

2018: A YEAR IN REVIEW



Looking retrospectively at 2018, there were many interesting developments in the legal arena. We provide a summary of the key highlights with insights as to what may be in store for 2019.

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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FIRM APPOINTS NEW DIRECTORS



MJM Limited is pleased to announce that Senior Associates, Jennifer Haworth and Jeremy Leese will be promoted to Directors of the firm effective 1 January 2019.

The newly promoted Directors have extensive combined legal experience, in Bermuda and globally. Both Jeremy and Jennifer have been at MJM for over six years, making strong contributions to their respective practice areas of dispute resolution and corporate respectively, and to the overall growth of the firm.

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MJM IS RECOGNISED

I F C 2 0 1 8

powerwomen

T O P 2 0 0



Fozeia Rana-Fahy is a Citywealth 2015 IFC Powerwoman Top 200 for a fourth year

For a fourth year, MJM Director, Fozeia Rana-Fahy has been named as a Powerwoman on the Top 200 International Powerwomen

list 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).

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MJM's Dispute Resolution Team Ranked Band 1 by Chambers Global 2018

MJM Limited is pleased to announce that its Dispute Resolution Team is Ranked BAND 1 in Bermuda in results released today by Chambers & Partners in the Chambers Global 2018 rankings.

[Read More \[February 2018\]](#)

MJM's Corporate Team Ranked Tier 2 by IFLR1000

MJM Limited is pleased to announce that its Corporate Team is Ranked TIER 2 in Bermuda in results released recently by International law firm rating agency, IFLR1000.

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MJM's Real Estate Team Ranked Tier 1 by Legal500

MJM Limited is pleased to announce that its Real Estate Team is Ranked TIER 1 in Bermuda in results released recently by International law firm rating agency, The Legal500.

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LEADING FIRM



"Distinguished, independent Bermudian firm that is widely respected in the jurisdiction." - Chambers Global, 2018

"MJM Limited's 'team is very knowledgeable and the advice provided is detailed, thorough and spot on in appropriateness'." - Legal500, 2018

"MJM have always provided an efficient service and are very approachable." - IFLR1000, 2018

2018 MJM LIMITED CONTRIBUTIONS TO PUBLICATIONS



The International Comparative Legal Guide to: Mergers & Acquisitions 2018



Getting the Deal Through - Corporate Immigration - 2018



Getting the Deal Through - Aviation Finance & Leasing - 2018



The International Comparative Legal Guide to Business Crime 2018

All PDF versions of publications are on our website "bookshelf" at www.mjm.bm/bookshelf

TAKE A LOOK AT OUR NEW WEBSITE - WWW.MJM.BM



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2018 CASES OF NOTE

Notable Bermuda Trusts Decisions of 2018

In the Matter of the X Trusts [2018] SC (Bda) 56 Civ (12 July 2018)

The trustees in this case are private trust companies which have for some years been responsible for managing trusts which control underlying assets worth billions of dollars. The beneficiaries fall into two family camps – the Y and Z branches.

[Read more \[December 2018\]](#)

Court of Appeal Ruling Backs Former Chief Justice's Ruling in Same Sex Marriage

In an important decision for Bermuda, the Court of Appeal has supported a decision of the Supreme Court made by Former Chief Justice Ian Kawaley in *Ferguson et al v Attorney General* in June 2018 which held that certain aspects of the Domestic Partnership Act 2018 (the "DPA") are unconstitutional.

We previously told you about landmark court ruling in May 2017 which allowed same-sex marriage in Bermuda. There have been some developments in this area during the last year culminating with the recent decision of the Court of Appeal (the "Judgment").

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Guarantees and Independent Legal Advice

It is well recognised that in the context of certain types of banking transactions a presumption of undue influence can arise. An example of this would be where an individual is agreeing to charge a property which they own in order to secure the debts of their spouse. The question of whether a lack of independent legal advice invalidated a guarantee was considered recently in a case before the Chief Justice:

Clarien Bank v E Kempe.

The Defendant in this case guaranteed the full mortgage debt of a trust which had been established by her former husband and to which a property was transferred subject to the existing mortgage with the relevant bank.

[Read more \[March 2018\]](#)

Commercial Contract Disputes – "No Oral Modification" Clause

The UK Supreme Court has recently confirmed that contractual provisions which restrict the parties from modifying an agreement orally are binding and enforceable. These provisions are more commonly known as a 'No Oral Modification Clause' ("NOM Clause").

In *Rock Advertising Limited v MWB Business Exchange Centres Limited [2018] UKSC 24* ("Rock Advertising") there were two primary legal issues before the court: First, whether a NOM Clause was binding generally; and second, whether it's possible for parties to orally agree that any NOM Clause will have no effect on subsequent oral variations.

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The Law of Meetings

The fundamental principles of the law of meetings are sometimes over-looked in the modern climate of unanimous written shareholder resolutions, comprehensive retrospective ratifications, and the liberal application of the "Duomatic principle". The decision in *East Asia Company Limited -v- PT Satria Tirtatama Energiindo* in the Bermuda Court of Appeal provides a salutary reminder that the devil is always in the details.

The facts of the case were complex but it is not necessary (or helpful) to give a detailed explanation of those facts in order to distil the essential take-away points contained in the reasoning of the Court of Appeal. Briefly, the case concerned an application to rectify the register following the purported removal of directors in the context of a contested share purchase transaction.

[Read More \[December 2018\]](#)

Bermuda Banking Fintech Boom

In a recent announcement, the Premier of Bermuda, David Burt, who is also Minister of Finance, made it clear that his intention is for a “new class of bank” to come to Bermuda, with legislation on the way to create new services to cater to Bermuda-based FinTech companies. This was due to the island’s fledgling FinTech sector facing “understandable resistance” from banks, as their business model “does not fit the mould of what we have come to know as Bermuda’s traditional model.”

[Read More \[July 2018\]](#)

New Draft Bermuda Plan In Operation

On 3 December 2018, the Department of Planning released the Draft Bermuda Plan 2018 (the “Draft Plan”), which became operational on the same date. The Draft Plan details the land use zonings and policies, which the Department of Planning uses to review and assess planning applications.

[Read more \[December 2018\]](#)

Probate: Do I have to?

With a surprising degree of frequency I meet with clients to initiate the probate process many years after the death of a loved one. Often the catalyst is an attempt to sell a piece of real estate, at which time they learn that they have no authority to sell because dad’s estate or grandma’s estate was never probated. As many Bermudian families try hard to keep properties within the family, and as many families have a number of pieces of real estate, it can be years before this discovery is made. Then, the whole sale process comes to a grinding halt.

[Read more \[September 2018\]](#)

Digital Asset Business comes into force

The Digital Asset Business Act 2018 (the “DAB Act”) became operative on 10th September 2018, creating a legislative framework for digital asset business and services to operate within a regulated environment in or from within Bermuda.

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2018 THRONE SPEECH

A Brief Summary of the Parliamentary Agenda

The Government’s legislative agenda unveiled during the Speech from the Throne delivered on the convening of Parliament on Friday 9 November 2018 announced its priorities to continue the “diversification of Bermuda’s economy, the growth of new sectors of industry and the measures required to facilitate the continued growth in tourism.” The predominant focus is articulated as “reducing the cost of living for Bermudians and dismantling systems of inequality.”

[Read More \[November 2018\]](#)

Changes in Bermuda’s Supreme Court

There have been some important changes in the Supreme Court of Bermuda in the months of June and July of this year. Chief Justice Ian Kawaley stepped down in mid-July and was given much praise for his contributions to jurisprudence in Bermuda at a Special Sitting of the Bermuda Bar on 13 July. Mr Justice Kawaley was appointed to the Supreme Court in 2003 and was a founding member of Bermuda’s Commercial Court. He was appointed Chief Justice in 2012.

[Read More \[July 2018\]](#)

Land Title Registration is Up and Running

Following indications given last year, the Land Title Registration regime went live on 27 August 2018 when certain triggers for compulsory registration were enacted.

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LEGAL UPDATES

GDPR – What Non-EU Entities Need to Know

The General Data Protection Regulation (the “GDPR”) came into effect on 25 May 2018 and is designed to harmonise national data protection laws across the EU, while at the same time, modernising the law to address new technological developments. As a regulation, the GDPR is directly applicable, and therefore enforceable, in all 28 EU Member States. For an interesting summary, check out this infographic from the European Commission’s official website.

[Read more \[July 2018\]](#)

Redaction Action

It is always reassuring when a decision of the court validates and confirms the adage that the law is largely just “common sense with knobs on” (in the words of Lord Sumption).

The loser in a recent injunction case wanted to be able to rely upon privileged information contained in the bill of costs submitted by the winner, and to use that information against the winner in the arbitration proceedings that were pending between the parties. This is pretty outrageous, and one would readily expect that this would not be permissible. It isn’t.

[Read More \[March 2018\]](#)

Bermuda’s Economic Substance Requirements

The Economic Substance Act 2018 (the “Economic Substance Act”) was tabled on 7 December 2018 and, following revisions, again on 17 December 2018.

Background

In November 2017, the Government of Bermuda made a commitment to the Code of Conduct Group (Business Taxation) (the “COCG”) of the Council of the EU to address concerns relating to economic substance. Bermuda agreed to pass legislation to implement any appropriate changes by 31 December 2018 to avoid being put on an EU list of non-cooperative tax jurisdictions.

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ICO Legislation Takes Effect and ICO Regulations Published

The Companies and Limited Liability Company (Initial Coin Offering) Amendment Act 2018 (the “ICO Act”) became operative on 9 July 2018 and the underlying Companies and Limited Liability Company (Initial Coin Offering) Regulations 2018 (the “ICO Regulations”, together with the ICO Act, the “ICO Legislation”) were published on 10 July 2018.

[Read more \[July 2018\]](#)

Death and Your Digital Data, Continued: How Far Have We Come?

“There is only one kind of shock worse than the totally unexpected: the unexpected for which one has refused to prepare.” Mary, Renault, The Charioteer.

In May 2013, I wrote about the importance of addressing digital assets in the context of estate planning. With the passage of almost five years, I thought it would be interesting to revisit this subject. What, if any, progress has been made in identifying the nature and scope of digital assets and the rights arising in respect of those assets on the death of the “user”?

[Read more \[March 2018\]](#)



MJM LIMITED IS ORGANISED AROUND FIVE CORE PRACTICE AREAS:

CORPORATE & FINANCE
DISPUTE RESOLUTION
EMPLOYMENT & IMMIGRATION
PRIVATE CLIENT
PROPERTY

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

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