 Extortion By Public Officers), the Parliament Act 1957 and the Parliamentary Election Act 1978. But as of 1 September, we have one comprehensive statute that sets out bribery offences in Bermuda, including the offence of

failure of commercial organisations to prevent bribery, a strict liability offence for which the only defence is for a commercial organisation to demonstrate that it had 'adequate procedures' to prevent bribery.

[Read More \[November 2017\]](#)

### Supreme Court Creates Handbook to Help Guide Civil Litigants



"While, in the vast majority of cases, people exercise their right of access to justice through the services of a lawyer, over the last decade, there have been an ever increasing number of litigants in person appearing in the Bermuda Courts," reads the Preface in the newly released

Handbook for Civil Litigants in Person. Although not short, the 47 page Handbook is clear and comprehensive, detailed and accessible, and aims to help individuals appearing on their own behalf to navigate the civil justice system as effectively as they can.

[Read more \[May 2017\]](#)

### To Be Or Not To Be A Trustee...

Recently tabled in the House of Assembly, the Proceeds of Crime Amendment (No.3) Act 2017 ("PCA3") will have the effect of extending regulatory reach to lay trustees.

*continued*



BARRISTERS  
& ATTORNEYS

MJM Limited is consistently recognised by some of the world's most respected benchmarking publications for leadership in law, excellence in client service and longstanding depth of experience in our practice areas.

Some of you already act as a trustee for a friend or family member. Others will be asked to do so in future. The playing field is changing for lay trustees and it is important to fully understand the responsibilities of the position.

A “trust” has historically been conceptualised as a “personal relationship” between trustee and settlor. Trustees were trusted friends, advisors or business associates of the settlor, at least familiar, if not intimately acquainted, with the settlor’s personal circumstances, who took on the noble responsibility of holding and administering a trust fund for the benefit of the settlor’s chosen class of beneficiaries.

[Read more \[October 2017\]](#)

---

## **Transcontinental Trusts International Forum 2017 Highlights Data Protection Concerns**

The Transcontinental Trusts International Forum 2017 took place earlier this month on 4-5th May 2017 at the Fairmont Southampton. This conference began in Bermuda in 2015 and has grown hugely in popularity as one of the key events on the private client calendar. This year it was attended by leading international experts, lawyers and barristers from the international and local private client market as well as renowned international judges. The whole event received an extremely favorable response from speakers and delegates alike.

Topics covered included the impact of Brexit and the US election on the industry, practical consequences flowing from CRS & FATCA, an international litigation update, family governance and tax changes in the US and UK. Furthermore, data protection was highlighted in several of the sessions as an area to look out for.

[Read more \[May 2017\]](#)

---

## **Fozeia Rana-Fahy recognised for the third year in a row as one of the Top 200 international Powerwomen by Citywealth**

For the third year running, MJM Director Fozeia Rana-Fahy has been listed as one of the Top 200 international Powerwomen by Citywealth. The list honours 200 of the most powerful women in government, private wealth, education, private client advisory and philanthropy across the international financial centres (IFCs).

[Read more \[December 2017\]](#)



## **Rights of Outgoing Trustees Examined by Bermuda Courts**

*Meritus Trust Company Limited v Butterfield Trust (Bermuda) Limited [2017] Bda LR 82*

In October 2017, Chief Justice Kawaley ruled that an outgoing trustee is neither entitled to retain any part of the trust assets as security for its equitable indemnity as former trustee nor demand a contractual indemnity.

[Read More \[December 2017\]](#)

---

## **MJM Lawyers attending London International Shipping Week**

Jeremy Leese and Brian Holdipp, members of MJM’s Corporate Department, will be attending London International Shipping Week in early September, as part of a Bermuda delegation which includes The Hon. Walter Roban, JP, MP, Minister of Transport, and Ross Webber, CEO of the Bermuda Business Development Agency (BDA).

[Read more \[August 2017\]](#)

---

## **MJM Helps Make Bermuda Cancer and Health Centre’s Radiation Therapy Unit A Reality**

At MJM we take great pride in the work we do. Often that work involves helping local organisations provide resources which benefit our island community.

Yesterday, the island’s first radiation therapy unit was officially opened at the Bermuda Cancer and Health Centre with a ribbon-cutting ceremony. Cancer patients will now be able to benefit from cutting-edge radiation treatments here at home, where they can receive emotional support from family and friends and continue on with their lives instead of going overseas for several weeks.

[Read more \[May 2017\]](#)

## Raising the Bar



Samuel Martin was called to the Bermuda Bar on 17 August 2017 by the Hon Chief Justice Ian Kawaley. Sam's call to the Bar was moved by his Dad, Andrew Martin, and seconded by his uncle, Peter Martin, who are both shareholders and directors of MJM Limited.

[Read more \[August 2017\]](#)

### The Good Samaritan

Recently in the news there have been increasing reports of rescue efforts and road accidents where members of the public have been praised for assisting the victims until emergency services personnel arrived. For some people, leaping to action in those circumstances is an instinctual response to seeing a fellow man or woman in need. But what happens if in doing so that person makes the matter worse?

[Read more \[August 2017\]](#)

### Bermuda Court Revisits Confidentiality Orders in Wake of the Paradise Papers

#### *In the Matter of the G Trusts [2017] Bda LR 371*

In the 2015 case of *Re BCD Trust* (confidentiality Order), the Chief Justice had confirmed that with respect to administration of trust cases, proceedings could be anonymised and dealt with as private applications where there was no obvious public interest in knowing about an internal trust administration matter.

[Read More \[December 2017\]](#)

## Several MJM attorneys ranked as "Leaders in their Field" in Chambers Global 2018

Research for Chambers Global 2018 has finished and, in an advanced ranking announcement from this Monday, the global law firm rating agency disclosed that several MJM attorneys will be featured as "Leaders in their Field" and that MJM Limited will be ranked in the forthcoming edition of Chambers Global Guides.

The "Leaders in their Field" list of names was released and we are proud to recognise the following for their achievement:

Fozeia Rana-Fahy, Director  
Alan Dunch, Director  
Andrew Martin, Director  
Peter Martin, Director  
Brian Holdipp, Senior Associate  
Jeremy Leese, Senior Associate

[Read more \[October 2017\]](#)

## Land Title Registration Expected To Go Live Next Year

The Land Title Registration Amendment Bill (the "Amendment Bill") was passed in the Bermuda House of Assembly on Friday, 24 November 2017. The Amendment Bill seeks to introduce new provisions to or amend existing sections of the principal legislation, the Land Title Registration Act 2011 (the "Act").

[Read more \[December 2017\]](#)

## New mortgage programme designed to aid Bermudian home ownership

MJM advised on the HomeStart Programme, announced today by Clarien Bank and Bermuda Housing Corporation. The programme documentation was drafted by MJM's Jeremy Leese, advising Clarien Bank.

[Read more \[January 2017\]](#)

## 2017 CASES OF NOTE

### **Supreme Court Terminates Waterfront Arbitration**

In the first decision of its kind, the Bermuda Supreme Court has utilised its powers under Section 39 of the Arbitration Act 1986 (the "Act") to terminate an arbitration – and in this case a very important one – the arbitration between The Allied Trust and Allied Development Partners Limited (together "Allied") and The Government of Bermuda. This decision follows Parliament's voiding of Allied's lease over the Hamilton Waterfront (the "Waterfront Arbitration").

[Read more \[December 2017\]](#)

### **In the Matter of A Trust (Change of Governing Law) [2017] SC (Bda) 38 Civ (19 May 2017)**

The Chief Justice has recently considered the impact of the Children Act 1998 ("the Act") as amended by the Children Amendment Act 2002 ("the 2002 Amendments") upon the ability of trustees to change the governing law of a foreign law trust to Bermuda.

The 2002 Amendments, which came into force in January 2004, created a new rule for construing all instruments, including international trusts. On one reading of the Act, a person can no longer validly give a gift or make dispositions of property to their "legitimate children" only (unless each legitimate child is identified by name), since such a gift/disposition would be construed as a gift/disposition to their legitimate and illegitimate children.

[Read more \[August 2017\]](#)

### **Heads up, LADS!**

In a recent Supreme Court decision the Chief Justice has made an important ruling with potentially wide implications. The case concerns the time limit for bringing a claim in negligence against a party with whom the claimant is also in a contractual relationship. The decision is of particular interest to Lawyers, Accountants, Architects, Doctors, and Surveyors (the "LADS") but also anyone else who makes their living by providing professional advice to clients.

[Read more \[February 2017\]](#)

### **Free Health Insurance Benefit For BELCO Retirees Protected By The Court**

In January of this year, Alan Dunch and I appeared before Justice Stephen Hellman in the case of Earlston J. Astwood and Others v Bermuda Electric Light Company Limited and Ascendant Group Limited [2017] SC (Bda) 13 Civ (16 February 2017) in a three-day trial in which we acted for 109 Plaintiffs fighting to protect their health insurance benefit.

[Read More \[May 2017\]](#)

### **Bermuda Judgment Highlights 2017 – Trust Cases**

#### ***Church Bay Trust Co. Ltd. v Her Majesty's Attorney General for Bermuda [2017] SC (Bda) 34 Civ (1 May 2017)***

In this case, the Plaintiff Trustee sought rectification of a Settlement on the grounds of mistake as the terms of the Trust Deed conferred a power upon the Trustee to add and exclude beneficiaries only during the lifetime of the Settlor.

The Court held that the quality of the evidence supporting the mistake was very high because it was derived from prior to the execution of the Deed and was based on communications between the Trustee and Settlor. It was clear that the Settlor did not intend the Trust property to go to charity (the ultimate beneficiary) when there were alternative persons identified by him to be added as beneficiaries. Therefore, in an effort to give effect to the true intentions of the Settlor, the application was granted to rectify the Trust Deed in the terms prayed.

[Read More \[September 2017\]](#)



**MJM LIMITED IS ORGANISED AROUND FOUR CORE PRACTICE AREAS:  
CORPORATE | DISPUTE RESOLUTION | PROPERTY | PRIVATE CLIENT**

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

The firm's "practicality of advice" is particularly noteworthy.  
"They really do think about what's in the best interests of the client"  
- Chambers Global, 2017

Peter Martin, Jeremy Leese and Brian Holdipp  
are ranked in this year's IFLR1000 Leading Lawyers list.

*Chambers Global* has recognised the following MJM Lawyers as  
"Leaders in their Field" for 2017:  
Alan Dunch , Andrew Martin , Peter Martin , Jeremy Leese and Brian Holdipp.



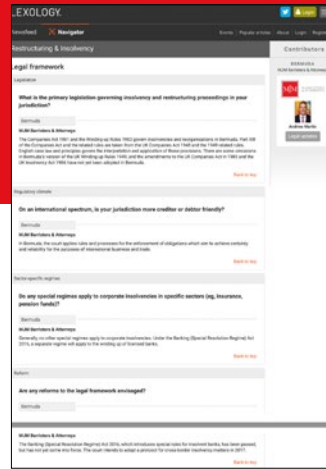
# 2017 MJM LIMITED CONTRIBUTIONS TO PUBLICATIONS



The International Comparative Legal Guide to: Mergers & Acquisitions 2017



Getting the Deal Through – Aviation Finance & Leasing – 2017



Lexology Navigator – Restructuring & Insolvency in Bermuda Q&A – 2017



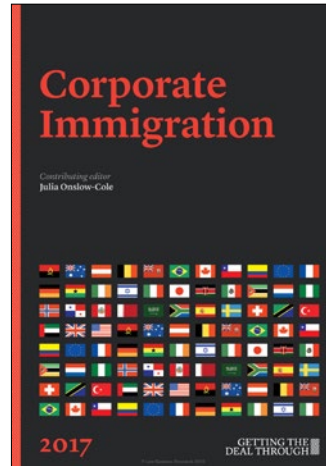
Getting the Deal Through: Private Client – 2017



Practical Law Company – Private Client Law in Bermuda: An Overview – 2017



The International Comparative Legal Guide to Business Crime 2017



Getting the Deal Through – Corporate Immigration – 2017

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

All PDF versions of publications are on our website "bookshelf" at [www.mjm.bm/bookshelf](http://www.mjm.bm/bookshelf)

**MJM LIMITED**

THISTLE HOUSE  
4 BURNABY STREET  
HAMILTON HM 11

P.O. BOX HM 1564  
HAMILTON HM FX  
BERMUDA

TEL 441.292.1345

FAX 441.292.2277

WEB [www.mjm.bm](http://www.mjm.bm)

BLOG [www.bermudalawblog.bm](http://www.bermudalawblog.bm)



BARRISTERS & ATTORNEYS