Litigation & Dispute Resolution

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glg global legal group

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Bermuda

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Efficiency of process

Large commercial disputes in Bermuda are resolved by either: (a) litigation; (b) arbitration under the UNCITRAL Model Law; or (c) mediation. Litigation of such disputes is conducted in the Supreme Court, which has an unlimited jurisdiction. The Supreme Court can grant any one or more of a range of different remedies: damages, specific enforcement of contracts, injunctive relief, declaration, restitution, and receivership orders. Actions in the Supreme Court are normally between commercial entities (companies or partnerships), or arise out of internal disputes between shareholders and partners, etc.

Any person, whether corporate or an individual, whether resident in Bermuda or resident abroad, can invoke the jurisdiction of the Supreme Court. In certain circumstances, a non-resident person may be required to provide security for the costs of the action to the defendant. The Supreme Court also has long-arm jurisdiction over persons, corporate or otherwise, not resident in Bermuda. This jurisdiction can be invoked only in cases where the subject matter of the action falls within defined categories. The types of disputes commonly heard in the Supreme Court are claims and counterclaims arising out of:

- trade and commerce;
- banking and financial services;
- insurance and reinsurance;
- purchase and sale of commodities; and
- applications made under the Companies Act 1981.

These actions are tried in the Commercial Court, a division of the Supreme Court. The judges in the Commercial Court are experienced in commercial matters and decide cases without a jury. The Commercial Court has dedicated courtrooms and administrative support provided by the Registrar of the Supreme Court. The two Commercial Court Judges of the Supreme Court of Bermuda have recently changed. Chief Justice Kawaley is due to retire effective as of mid-July 2018 and Mr. Narinder Hargun is appointed as the new Chief Justice. Justice Hellman has resigned effective as of mid-June 2018 and his replacement is yet to be announced as at the date of this publication. There is a small pool of senior members of the local Bar who also sit as assistant judges from time to time. The judges of the Supreme Court are known for their independence and impartiality, and for dealing with cases expeditiously. In appropriate cases where there is a need for urgent action to be taken, e.g., to prevent a threatened or continuing breach of a legal duty, the Supreme Court acts quickly to achieve a fair balance of competing interests pending a full hearing of the dispute between the parties.

Litigation is adversarial in nature. In regulating the conduct of adversarial litigation, however, the Supreme Court applies a set of principles known as the Overriding Objective to ensure that cases are dealt with fairly and justly. Proof of the facts at trial is on a balance of probabilities. The Bermuda legal system is founded upon the English common law, and decisions of the English Court of Appeal and Supreme Court are highly persuasive authority in the Bermuda Courts. Much of Bermuda's statute law is derived from English legislation, as are the Rules of the Supreme Court (RSC) which govern civil procedure. Bermuda legislation is modernised and updated regularly to enhance the jurisdiction's attractiveness as an efficient and favourable place to carry on business; and to ensure that Bermuda retains its reputation as a leading offshore jurisdiction.

The Court of Appeal for Bermuda hears appeals from the decisions of the Supreme Court. It sits three times a year in Bermuda and comprises the President and two Justices of Appeal; typically these sittings take place in April, June and November, although the precise dates may vary each year and are published on the Bermuda Government website at www.gov.bm. The current President of the Court of Appeal is Sir Scott Baker, a former Lord Justice of the Court of Appeal of England and Wales.

The ultimate appellate court is the Judicial Committee of the Privy Council which sits in London. In civil cases, a party may appeal to the Privy Council as of right against any final order where the sum or value of the matter in dispute is $12,000 or more. The judges of the Privy Council are eminent judges who also sit in the Supreme Court of the UK. Decisions of the Privy Council are binding on the Supreme Court and Court of Appeal, whether on appeal from Bermuda or from any other common law jurisdiction where the common law or statutory provisions in question are the same as those in Bermuda; see *Grayken v Grayken* [2011] Bda LR 15.

Integrity of process

Bermuda is the oldest British Overseas Territory. The Governor of Bermuda, appointed by the British Foreign Office, acts as the representative of the Queen and thereby as *de facto* head of state. The judges of the Supreme Court are appointed by the Governor and are renowned for their independence and impartiality. These judges are drawn from the ranks of senior members of the Bermuda Bar and the Commonwealth Bars and Judiciary.

The Bermuda Bar is regulated by the Bermuda Bar Act 1974 and its governing body is the Bermuda Bar Association. The Bermuda Bar follows many of the traditions of the English Bar and adopts a similarly stringent Code of Professional Conduct. However, unlike England (which still maintains a distinction between barristers and solicitors) there is a fused legal profession in Bermuda similar to that in Canada and some Australian jurisdictions. All lawyers admitted to practice in Bermuda (called "Barristers and Attorneys of the Supreme Court of Bermuda") have the right of audience before the Bermuda courts. The Bermuda Bar comprises Bermudian lawyers who have met certain minimum qualification and training requirements, and lawyers from Commonwealth jurisdictions who have been approved by the Bar Association for the grant of the right to work in Bermuda. English Queen's Counsel are admitted to practice at the Bermuda Bar on a temporary basis in individual and appropriate cases.

No requirements exist in relation to foreign lawyers appearing on behalf of a party in arbitration proceedings being conducted in accordance with the UNCITRAL Model Law in Bermuda. Any duly qualified legal practitioner who has been instructed by a party to represent him in the arbitration can participate in international commercial arbitration

proceedings in Bermuda. If the party to the arbitration chooses, he can also be represented by a layperson.

Privilege and disclosure

Standard disclosure

Parties to commercial litigation in the Supreme Court must disclose all documents in their possession, custody or power that relate to any matter in question between them in the litigation. This obligation is mutual between the parties and arises after the close of pleadings until trial. However, the parties can agree to dispense with or limit their discovery obligations.

The parties must exchange lists of all relevant documents and permit the other party to inspect and take copies of them. The time period set by the rules of court is 14 days after the close of pleadings. However, this period can be extended by agreement between the parties or by order of the court.

If a party fails to disclose all relevant documents in its possession, it is usual for the other party to request a verification of its list of documents by affidavit. If this is not complied with, the party can apply to the court for an order for a verifying affidavit.

A failure to comply with discovery obligations can ultimately result in the striking-out of the claim or defence and entry of judgment, as may be appropriate in the circumstances. Outstanding matters relating to discovery are usually dealt with by the court on the application of a party at the summons for directions stage.

Specific disclosure

A party can apply to the court for discovery of specific documents or specific classes of documents, if it is considered that the other party failed to comply with its discovery obligations. This application is made by summons returnable before a judge and supported by an affidavit stating the evidence on which the application is based. Such an application may be made at any time following ordinary discovery.

Privileged documents

Under Bermuda law there are three main types of privilege:

- Legal advice privilege.
- Litigation privilege.
- Without prejudice correspondence.

Legal advice and litigation privilege attaches to documents produced internally within an organisation in connection with obtaining advice from in-house legal advisers and written communications with outside lawyers. However, for litigation privilege to apply, the correspondence must have been made for the purposes of litigation or in contemplation of litigation. Letters and oral communications between the parties to actual or contemplated litigation, which are made or written for the purposes of settling the dispute and are expressed to be written or made without prejudice, cannot be admitted into evidence.

Other non-disclosure situations

The disclosure of confidential information can be compelled in litigation where disclosure is necessary to dispose of the case fairly. Relevance alone may not be a sufficient ground to order disclosure. In general, the court seeks to balance the private interest in preserving confidence against the public interest in seeing that justice is done.

Costs and funding

Costs

The general rule in Order 62 of the RSC is that costs follow the event (i.e., the unsuccessful party pays the successful party's costs.) However, there can be circumstances in which the costs of separate issues in the trial are subject to different costs orders. A typical costs order is "costs in the cause". This means that whichever party succeeds at trial obtains its costs of the application in which the order was made. Another typical costs order is "costs of the [claimant or defendant] in any event". This order is made where the court is satisfied that the claimant or defendant ought to have its costs of a certain application regardless of which party prevails at trial. It should be noted, though, that the Court's discretion on costs is wide and can take into account a variety of factors including taking a view as to how litigation *should* have been conducted. In the recent case of *David R. Whiting v Torus Insurance (Bermuda) Ltd* [2015] Bda LR 18, a successful claimant who claimed damages of $300,000 but was awarded only $1,909 was left to bear his own legal costs.

The judge awarding the costs of an application to a party can make a summary assessment of the amount of the costs of the application to be paid. However, it is more common for costs to be assessed at the end of the trial after judgment. In the absence of an agreement by the parties as to the amount of costs to be paid under a costs order, the Registrar of the Supreme Court, in the role of Taxing Master, assesses the claim for costs following the production of an itemised bill of costs by the party claiming its costs. These assessments are called taxation proceedings. The taxation of costs is an exercise which involves the Taxing Master determining what legal costs were reasonably incurred for the purposes of obtaining the result achieved.

The use of without-prejudice offers is commonplace in circumstances where a payment into court is not permissible under the rules of court. A payment into court is appropriate in civil cases, where monetary damages are claimed for breach of a contract or commission of a tort, and the defendant wishes to limit his exposure to the payment of the claimant's legal costs. The effect of an offer to settle puts the offeror in an advantageous position during the costs assessment, if the successful party recovers no more than the amount offered.

Interest is awarded on costs from the date of the order for costs. However, these costs do not need to be ascertained at the date of the order but only quantified when assessed (taxed). The statutory rate at which interest is awarded is currently 3.5% per year.

Funding

The usual fee structure between a lawyer and his client is for invoices based on the time spent performing the client's work, charged at an agreed hourly rate. In some cases, a lump sum can be agreed at the outset as the lawyer's remuneration.

The Barristers' Code of Professional Conduct does not permit Bermuda lawyers to enter into contingent fee arrangements. However, this rule does not apply to undefended debt collections, where a Bermuda lawyer can charge a percentage of an undefended debt as his fee for its collection. The matter of contingent fees is currently under review by the Bermuda Bar Association.

Litigation is usually funded by the parties to the litigation out of their individual financial resources. Legal aid is not available in commercial litigation cases. Some large-scale litigation is conducted in Bermuda with funding from third-party funders. Although after-the-event insurance is not available in Bermuda from local insurance sellers, insurance to cover these risks in Bermuda litigation can be purchased from UK insurers.

Interim relief

The Bermuda procedural rules provide a number of flexible remedies to preserve and detain property pending a substantive hearing, and for a party to apply for a case to be dismissed before trial. These remedies include:

Strike-out orders

Under the RSC Order 18, a claim can be struck out before trial. The usual ground for striking out a claim is that it fails to disclose a reasonable cause of action. The basis of this application is equivalent to a demurrer (that is, a plea in a lawsuit that objects to or challenges the sufficiency of a pleading filed by an opposing party). A statement of claim must plead all the essential elements of a cause of action under Bermuda law. For example, a claim in tort must plead the duty of care, the breach and loss or damage arising from the breach. A failure to plead any one of these elements gives rise to an application to strike out. Other grounds for striking out a claim exist under the Rules of Court; for example, that the claim is an abuse of the process, or is frivolous or vexatious.

Applications to strike out are usually made at an early stage of the proceedings (for example, after the statement of claim is served). The application is made by summons, returnable before a judge in chambers. If the ground relied on is a failure to disclose a reasonable cause of action, no evidence is served in support of the application, as the defects of the statement of claim are usually apparent on its face. However, other grounds for striking out require the service of evidence in support. The evidence is given by way of an affidavit. The first hearing of the summons to strike out is usually treated as a directions hearing at which a timetable for the filing of evidence (if any) and the return hearing are provided for.

Summary judgment

The summary judgment procedure under RSC Order 14 is another means of disposing of a claim without a full trial. Summary judgment may be granted in favour of the claimant in circumstances where it can be established on affidavit evidence, usually at an early stage of the action:

- that there is no defence to the claim or part of a claim; and
- that the defence is only as to the quantum of damages.

The applications are also made by summons supported by an affidavit verifying the relevant facts. Summary judgment applications are usually made following service of the statement of claim. On the hearing of the application, judgment may be given for the claimant. However, if the court has doubts as to whether the defendant has a defence to the claim, leave to defend may be given on condition that the defendant pays the amount in dispute into court. Summary judgment can also be given in favour of a defendant on any counterclaim made against the claimant.

Security for costs

RSC Order 23 provides for a defendant sued in the Supreme Court to obtain security for its legal costs in defending the claim. The usual grounds for this application are where:

- the claimant resides abroad; or
- the claimant is suing in a representative capacity as a nominal claimant on behalf of some other person and may not be able to satisfy an order for costs made against him.

An application for security for costs is made by summons supported by an affidavit stating the material facts. Orders for security for costs usually provide for a percentage of the estimated legal costs (around two-thirds, although this is not a hard and fast rule) up to the

date of the summons for directions, to be secured in favour of the defendant. If granted by the Court, the security can be provided by:

- letter of credit issued by a local bank;
- bond given by a third party acceptable to the defendant; or
- the claimant's firm of lawyers giving an undertaking to the defendant to satisfy any costs order up to a certain level.

A claimant cannot obtain security for costs against a defendant. The Supreme Court has jurisdiction to make third-party costs orders where, for example, the named defendant ordered to pay the plaintiff's costs is without financial resources. In such circumstances the Court may order a third party who directed/controlled the defence of the claim for its benefit to pay the plaintiff's costs. (This risk of being held liable to satisfy the costs incurred by another does not apply to pure funders.) Notice of a claim for third-party liability is usually given by letter and sent to the third party as soon as possible. The third party may be joined as a party at the conclusion of proceedings; see *Phoenix Global Fund Ltd v Citigroup Fund Services (Bermuda) Ltd* [2007] Bda LR 61. The Commercial Court's jurisdiction to make such orders extends to ordering disclosure of documents which might lead to the identification of further funders; see *Majuro Investment Corporation v Timis & ors* [2016] SC Bda LR 23.

Interim injunctions

Interim injunctions are available in the Supreme Court in Commercial Court actions. They aim to preserve the subject matter of the proceedings or to prevent a defendant from dissipating his assets in order to render nugatory any judgment obtained against him in Bermuda (*Mareva* injunctions). *Mareva* injunctions can be accompanied by disclosure orders regarding the defendant's assets and are limited to the amount claimed in the action. They can also permit ordinary business expenses and the cost of defending the action to be paid from the assets, if no other assets are available for that purpose. The Court must be satisfied that a *prima facie* case exists for granting the interim relief sought.

Following the filing of the application, an interlocutory injunction can be granted on an urgent basis. These orders can be made without notice to the defendant where circumstances so require to ensure their efficacy. An injunction is usually sought without notice to the defendant, for example, where there is reason to believe that the defendant will immediately seek to transfer his assets out of the jurisdiction if made aware of the commencement of proceedings. The test to be applied to whether an injunction should be granted generally follows the well-established *American Cyanamid* principles, including: consideration of whether there is a serious issue to be tried; the determination of where the balance of convenience lies; and whether damages would be an adequate remedy. The Commercial Court recently applied these principles in *Oung Shih Hua James v Paladin Ltd* [2014] Bda LR 75, to the question of whether directors purported to have been removed at a special general meeting should be restrained from acting. The court determined that the question of whether the meeting was properly called was a serious issue and that the balance of convenience lay in preserving the *status quo* between 'rival boards'. The court in that case also ordered an expedited trial, as it was held to be in the interests of justice generally and the reputation of Bermuda and the Hong Kong Stock Exchange, for a dispute about who controls a company to be resolved at the earliest opportunity.

The court can, in an appropriate case, grant a mandatory injunction instead of the usual prohibitory injunction to compel a defendant to perform an act or function. Where the

order is made without notice to the defendant, the usual course in challenging the order is to apply to set the order aside. If that fails, an appeal against the order can be lodged.

Interim attachment orders

Interim orders are available in the Commercial Court to preserve the subject matter of an action brought in the court or to prevent the defendant from dissipating its assets, with the intention of making itself judgment-proof. In making this order, the court must be satisfied that a *prima facie* case exists for making the orders sought. Examples of such orders are *Mareva* injunctions (freezing orders) and *Anton Piller* orders to preserve evidence.

In cases of emergency, the orders can be made without notice to the defendant and, depending on the availability of a judge, shortly after the application is filed.

An injunction to prevent the dissipation of assets of a defendant can be granted in support of proceedings continuing in another jurisdiction or in support of arbitration proceedings.

An injunction to prevent the dissipation of assets does not create any security over those assets in favour of the claimant. If the claimant is claiming a proprietary right in the asset in question, this right, if confirmed by the judgment at trial, is preserved by the injunction.

As a precondition to obtaining an interlocutory injunction, a claimant must give an undertaking to be responsible for any loss or damage to the defendant caused by the injunction, if the court subsequently decides that the injunction ought not to have been granted. The court can order a claimant who obtained an interim injunction to fortify his undertaking in damages by providing security for the undertaking.

Interim orders are also available for the detention, custody or preservation of any property that is the subject of an action in the Commercial Court. The court can also order an inspection of the property in question, as well as samples of and experiments taken on the property.

Enforcement of judgments

Local judgments

Enforcement of a money judgment is by way of a writ of execution against the assets of the judgment debtor; for example, by seizure and sale through the Provost Marshall General (officer of the court responsible for the execution of judgments). Judgments that require the defendant to do or refrain from performing a certain act can be enforced by sequestration or committal proceedings. An application for sequestration or committal is appropriate in circumstances where a person who is required by a judgment or order to do an act within a time specified refuses or neglects to do it; or disobeys a judgment or order requiring him to abstain from doing an act. An application for sequestration or committal must be made by notice of motion, which must be served personally on the respondent. The notice must be supported by an affidavit explaining the circumstances of the judgment and the failure of the respondent to comply with its terms. An order that requires the defendant to deliver a chattel to the claimant can be enforced by a writ of delivery. A writ of specific delivery is appropriate in circumstances where there is no option given to the defendant to retain the chattel and pay the assessed value of the item.

Foreign judgments

Only foreign judgments or arbitration awards for the payment of a sum of money can be enforced in Bermuda. Court judgments are enforced by registration under the Judgments (Reciprocal Enforcement) Act 1958. This is a relatively quick and simple process. However, the 1958 Act only applies to the territories listed in a schedule to the act (all of

which are British Commonwealth countries). Judgments from countries not covered by the act can be enforced by a common law action on the foreign judgment, in accordance with the principles established in *Muhl (Superintendent of Insurance of the State of New York, as liquidator) of Nassau Insurance Co v Ardra Insurance Co Ltd* [1997] Bda LR 36 (which in turn followed the principles of English private international law governing the recognition and enforcement of foreign judgments).

At common law, the judgment creditor will be required to issue proceedings in Bermuda for the amount awarded by the foreign court. Thereafter, the judgment creditor must apply for summary judgment on the foreign judgment; this is the procedure set out in *Young v Hodge* [2001] Bda LR 70. If there is no dispute then, in practice, the application may result in a judgment without trial, since the application will usually not be contested; or summary judgment is granted if the application for a judgment without a trial is opposed.

The grounds available for resisting the enforcement of a judgment at common law are strictly limited as follows:

- want of jurisdiction of the foreign court in the international sense;
- the judgment was obtained by fraud;
- enforcement would be contrary to public policy; or
- the proceedings in which the judgment was obtained were conducted in a manner contrary to natural justice.

Arbitration awards are enforceable in accordance with the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, to which Bermuda is a party.

Cross-border litigation

Governing law and jurisdictions clauses

The Commercial Court generally respects the governing law of contracts. Certain matters relating to claims under the contract are treated as procedural and governed by Bermuda law if enforced in the Bermuda Commercial Court; for example, whether a claim under a contract is time-barred pursuant to the Limitation Act 1984.

The Commercial Court will also enforce the choice of jurisdiction clause in a contract and will stay any proceedings brought in breach of an exclusive jurisdiction clause. The Commercial Court will not give leave to serve a defendant overseas in proceedings commenced in Bermuda in breach of an exclusive jurisdiction clause unless the claimant proves that it is just and proper to allow the proceedings to continue. An example of this is where there is a revolution in the foreign country and, as a result, the court which was agreed to have exclusive jurisdiction is a different court.

Service

Bermuda is a party to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters. Service on a Bermuda incorporated company in Bermuda is effected by leaving the documents to be served at the company's registered office. In the case of a non-resident insurance undertaking, the documents must be left at the principal office of the undertaking. Service of originating process on an individual is effected by handing the documents to the individual.

Taking evidence

Bermuda is not a party to the Hague Convention on the Taking Abroad of Evidence in Civil and Commercial Matters (Hague Convention). However, Bermuda allows the taking of

evidence in Bermuda for use in foreign proceedings in accordance with local legislation, which is broadly similar to the Hague Convention.

The procedure requires an application to be made to the Supreme Court exhibiting a letter of request from the foreign court to the Supreme Court. The letter must request the attendance of the witness before a named examiner at a certain place at a certain time, or require the attendance of the custodian or records of a company whose documents are sought to be adduced in evidence. The application is made without notice. The order requiring the witness's attendance usually contains a penal notice and is served personally on the individual. The commissioner appointed by the order records, certifies and transmits the evidence to the foreign court.

Insolvency proceedings

The Commercial Court will recognise a foreign liquidator's ability to gather in assets in Bermuda. The Court will also ensure judicial cooperation in cross-border cases on a common law basis where the relief being sought is also available under the laws of the country in which the liquidation is proceeding; see *Singularis Holdings Limited v PricewaterhouseCoopers* [2014] UKPC 36. The Commercial Court, however, generally has no jurisdiction to wind up foreign companies; see *PricewaterhouseCoopers v Saad Investments Company Limited* [2014] UKPC 35.

International arbitration

The main method of ADR in Bermuda for international commercial disputes is arbitration, in accordance with the Bermuda International Conciliation and Arbitration Act 1993. The 1993 Act provides for arbitration in accordance with the UNCITRAL Model Law (the Model Law appears as Schedule 2 to the Act). This form of ADR is used predominantly in the insurance and reinsurance sector.

Approximately 90% of insurance and reinsurance disputes that are not settled are resolved in arbitration proceedings. Commercial contractual disputes usually contain arbitration clauses, with or without mediation as a precursor.

ADR, however, does not form a part of court procedures. It only applies if the parties agree. If a clause in a contract requires ADR, the Commercial Court will enforce it by staying any court proceedings brought in breach of it; see *DuPont Scandinavia AB (ARA-bolagen AB) v Coastal Bermuda* [1987] Bda LR 74. The Commercial Court also has the power to act to appoint and/or remove arbitrators in certain circumstances; see *Management Inc v Everest Capital Inc* [1999] Bda LR 22.

Evidence in arbitration proceedings can be oral or documentary, in whole or in part. The evidence adduced is confidential and cannot be disclosed to third parties without the consent of the parties or where legally compellable. Documents disclosed and admissions made in mediation proceedings are usually the subject of written confidentiality agreements. If not expressly agreed, a Bermuda court implies an obligation of confidentiality to documents deployed and admissions made in mediation proceedings.

The award of costs in commercial arbitrations is at the discretion of the arbitral tribunal. Its discretion is exercised in the same way as the court's discretion as to costs in litigation; for example, the unsuccessful party is usually ordered to pay the successful party's costs. These costs can include the costs of the arbitrators and the costs for the use of the venue.

The Bermuda branch of the Chartered Institute of Arbitrators can act as an appointing authority, if required. The address and contact details of the Bermuda branch of the Chartered

Institute of Arbitrators are as follows:

The Chartered Institute of Arbitrators

Bermuda Branch

Clarendon House

2 Church Street

Hamilton HM 11

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Tel: +1 441 295 1422

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Mediation and ADR

Domestic arbitrations are conducted in accordance with the Arbitration Act 1986, which is modelled on the Arbitration Acts 1950 and 1979 (UK). Mediation can also be used as a means to resolve disputes, but in practice it is not common in Bermuda. The exception is in respect of employment disputes, where mediation conducted by the Department of Workforce Development is a mandatory precursor to a referral to the Employment Tribunal.

Regulatory investigations

The Bermuda Monetary Authority (BMA), established in 1969 as an independent statutory authority, regulates the principal business activities in financial services operating in or from Bermuda. The areas covered include banking, insurance, investment business, trust business and mutual funds. The regulatory regime in these areas is not uniform, as the BMA's powers are derived from sector-specific legislation such as the Insurance Act 1978 (for insurance and reinsurance companies), the Investment Business Act 2003 (for investment businesses) and the Trusts (Regulation of Trust Business) Act 2001 (for trust companies).

The BMA has wide powers to carry out on-site visits, gather information and investigate suspected breaches. Enforcement powers include the power to impose restrictions on licences, to give directions, to take protective measures such as to obtain injunctions, to take disciplinary measures such as imposing civil penalties (fines), and a process of public 'naming and shaming'. In terms of these disciplinary measures, under each statute there is generally a process which comprises the issue of a warning notice by the BMA, followed by an opportunity for the regulated entity to make written representations, and then a decision notice is issued by the BMA. Sector-specific statutory tribunals exist as an avenue of appeal but do not amount to a full rehearing. A further right of appeal, on points of law only, lies to the Supreme Court. This is a developing area of law and in 2015 and 2016, the Banking Appeal and Insurance Appeal Tribunals sat for the first time.

In general, regulation has been relatively 'light touch' and collaborative in nature in Bermuda. However, in March 2016, the BMA announced a toughened stance on enforcement action, and in particular announced a policy of publicising the details of breach and the identity of the regulated entity in each case; see www.royalgazette.com/business/article/20160324/bma-to-go-public-on-enforcement-actions.

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David is a leading member of CHW's litigation team and a former Managing Partner of CHW. He has amassed 40 years' experience at the Bermuda Bar and is ranked as a leading practitioner in both *Chambers Global* and *The Legal 500* publications. *Chambers Global* commented that David is "an impressive attorney" who "has strong analytical skills and the respect of the court" and that "he has a good reputation in the market and is very good at taking on board what the client wants".

David is widely recognised for his expertise in commercial litigation, trust litigation, insurance and reinsurance arbitration and litigation and professional negligence matters. He is a Fellow of the Chartered Institute of Arbitrators, an honorary member of the Centre for International Legal Studies, a member of the Honourable Society of the Middle Temple, was appointed as an Assistant Supreme Court Judge in 2016 and is often approached to provide expert evidence on Bermuda law. David is the author of the Trust Litigation chapter of *Offshore Commercial Law in Bermuda* (Wildy, Simmonds & Hill, 2013), co-author of the Bermuda chapter of *Offshore Financing: Security and Insolvency* (Sweet & Maxwell, 1997) and author of the Bermuda chapter of *International Execution Against Judgment Debtors* (Sweet & Maxwell, 1993).

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Matthew is identified by *The Legal 500* as a "well regarded" Senior Associate who "provides painstaking attention to detail". He services CHW's clients with commercial, trust and estate litigation before the Bermuda Courts, often in a cross-border context. Matthew has acted on some of the largest trust cases of significant complexity and quantum before the Bermuda Courts in the past year. This has included appearing as local Counsel on behalf of the beneficiaries in the novel trust case of *In the Matter of XYZ Trusts* which concerned an application to bless a restructuring of the trust assets, part of which involved a contentious proposed amendment to permanently disqualify a family director; represented the trustees in the multi-faceted trust variation case of *In the Matter of G Trusts*; and acts for beneficiaries in a number of other on-going high value and contentious trust cases.

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Sam is an Associate and has been with CHW since pupillage in 2013. He is involved in a range of insolvency work including international restructurings and local liquidations. Sam recently acted for clients in two recent cases before the Court of Appeal which are both on appeal to the Privy Council, including advising a hedge fund defending winding-up proceedings in the Court of Appeal that raised novel issues regarding the court's jurisdiction to wind up a solvent company on a just and equitable basis. Sam also has broad civil litigation experience (including employment, personal injury and property disputes) and a growing clinical negligence practice. Sam also works with David Kessaram on high-value contentious trusts and estate cases.

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