

2015: A YEAR IN REVIEW



Looking retrospectively at 2015, there were several interesting developments in the legal arena. We provide this as a summary with a view to what 2016 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.

Photo of Zara 77 courtesy of Andrew Stephenson (c) 2015, with our thanks.

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DID YOU KNOW?

The PATI Act grants every Bermudian and Bermuda resident the right to request access to a record held by a public authority. Here's how to write and submit a request for information: <http://www.ico.bm/#!pati-request/ch6q>

Bermuda wins Solvency II equivalence

Bermuda has now been awarded full equivalence under the tough EU Solvency II regulations by the European Commission.

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Another Step in the Right Direction: Bermuda Solvency II Equivalence

Bermuda has moved closer to equivalence under Solvency II (Directive 2009/138/EC) and the retention of EU market access for Bermuda commercial (re)insurers. The encouraging news follows the recent consultation paper published by the European Insurance and Occupational Pensions Authority (EIOPA) which is focused on the equivalence assessment of the Bermuda supervisory system (EIOPA-CP-14/042).

[Read more \[Jan 2015\]](#)

Enhancements to Legislation with an Eye on Private Equity

The vast majority of partnerships on the Bermuda registry are said to be private or closed-end funds. Hailed as an important part of the government's efforts to achieve growth in the asset management area, amendments have been made to partnership and company legislation to enhance the flexibility and efficiency of Bermuda exempted and limited partnerships and to boost the desirability to use Bermuda as a jurisdiction to establish private equity funds and asset-holding structures.

[Read more \[Aug 2015\]](#)

Aircraft Finance: Cape Town Convention to Further Strengthen Bermuda's Hand

Bermuda is firmly established as the offshore jurisdiction of choice in aviation finance; however, one missing piece in the jigsaw puzzle within this sector has been the non-implementation in Bermuda of what is known as the Cape Town Convention. The Cape Town Convention on International Interests in Mobile Equipment and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment (together the "Convention") came into force on 1 March, 2006.

[Read more \[Aug 2015\]](#)

Public Access to Information (PATI) Act and Regulations Now In Force

In Canada, the Access to Information Act provides the public the right of access to information under the control of a federal government institution. In the USA, the Freedom of Information Act allows for the disclosure of documents controlled by the United States government to the public. In the UK, the Freedom of Information Act gives the public the right to obtain access to information held by public authorities. In the Cayman Islands, these rights fall under the Freedom of Information Law. In Jamaica, the relevant legislation is the Access to Information Act. In Trinidad and Tobago, it's the Freedom of Information Act.

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MJM Limited awarded
Follow-On Deal of the Year by Marine Money Offshore
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Bermuda Introduces Draft Model Personal Information Protection Act (PIPA)



The Government of Bermuda under the Ministry of economic Development is planning to introduce legislation that fortifies privacy protection rights for all residents. A Draft Model Personal Information Protection Act (PIPA) was written and sent out for the public consultation from July 10th to August 17th, 2015. The PIPA Draft Model covers personal information in both the online and offline environments (ie filing cabinets), including provisions for the protection of children's personal information, the use of 'sensitive' information...

[Read more \[Apr 2015\]](#)

Q & A with Bermuda's first Information Commissioner, Gitanjali S. Gutierrez

I had the pleasure of sitting down with Mrs. Gitanjali Gutierrez in my office at MJM last week for a one-on-one interview about her background, role as Bermuda's first Information Commissioner, and the Public Access to Information (PATI) Act implementation. A fascinating woman, she spoke passionately about her new role and the way PATI is changing the way things are done in Bermuda. Here's what she had to say...

[Read more \[Apr 2015\]](#)

Property Rights of Permanent Resident Certificate Holders under the proposed Bermuda Immigration and Protection Amendment Act 2015

The recent sitting of Senate has seen significant legislative amendments introduced. One amendment in particular that has caused great discussion is that of the property rights now afforded to Permanent Residence Certificate Holders ("PRC Holders"). For clarification, a PRC holder is one who has obtained a Permanent Resident's Certificate by the Minister under section 31A or 31B under the Bermuda Immigration and Protection Act 1956 (the "Act").

[Read more \[Apr 2015\]](#)

2015 THRONE SPEECH

A brief summary of the
Parliamentary Agenda

"Government continues to pursue a two-track strategy to grow the economy and impose discipline on the public purse", said the Governor Sir George Fergusson who by tradition reads the speech at the opening of parliament ceremony.

"Particular energies have been focused on rebuilding Bermuda's tourism industry and improving the Island's attractiveness to international business." Some reforms detailed in the speech include:

- New amendments to partnership laws to provide greater flexibility and certainty with respect to partner activities, rights and remedies as well as structural conversions, re-domiciliation and the impact of specified events on the continuity of partnerships;

Continued on the next page...

Changes to Bermuda's Criminal Law – An Update

In early July of this year, I wrote a blog post detailing two proposed Criminal Law Reform bills: the Disclosure and Criminal Reform Act 2015 (the "Disclosure Act") and the Criminal Jurisdiction and Procedure Act 2015 (the "Procedure Act"). At that point, the Bills had been passed by the House of Assembly on 5 June 2015 and remained to be debated in the Senate.

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The Protections and Perils of Enduring Powers of Attorney

None of us likes to consider the possibility that we may one day find ourselves unable to manage our own affairs. It is a boon that we can expect to live longer, but longer life often involves a loss of independence, and the possibility of that loss of independence necessitates forward planning. It is essential to ensure that someone can take up your day to day responsibilities in the event that you lose physical or mental capacity and one of the simplest and most cost-effective tools available for these purposes is the Enduring Power of Attorney ("EPOA").

[Read More \[Nov 2015\]](#)

Bermuda Immigration Appeal Tribunal to publish decisions online

Minister of Home Affairs, Michael Fahy, said in a recent press release, that these cases have resulted in "a body of well-reasoned written decisions that have influenced and shaped our understanding of the [Immigration Act] as well as influenced policies at the Department of Immigration for the better." As a result, these decisions will now be posted online and open to the public for review.

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End-of-Life Care and Advance Directives: What are your wishes?

For a diversity of reasons, many of us are unwilling to properly contemplate our own beliefs and preferences concerning the subject of end-of-life care. Some of us are young enough that we have no sense of our own mortality – we are invincible and have the advantage of a seemingly infinite time horizon to get serious about the serious stuff...

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2015 THRONE SPEECH CONTINUED...

- A Bill to modernise Bermuda's current legal position on third party rights, giving the jurisdiction maximum flexibility to meet the needs of the market and to match similar rights already in place in other jurisdictions;
 - An amendment to the Perpetuities and Accumulations Act so as to give Bermuda courts the power to remove legal restrictions on the time period for which property can be held in trust;
 - A Tourism Investment Incentive Act to encourage investment in hotel development and re-development as well as to provide incentives for "tourism-related products" and which will replace the existing Hotel Concessions Act
 - The introduction of a Personal Information Protection Act (PIPA)
- [Read More \[Nov 2015\]](#)

2015 CASES OF NOTE

Analysing the Legality of a Forfeiture Clause Within a Bermuda Will

In an anonymised ruling of December 2014, In the Matter of the Estate of PQR, Deceased [2014] Bda No. 205, Chief Justice Kawaley analysed the legality of a forfeiture clause within a Bermuda will. The point of construction was one that had not been determined as a matter of Bermuda law and turned on the divergence between commonwealth case law (more hostile to the validity of forfeiture clauses) and English case law (less hostile to the notion of seeking to give reasonable effect to forfeiture clauses).

[Read more \[Apr 2015\]](#)

Temporary Stewardship of the Corporation of Hamilton

On 22 December 2014, counsel for the Corporation of Hamilton initiated proceedings to challenge the constitutionality of certain amended sections of the Municipalities Act 1923.

[Read more \[Apr 2015\]](#)

Landmark Ruling by Chief Justice Regarding Access to Court Documents and "Open Justice"

Bermuda Press (Holdings) Ltd. ("BPHL"), the parent company for the local daily newspaper The Royal Gazette, commenced proceedings against the Registrar of the Supreme Court (the "Registrar") following the Registrar's refusal of BPHL's application to obtain copies of Affidavits and Exhibits filed in a case pending in the Supreme Court. The case involved a dispute between Allied Development Partners and the Government of Bermuda with reference to the Hamilton Waterfront. BPHL sought to challenge the accepted legal view that documentation being used in ongoing legal proceedings is not open to public inspection, even if the parties to the proceedings do not oppose access to the documentation.

[Read more \[Sept 2015\]](#)

Harkin: An Important Decision for Human Rights in Employment Law

A recent decision of the Chief Justice of the Supreme Court of Bermuda given on 23 November 2015, illustrates the importance of adherence to Human Rights' provisions in the employment context. In what has been referred to as a landmark decision, the Chief Justice...

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Same-Sex Partners of Bermudians: Right to Live & Work

As of 29 February 2016, same-sex partners of Bermudians will have the same right to reside and work in Bermuda as spouses of Bermudians. This is following the landmark decision of the Chief Justice of the Supreme Court, Justice Ian Kawaley, in Bermuda Bred Company v The Minister of Home Affairs and The Attorney-General handed down on 27 November 2015.

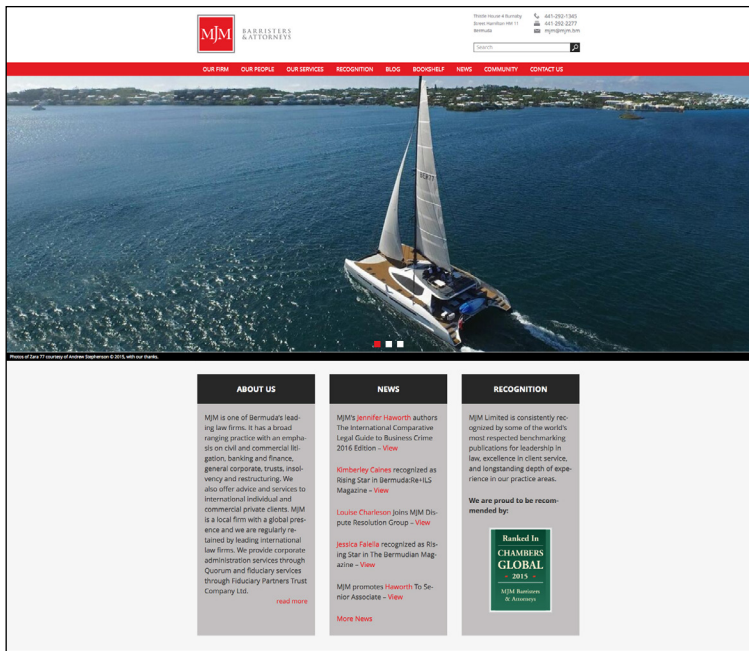
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Bermuda Press (Holdings) Case – An Update

Following the July 2015 ruling in Bermuda Press (Holdings) Ltd. v Registrar of the Supreme Court, the Chief Justice subsequently issued a Practice Direction (No. 23 of 2015) regarding access to court records in civil cases. In the Bermuda Press case, the Chief Justice had noted that access rights would still be subject to any valid objections from the parties in the case concerned. The Chief Justice had also specifically noted that the discretionary power will "rarely if ever" apply in ordinary civil or commercial cases where only private interests were in play. However, following the Practice Direction, this gateway has been widened.

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MJM LAUNCHES NEW WEBSITE



MJM Limited wins The Bermudian 2015 Product & Services Award for Legal Services



MJM LIMITED IS ORGANISED AROUND FOUR CORE PRACTICE AREAS:

CORPORATE | LITIGATION | PROPERTY | PRIVATE CLIENT

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

MJM continued to be the designated Bermuda law firm within *Insuralex Global Insurance Lawyer's Group* this year. Insuralex is a world-wide network of independent insurance and re-insurance lawyers.

MJM Limited welcomes Louise Charleson to the Dispute Resolution Team and appoints Jennifer Haworth to Senior Associate.

MJM's Peter Martin is ranked a Leading Lawyer in the *IFLR1000* for 2016

Chambers Global has recognised the following MJM Lawyers as "Leaders in their Field" for 2016: Alan Dunch, Andrew Martin, Peter Martin, Jeremy Leese and Brian Holdipp.

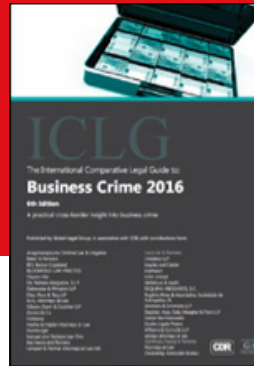
2015 MJM LIMITED CONTRIBUTIONS TO PUBLICATIONS



Getting the Deal Through - Mergers & Acquisitions 2015



Getting the Deal Through - Insurance & Reinsurance 2015



The International Comparative Legal Guide to Business Crime 2016



Practical Law Company – Private client law in Bermuda overview 2015



The International Comparative Legal Guide to Lending & Secured Finance 2015 Edition



The International Comparative Legal Guide to Lending & Secured Finance 2015 Edition



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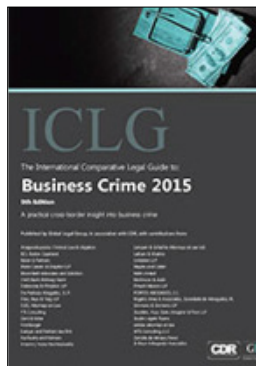
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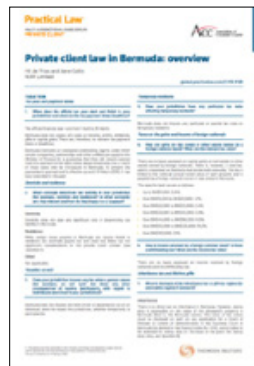
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