



Government of Bermuda
Ministry of Education and Economic Development

Corporate Landholding Policy
As at Friday, March 14th 2014

PURPOSE

Further to the Companies Amendment Act 2014 (with regard to corporate landholding) the holding of land by corporate entities became a restricted business practice under the Companies Act. This policy is to provide guidance for the Minister in making the decision as to whether to provide consent for business entity to acquire and/or hold land.

LOCAL COMPANY

Freehold

Commercial A local company may acquire and hold land, fee simple that is required for its business purpose. The business purpose for the use of the land must be detailed and presented to the Minister.

Mixed use
Property

A local company may acquire and hold land that has a combination of offices/shops and residential units on the condition that no more than 20% of the property is composed of residential units.¹ There is no requirement for the company to divest the residential units.

Residential
Property

A local company may acquire specific residential properties, fee simple for accommodation of the company's employees or corporate hospitality/recreation. Freehold properties with an ARV equal to, or in excess of, the benchmark established by the Department of Immigration for restricted persons are eligible for this type of acquisition. The company must have a physical presence in Bermuda.² There is no requirement for the company to divest the residential units.

¹ The remaining 80% may be composed of office, foyer, reception area, stair case etc.

² Physical presence is defined in the Companies Act 1981 section 120(6) as a company that "has a physical presence in Bermuda if it operates from Bermuda with staff and management present in Bermuda, has an affiliate that does so, or is a member of a group, one of the members of which operates in that manner."

999 Year Leasehold

Commercial

Property A local company may acquire and hold land via a lease or tenancy agreement beyond 50 years. The business purpose for the use of the land must be detailed and presented to the Minister.

999 Year Leasehold

Residential

Property A local company may acquire and hold condominium(s) with an ARV equal to, or in excess of, the benchmark established by the Department of Immigration for restricted persons on leasehold up to 999 years for accommodation of the company's employees or corporate hospitality/recreation. The company must have physical presence in Bermuda.

Local companies that fall outside the 60/40 Rule

A local company that falls outside the 60/40 Rule will be treated the same as an exempted company, for the purposes of acquiring and holding land even if it holds a 114B licence or deemed to be Bermudian under section 113(1)(cd) of the Companies Act.

Conditions

Conditions may be applied to the sanction. Below is a non-exhaustive list of conditions that may be imposed:

- i. the company must provide a legal description and survey map of the property it seeks to acquire and hold.
- ii. If the purpose of the company is property development, *e.g.* condominium development, the company must divest itself of residential units within five years. There will be no prohibition against the company renting or leasing during the divestiture period. However, the company must make every reasonable effort to divest the property within the timeframe and should not expect the divestiture period to be extended.
- iii. If the business purpose changes, the company must again obtain ministerial consent.
- iv. In the case of mixed use property, if the percentage of property use changes, the company must again obtain ministerial consent.
- v. In the case of residential property, the company will not be allowed, under any circumstances, to lease or rent the property to third parties.
- vi. In the case of a private trust company, beneficiaries must be Bermudian and the company must fully comply with the restrictions imposed by the Bermuda Immigration and Protection Act 1957. Further, the company must file a report annually with the Department of Immigration confirming that the beneficiaries are Bermudian.
- vii. In the case of a company limited by guarantee, the provisions of section 9(2A)(c) will apply, *i.e.* the Company's bye-laws or memorandum must require that the company's assets that would otherwise be available to its members generally to be transferred on its winding up either to another body with objects similar to its own or a body formed for promoting art, science, religion, charity, sport or any other useful object.

The sanction may be revoked, if:

- (a) terms and conditions of the sanction are contravened;
- (b) the company ceases to operate; or
- (c) the company goes into liquidation or is wound up or otherwise dissolved.

Before revoking a licence, the Minister will give notice in writing to the Company and give it the opportunity to be heard before he makes his decision.

EXEMPTED COMPANY

Freehold

Commercial Property

An exempted company may acquire and hold land, fee simple that is required for its business purpose. The business purpose for the use of the land must be detailed and presented to the Minister.

Residential Property

An exempted company may acquire specific residential properties, fee simple for accommodation of the company's employees or corporate hospitality/recreation. Freehold properties with an ARV equal to, or in excess of, the benchmark established by the Department of Immigration for restricted persons are eligible for this type of acquisition. The company must have a physical presence in Bermuda. There is no requirement for the company to divest the residential units.

999 Year Leasehold

Residential Property

An exempted company may acquire and hold a condominium for accommodation of the company's employees or corporate hospitality/recreation with an ARV equal to, or in excess of, the benchmark established by the Department of Immigration for restricted persons are eligible for this type of acquisition. The company must have a physical presence in Bermuda.³

In considering whether to grant permission to an exempted company to acquire and hold residential property (fee simple or 999 year leasehold), the Minister will have regard to:

- a. the economic situation in Bermuda and the pool of available property;
- b. the nature and previous conduct of the company and the persons having an interest in the company whether as directors, shareholders or otherwise;
- c. any advantage or disadvantage to Bermuda and/or Bermudians which may result from the company acquiring and holding residential property; and
- d. the desirability of retaining in the control of Bermudians the economic resources of Bermuda.

³ *Ibid*

999 Year Leasehold

Commercial

Property Not allowed. For such purposes a local company must be used.

Conditions

Conditions may be applied to the sanction. Below is a non-exhaustive list of conditions that may be imposed:

- i. the company must provide a legal description and survey map of the property it seeks to acquire and hold.
- ii. If the business purpose changes, the company must again obtain ministerial consent.
- iii. the company will not be allowed, under any circumstances, to lease or rent the property to third parties; and
- iv. should the company discontinue from Bermuda it must divest its interest in the property within three years of its discontinuance.

The sanction may be revoked, if:

- (a) terms and conditions of sanction are contravened;
- (b) the company ceases to operate; or
- (c) the company goes into liquidation or is wound up or otherwise dissolved.

Before revoking a licence, the Minister will give notice in writing to the Company and give it the opportunity to be heard before he makes his decision.