

# 2016: A YEAR IN REVIEW



Looking retrospectively at 2016, there were several interesting developments in the legal arena. We provide this as a summary with a view to what 2017 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.

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## DID YOU KNOW?

2016 Bills in the House of Assembly and the Senate can be viewed on the Bermuda Parliament website at [www.parliament.bm](http://www.parliament.bm) or [read more](#) about this on our blog.

### **Bermuda's Brexit Blues?**

Setting aside the effects on the UK economy, which are already being felt with political turmoil, the fall of the pound, billions being slashed from UK stocks worldwide and the potential break-up of the United Kingdom itself, one little examined effect is how its overseas dependent territories, of which Bermuda is one of the largest, would fare in the post-Brexit world, particularly in their relationship with the EU that the UK is leaving behind.

[Read More \[July 2016\]](#)

### **Facts & Figures 2016**

In October 2016, the Department of Statistics released its "Facts & Figures 2016" which sets out in summary form some of the key indicators of Bermuda's economic and trends. There are some important points to note from that report...

[Read More \[November 2016\]](#)

### **Transcontinental Trusts: International Forum 2016 (Bermuda)**

As one of the oldest international trust jurisdictions, Bermuda is known as a premier jurisdiction for trusts and other private client structures. Bermuda serves a broad spectrum of international businesses and high net worth clients and this year we proudly hosted the Transcontinental Trusts Forum: International Forum 2016.

[Read more \[June 2016\]](#)

### **Will Bermuda be Trumped?**

As I sat in my hotel room in New York in the early hours of Wednesday, 9th November 2016, having been awoken from my slumber by the screaming and cheering from across the road at the Hilton's Trump Election Party, my first thought was that the world in which we live will most certainly change once President-Elect Trump vacates his golden palace for a White House early in the new year. Change for sure, but for the better? And, if so, who is most likely to benefit? Much closer to home, what does it mean for us here in Bermuda?...

[Read More \[November 2016\]](#)

### **Congratulations to the Supreme Court on its 400th Anniversary from the legal team at MJM Limited.**

Wednesday June 15th saw 400 continuous years of sitting of the Supreme Court in Bermuda since it first sat in June 1616.

Congratulations on behalf of the legal team, managers and staff and MJM Limited!

"This Court in which we sit is a temple of justice; and the Advocate at the Bar, as well as the Judge upon the Bench, are equally ministers in that temple. The object of all equally should be the attainment of justice."

CRAMPTON, J., R. v. O'Connell (1844) 7 Ir. L.R. 261, 312.

[Read more \[June 2016\]](#)



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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.

## MJM Limited inspires students at Bermuda College



On 31 March 2016, lawyers from MJM Limited attended a Student Networking Event at the Bermuda College, providing students with information and insight into a legal career. Students had the opportunity to hear from lawyers Louise Charleson and Kimberley D. Caines as well as from the firm's pupil, Tristy Smith, about the various areas of law practiced in Bermuda, the process to qualify and the benefits of pursuing a legal career.

MJM Limited is committed to the development of young law students by way of providing work shadowing placements to students, attending networking events and speaking at career days in the local schools or other educational events.

[Read more \[April 2016\]](#)

### Access to Court Records

We have previously written a post about the Supreme Court's decision in *Bermuda Press (Holdings) v Registrar of the Supreme Court* in which the Chief Justice considered the public's right of access to court documents in a constitutional matter deemed to be in the public interest. The Court then issued Practice Direction ("PD") No. 23 of 2015 (discussed here) late last year which widened the scope indicating that members of the public were then entitled in civil cases to apply for copies of (1) the originating process and (2) judgments and orders in civil and commercial matters...

[Read more \[November 2016\]](#)

MJM Limited is highly ranked by global benchmarking publication Chambers Global.

[Read more \[April 2016\]](#)

## 2016 THRONE SPEECH

Plans for the forthcoming year include:

- A two-track strategy of growth renewal and job creation coupled with the imposition of discipline on public spending
- A ramping up of hotel development
- Construction of a new airport terminal
- The hosting of the America's Cup
- The introduction of progressive payroll tax reform "to ease pressures on lower income earners"
- A legislative review to improve and develop the registration and protection of intellectual property rights in Bermuda
- A second and final phase of telecommunications regulatory reform
- Introduction of an electronic registry system for the Registrar of Companies to keep pace with international reporting requirements
- Continued review of the islands' immigration laws and policies to address the issue of granting permanent residence certificates and Bermudian status
- A long-term care action plan to assist families and seniors;
- Examination of ways to protect seniors against age discrimination in employment;

Continued on the next page...



## Bermuda LLCs on the Way

Legislation was recently put before Parliament to introduce Bermuda's newest form of commercial vehicle: the limited liability company ("LLC"). The new law establishing the Bermuda LLC is heavily (and intentionally) influenced by the Delaware Limited Liability Company Act to accommodate the main efficiencies of a Delaware LLC.

[Read more \[July 2016\]](#)

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## The Register of Directors (UPDATE)

The 2015 POCA Amendment Act came into force on 1 January 2016 except for the operation of section 25 in relation to the Register of Directors, which was later brought into effect and operative so that the public Register of Directors must be completed by 31 December 2016.

[Read more \[November 2016\]](#)

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## The Contracts (Rights of Third Parties) Act 2016

One of the latest notable changes to the Bermuda legislation is the introduction of the Contracts (Rights of Third Parties) Act 2016 (the "Act"). This Act, which is based largely on the UK equivalent, allows parties to a contract in Bermuda to now provide for enforcement of its contractual terms by third parties subject to certain exceptions.

[Read more \[April 2016\]](#)

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## Banking (Special Resolution Regime) Act 2016

This Act was passed in the first quarter of 2016 but has not yet become effective. It is a lengthy Act with a number of separate and detailed statutory mechanisms which work in conjunction with one another. The purpose of the Act is to address a situation where all or part of a bank's business encounters financial difficulty or is likely to encounter such difficulty. The Act seeks to provide a mechanism for enabling the orderly transfer of the assets of a distressed bank, and the protection of deposit holders' interests in keeping with international standards.

[Read more \[November 2016\]](#)

## 2016 THRONE SPEECH CONTINUED...

- A study of the need for improved parental leave for, maternity, paternity and adoption; and,
- Establishment of a cross-Ministry committee to address the challenge of collecting arrears for child maintenance payments.
- The enactment of recommendations for civil service reform to increase accountability for performance at the top;
- A new code of conduct for the procurement of goods and services; and
- A Bribery Act to establish a National Anti-Corruption and Bribery Committee along with amendments to the Proceeds of Crime Act to facilitate reporting of suspected tax evasion.

[Read More \[November 2016\]](#)

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## Bermuda Legal Updates - Video Podcasts

Fozeia Rana-Fahy and Louise Charleson provide a Bermuda Trusts Update in this short video [podcast](#) [July 2016]

Andrew Martin speaks on Directors' Duties in this short video [podcast](#) [July 2016]

Jeremy Leese provides an update on Aviation Finance in this short video [podcast](#) [July 2016]

## **A “Balanced” Approach to Personal Information Protection: A PIP on Each Shoulder?**

The Personal Information Protection Act (“PIPA”) was enacted on 15 July 2016. However, it is not anticipated to come into force until 2018. This is to provide organisations with time to prepare for PIPA’s implementation. An independent Privacy Commissioner is due to be appointed shortly to assist with this process and ensure compliance with PIPA once it is in force.... At the date of this blog post, the Minister has not appointed a Privacy Commissioner, no Regulations have been made and no codes of best practice have been issued under PIPA.

[Read more \[September 2016\]](#)

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## **New Shipping and Aviation “Quangos” Given Green Light**

With effect from 1st October 2016, the governmental departments responsible for the oversight of the aviation and shipping sectors became “quangos” newly titled as the Bermuda Civil Aviation Authority and the Bermuda Shipping and Maritime Authority.

The aim of granting such status is to boost revenue from the registration of both vessels and aircraft, by making Bermuda more competitive in the global shipping and aviation markets.

[Read more \[October 2016\]](#)

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## **Succession on Intestacy - who will get a piece of your pie?**

While most people prefer to leave nothing in life to chance, there are many who don’t get around to making a Will, for one reason or another. Life is busy after all and planning for death is surely to tempt fate in the wrong direction. Those who are married often make the assumption that the surviving spouse will take everything, in all circumstances. Sadly, this is not the case.

[Read more \[September 2016\]](#)

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## **Testamentary Freedom v Family Obligation – Where does the Balance Lie?**

Our property is ours to give. This belief forms the foundation of the common law principle of testamentary freedom – that by the terms of your last will and testament, you may leave whatever you choose to whomever you choose. ...

[Read more \[October 2016\]](#)

## **EMPLOYMENT TRIBUNALS: THE GOOD, THE BAD AND THE UGLY**

The employment tribunal system was established to provide an employee the regime in which to make a formal complaint that their employer has violated the Employment Act 2000 (the “Act”).

The process was designed to encourage the parties to settle their differences wherever possible. If the parties cannot reach an agreement and there are reasonable grounds to suggest the employer may have violated the Act, the parties proceed to the Employment Tribunal for a hearing which lacks the sometimes daunting formalities of the courts.

The trouble with the process in Bermuda is that over the course of the last several years, the Act has been interpreted in such a way as to limit the role of the Employment Inspectors, pushing many, if not all complaints, through to the Employment Tribunal. This erodes important principles of justice and the pendulum has swung so far toward due process for the employee that parties are no longer on equal footing.

[Read More \[October 2016\]](#)

## 2016 CASES OF NOTE

### **Court Of Appeal: Important Security For Costs Decision**

In *The Allied Trust and Allied Development Partners Ltd v Attorney General and Minister for Home Affairs* [2015] SC Civ (Bda) 61, dated 24 August 2015, the Chief Justice of the Supreme Court of Bermuda ruled in favour of our client, the Minister of Home Affairs, and struck out a constitutional claim made by the Allied Trust and Allied Development Partners Limited (the "Applicants") in relation to the voiding of the Waterfront agreements. Following a Notice of Motion for Leave to Appeal filed in September 2015, the Applicants were granted leave to appeal by the Chief Justice on 20 November 2015.

[Read more](#) [April 2016]

### **Section 47 Confidentiality Orders**

The Chief Justice has recently provided helpful guidance to practitioners seeking confidentiality orders in section 47 applications by handing down an ex tempore ruling....

Section 47 of the Bermudian Trustee Act 1975 allows for the restructure of trusts in circumstances where the requisite power to implement the variation is absent from the trust instrument. It gives the Court jurisdiction to authorise transactions which it deems expedient for the trust.

[Read more](#) [February 2016]

### **Bermuda's Supreme Court confirms that property owners have an indefeasible right to title deeds**

It may seem obvious to practitioners that where there is no mortgage on a property, the legal owner is entitled to retain the title deeds to the property. However, it was recently argued in a dispute over whether a deposit could be forfeited by the vendor in a failed property transaction that the purchaser's attorneys should be permitted to hold onto the title deeds until the vendor returned the full deposit.

[Read more](#) [September 2016]

### **Costs in Regulatory Proceedings**

In an important decision in November 2016, the Insurance Appeals Tribunal (the "IAT") published in the press the text of its decision in relation to the jurisdiction to award costs in an appeal from a regulatory decision and appeal to the IAT under the Insurance Act 1978 (the "Act").

[Read More](#) [November 2016]

### **Bermuda Trust law update**

In the Matter of the C Trust [2016] SC [Bda] 53 Civ was the first Bermuda case to extend the perpetuity period under the new Section 4 of the Bermuda Perpetuities and Accumulations Act 2009 ("the 2009 Act"). The amendment to Section 4 took effect in December 2015. Although prior to the amendment, the 2009 Act had already abolished the rule against perpetuities with respect to instruments taking effect on or after 1 August 2009, the rule continued to apply to trusts established under Bermuda law prior to 1 August 2009 as well as to trusts originally established in other jurisdictions (with an applicable perpetuity period or similar limitation) but now governed by Bermuda law.

Prior to the amendment, trustees or interested parties could apply to Court using Section 47 of the Trustee Act 1975 to amend a trust to vary the perpetuity period as well as other aspects of the trust. 'Section 47' applications require showing that the proposed variation is "expedient" to the trust as a whole. The Section 4 amendment avoids the more rigorous and costly method of dealing with perpetuities variation via a Section 47 application – the test being a weaker test than "expediency".

[Read More](#) [November 2016]

**CONGRATULATIONS TO THE SUPREME COURT**  
on its 400th Anniversary from the Legal Team at MJM Limited



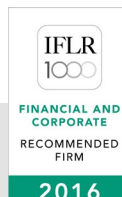
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**CORPORATE | DISPUTE RESOLUTION | PROPERTY | PRIVATE CLIENT**

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

"They've got their finger on the pulse of what's going on in Bermuda; they're very strategic in their advice and always think five steps ahead."  
- Client quoted in Chambers Global, 2016

MJM Limited welcomes Jordan Knight to the Dispute Resolution Team.

*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.





# 2016 MJM LIMITED CONTRIBUTIONS TO PUBLICATIONS



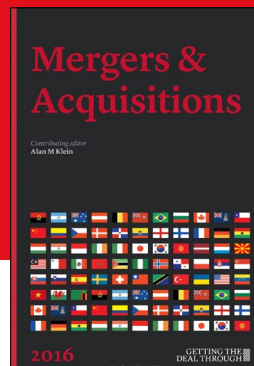
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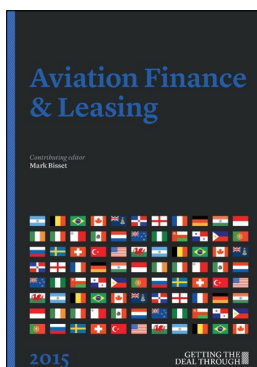
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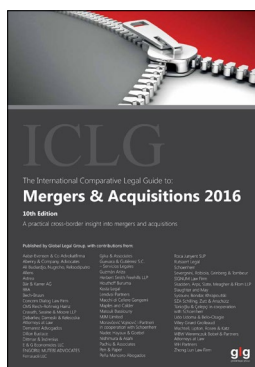
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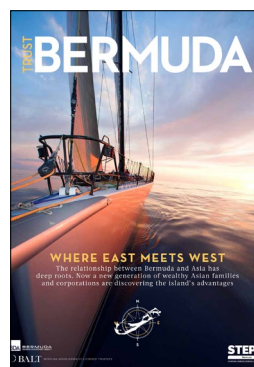
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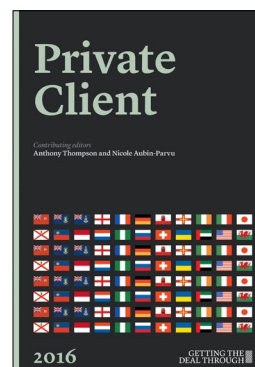
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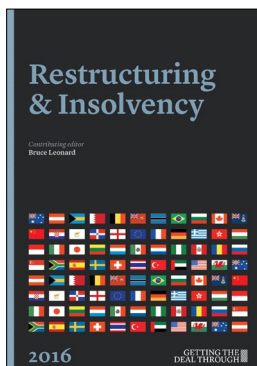
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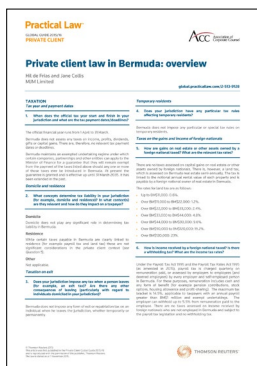
STEP Bermuda – Bermuda Trust feature "Where East Meets West" November 2015



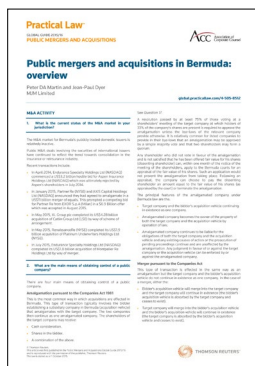
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