



LOCAL REQUIREMENTS AND REGULATIONS FOR E-BUSINESS



GOVERNMENT OF BERMUDA
Ministry of Economic Development
Department of E-Commerce



MEET OUR PANEL

Keiva Maronie-Durham - Amicus Law Group

Honey Adams - Consumer Affairs

Jene Charles - Social Insurance

Cal White - HIP

Peter Sousa - Pension Commission

KEIVA MARONIE-DURHAM, LLB, [HONS] PGDIP

- Attorney Keiva Durham's practice encompasses all aspects of private client work which includes the formation of companies and preparation of company agreements and terms of business. Keiva focuses on helping clients reach their goals today and securing their assets for their futures and the next generations. Keiva excels at guiding her clients through the maze of structuring their business in order to protect the client and the client's assets. She believes that speaking to her clients without using legalese ensures that clients leave well informed and confident of the plans that they have made. Whether you are an entrepreneur just starting or you have been in business for many years, Keiva can help you craft and structure your business so that you reach your goals of protecting yourself while being profitable.
- Keiva completed her undergraduate degree at the University of Kent at Canterbury and graduated in 2004. In 2007 she graduated with commendation from the legal practice course vocational program at the University of Westminster in London. After graduation, Keiva was an Associate at Trott & Duncan where her focus was simply residential property purchases. Keiva then launched the property Law Group in 2009, and after she married another Lawyer Mr. Jaymo Durham in 2012, she gave up her practice to be Managing Director of Amicus Law Chambers Ltd.
- Keiva also provides support to clients for completing business succession plans. She is a firm believer of maintaining ongoing relationships with her clients and as such meets with her business clients yearly or more often as required to ensure that their businesses are well maintained.
- Keiva enjoys educating her community and has worked with the Bermuda Economic Development Corporation to discuss estate planning, business formation, and mental health and the law. Keiva has chosen to concentrate on these areas because she's passionate about helping families and creating happy and secure futures.

COMPANY FORMATION

Companies:

- Cost
- Types of companies
- Benefits

TYPES OF COMPANIES

- Sole Proprietor
- Partnership
- Limited Liability

SOLE PROPRIETOR - PROS

- You are the only one in control of your business
 - You are not subject to the decisions of a board of directors
 - There are no annual maintenance fees payable to the government
 - Less rigorously structured
 - Lower start up costs
- 

SOLE PROPRIETOR-CONS

- You are responsible for the debts of the business (personal assets are at risk)
 - Unlikely to secure financing as the structure is seen as less secure
 - Your business usually ends at your death (no legacy)
- 

PARTNERSHIP- PROS

- Risk and liability is shared
 - More capital can be put into the business
 - Have a support network
 - Can bring a network of clients to grow the business
- 

PARTNERSHIP- CONS

- Must share profits
 - May not have the same work ethic as you
 - Can leave you responsible for debts
 - Must make mutual decisions on business (you are not in control)
 - May negatively affect your reputation
- 

THINGS TO CONSIDER

- Do you share the same plans for the growth of your business
 - Do you have a similar work ethic
 - Are you capable of compromising and sharing
 - Do you have the same beliefs regarding clients
- 

THINGS TO CONSIDER - 2

- Agreement to be in writing
- How assets will be divided on dissolving the partnership
- What happens on death

LIMITED LIABILITY - PROS

- Limited liability for debts
 - More secure structure – attracts investors
 - Exists as a separate entity from you
 - Can enter into contracts in its own name
 - Company continues after your death
 - Personal assets are not at risk
 - You can be the sole director of your company
- 

LIMITED LIABILITY - CONS

- Higher start up costs
- High annual costs



THINGS TO CONSIDER

- Liability
 - Ongoing Costs
 - Separate entities
 - Continuation
 - Tax benefits
 - Trademark – patent- copyright
- 

CONTACT INFORMATION

Keiva Durham

Amicus Law Chambers Ltd.

Suite 206, Commerce Building

54 Reid Street

Hamilton HM12

441-292-2308

www.amicuslaw.bm

ABOUT CONSUMER AFFAIRS

Our Core Function

- To preserve and protect the rights of consumers and, in particular, to keep business practices under review, to regulate product safety, to ensure the provision of adequate information to the consumer and to monitor the timeliness of repairs and other services.
- To use its good offices informally to conciliate and settle consumer complaints and grievances.
- To encourage businesses to adhere to better business practices.



ACTS

- Sale of Goods Act 1978 (as amended 2002) – civil. Sets out the law on sales of goods in Bermuda.
- Supply of Services Act 2003 – civil. Sets out the law on how services should be supplied.
- Consumer Protection Act 1999 – criminal. Sets out the law on unfair businesses practices, unconscionable acts and consumer safety.



WHAT YOU SHOULD KNOW ABOUT THE SALE OF GOODS ACT

- Civil Act
- Main piece of legislation to assist buyers to obtain redress when purchases go wrong
- It's in the interest of anyone who sells goods to understand the implications and their responsibilities under the Act
- Can use the knowledge to positively enhance customer relationships



YOUR **LEGAL** RESPONSIBILITIES WHEN SELLING GOODS

- **Must have clear title to sell the goods.**
- **Goods sold must :**
 - ❖ Conform to contract
 - ❖ Be fit for their purpose
 - ❖ Be of satisfactory quality
 - ❖ Durable
 - ❖ Safe
 - ❖ Free from minor and major defects
 - ❖ Match their description
- All descriptions whether verbal, written, implied or given in an illustration must be accurate and not misleading.
- This also applies to goods sold by sample.
- You could be held liable for goods you supply which causes any damage, injury or death.

RESPONSIBILITIES FOR DELIVERY OF GOODS

- Payment and delivery are concurrent unless otherwise agreed
- If not specified, goods must be delivered within a reasonable time
- If the quantity of goods is less than or more than contracted for, the consumer can reject some or all of the goods
- If the goods are mixed with goods of a different description not included in the contract, the consumer can reject some or all of the goods
- The consumer is not bound to accept delivery of goods by installment unless it has been agreed

WHAT ABOUT WARRANTIES?

- Warranties are offered by manufacturers of products
- It is an agreement to provide some benefit for a set period of time in the event of the goods being defective
- They are legally binding
- They are in addition to the consumer's statutory rights under the Act
- A supplier of goods cannot refuse to deal with a customer's complaint about a faulty product on the grounds that the warranty has expired

BREACH OF CONTRACT

- If you sell goods that do not conform to contract, then you are **legally obliged** to resolve the problem if your customer seeks redress
-
- If a customer wants to reject faulty goods it must be within a reasonable time
- If they reject faulty goods within this reasonable time, they are entitled to ask for their money back
- In the first 6 months the onus is on *you* to prove there was no fault at the time of the sale
- After 6 months the onus is on the *customer* to prove there was a fault at the time of the sale
- Customers have up to 6 years to claim compensation

REFUND, REPAIR OR REPLACEMENT

- If the faulty goods were purchased in a reasonably short time, then you should offer a refund
- If they ask for a repair or replacement honor their request. But if it is impossible or disproportionately expensive to repair a product, a replacement instead
- If neither a repair or replacement are practical options, then you can offer a partial or full refund if it is cheaper for the business
-
- When considering whether or not to give a partial or full refund, you need to take into consideration the benefits the consumer has gained since they bought the good

WHY YOU SHOULD KNOW THE SUPPLY OF SERVICES (IMPLIED TERMS) ACT 2003

- Civil Act
- It applies to all businesses that supply a service
- It's in the interest of anyone who sells services to understand the implications and their responsibilities under the Act
- Can use the knowledge to positively enhance customer relationships



YOUR **LEGAL** RESPONSIBILITIES WHEN SUPPLYING SERVICES

The supplier of the service will:

- ❖ Carry out the service with reasonable care and skill. This is the same reasonable care and skill that is set by a person trained and practiced in that discipline
- ❖ Will carry out the service within a reasonable time. Where a date has not been set for completion, the customer is legally entitled to have the work done in a reasonable time
- ❖ Will charge a reasonable price

REMEDIES

- If a customer justifiably believes reasonable care and skill has not been done, the work must be put right at NO EXTRA COST to the customer.
- If you charge a customer more for the service than was agreed, the customer is only obliged to pay the price you quoted them. If no price was agreed, they must pay you a reasonable price.
- If you do not complete the work by an agreed deadline then you are in breach of contract. The customer can claim compensation for ANY losses.



CONSUMER PROTECTION ACT 1999: NINE THINGS YOU MUST KNOW

NINE THINGS YOU SHOULD KNOW:

1. The words “Estimate and Quote” have a legally binding definition.

- ❖ **Estimate** – a statement or representation, proposal whether written, oral or implied which is a provisional guide to the price that will be charged in respect of consumer goods or services
- ❖ **Quote** – a detailed written statement dated and signed by both the supplier and the consumer, giving the price to be charged in respect of consumer goods or services



a) Businesses will be held accountable for their estimates and quotes, under estimating is not acceptable.

b) Businesses will have to prepare proper professional costing for goods and services.



2. Businesses will be in violation of the Act if they **engage in aggressive behavior** towards a consumer. This is an action that is used to intimidate the consumer into complying with the businesses will. This behavior is often carried out by those who solicit work door to door.

3. When entering into an agreement with a consumer for goods or services you cannot have an agreement that is **unjust, extremely one-sided in favor of the business, taking advantage of a consumer who is in a position of weakness** i.e. mentally impaired, illiterate etc.



4. Businesses are required to **provide the consumer with all material information** pertaining to the goods or services being offered. This affords the consumer the right to make an informed decision based on all the facts.
5. Businesses are required to **obtain the consumer's permission** before they can proceed with providing additional goods or services outside the parameters of the original agreement. For example if a client brings in a clock to have its arms repaired the technician cannot repair any other problems discovered without first getting the expressed permission of the consumer.
6. Businesses **can not place liens** on the consumer's property for the purpose of inducing them into paying for unauthorized services or goods.



7. Businesses have **thirty days to refund consumers** their money from the date of their request. The circumstance where this is applicable is where the business has failed to supply or substantially supply the goods or services under the agreed terms and conditions.

8. There are penalties for businesses found guilty of committing an **unconscionable representation or an unconscionable act**.
 - a) The Courts can order compensation or award remedies to a consumer.
 - b) The Courts can award exemplary or punitive damages against those businesses found guilty under the Act.

9. If a business induces a consumer into entering an agreement by means of an unfair business practice the consumer may rescind the agreement and within six months claim a remedy by giving notice to the business in writing.



SOCIAL INSURANCE



Any Questions?



HIP



PETER SOUSA OF THE PENSION COMMISSION

- Mr. Peter T. Sousa is the Chief Executive Officer of the Pension Commission having joined the Commission in November 2003 from the Ministry of Finance.
- At the Ministry of Finance, Mr. Sousa held the position of Assistant Financial Secretary (Economics and Finance) and was responsible for overseeing the Economics and Financial Intelligence Unit, managing the Government's debt programmes, Bermuda's credit ratings, coordinating Bermuda's anti-money laundering policies and procedures and implementing specific legislative projects such as the National Pension Scheme.
- Prior to joining the Ministry of Finance, Mr. Sousa was a senior manager at the Bermuda Monetary Authority responsible for the supervision, regulation and inspection of the Bermuda Stock Exchange, collective investment schemes and the investment services sector in general.
- Mr. Sousa has served on numerous Bermuda Government boards and committees and has a long history of sports related community service. He is currently a Governor of the Bermuda College (and Chairman of its Finance Committee) and President of the Bermuda Futsal Federation.



BERMUDA STATISTICS

- 24,140 Plan Members
- 2,991 Plans (2,972 DC & 19 DB)
- US\$2.3 Billion of assets in Plans
- US\$193.3 Million of new contributions in
- 2013
- 632 Self-Employed Plans
- US\$510 Million of assets in local PRP's
- US\$3.9 Million transferred to overseas plans in 2014 vs \$5.63 million in 2013
- 6 Approved 3rd Party Plan Administrators

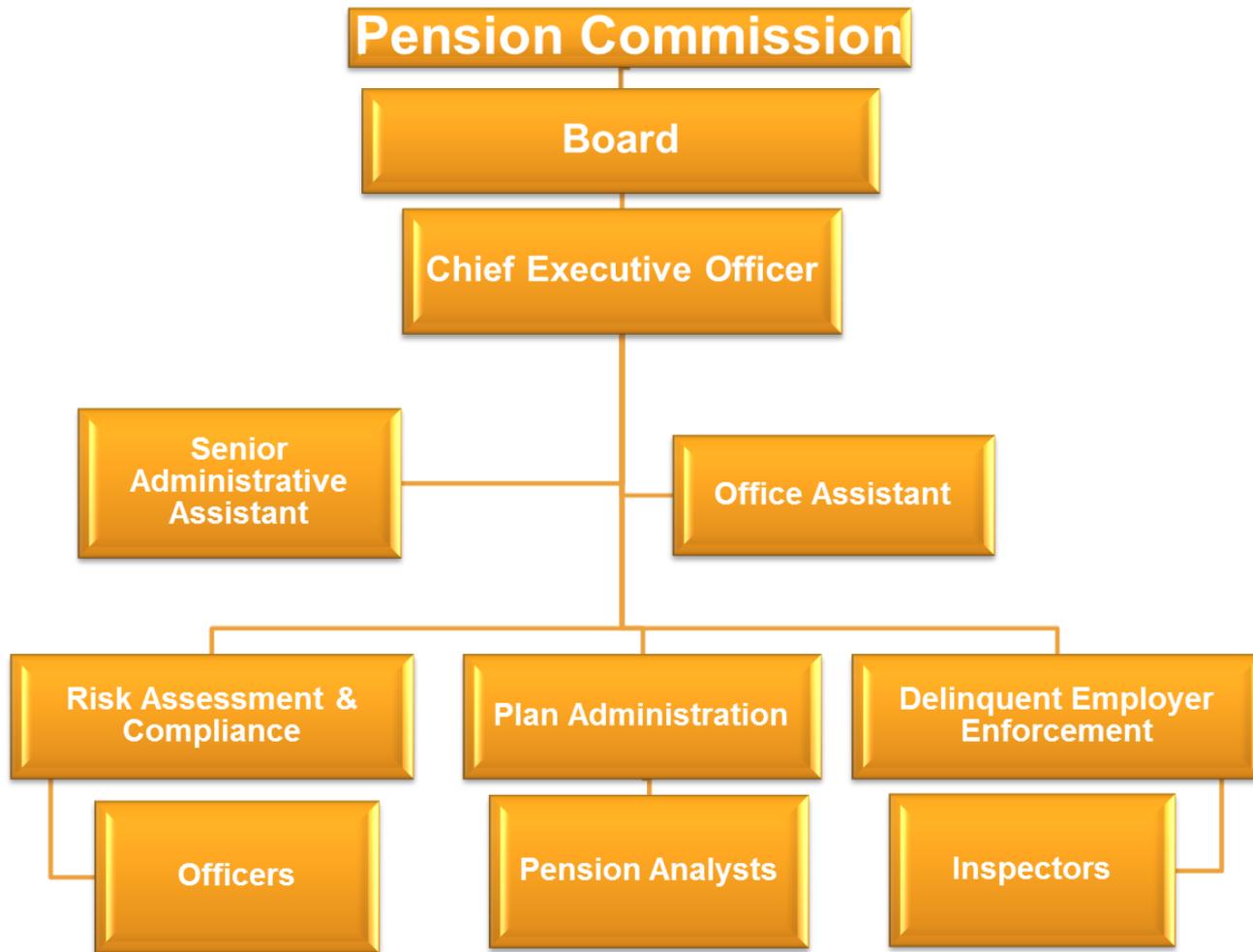


NATIONAL PENSION SCHEME

The Commission's core functions relate primarily to:

- ❖ the registration of all specified plans
- ❖ the protection of pension assets
- ❖ verifying benefit payments
- ❖ monitoring plan administration
- ❖ financial hardship applications
- ❖ ensuring overall compliance with the law





NATIONAL PENSION SCHEME

Enforcement Processes

- ❖ Employer/Self-Employed Obligations
- ❖ Investigations
- ❖ Penalties for Non-compliance
- ❖ Legal Actions (criminal + civil)
- ❖ Remedy for Non-compliance



Employer/Self-Employed Obligations

- ❖ Establish plans for eligible employees
- ❖ Make required deductions from employees/self-employed salaries/wages, make employer/self-employed required contributions and submit to plan administrator
- ❖ Update administrator for terminations or other changes



Investigations

- ❖ Based on various reports submitted or plan member or union complaints
- ❖ Meetings with employer/self-employed and, if necessary, Directors & Officers and requests for information
- ❖ Liaison with Government Departments



Penalties for Non-Compliance

- ❖ Commission can issue a directive to compel compliance
- ❖ Commission can wind-up plan
- ❖ Monetary Fines (to be introduced)
- ❖ Criminal and civil penalties



Legal Actions

- ❖ Criminal on summary conviction to a fine not exceeding \$10,000 on indictment, to a fine not exceeding \$50,000 or 5 years in prison or both
- ❖ Civil directors and officers of employers individually and severally liable for any unpaid pension contributions



Any Questions?



If you think of any more questions you can always contact us at:

Maryem Biadillah

Dept. of E-Commerce

mbiadillah@gov.bm

BEDC

Ray Jones

rjones@bedc.bm

We look forward to seeing you at the next workshop!

