



## BAR COUNCIL

### **Work Permit Policy Guidance: law firms setting up in Bermuda that have, or are affiliated with offices in other jurisdictions**

It is the policy of Bar Council to facilitate the practice of Bermuda law by practitioners based in Bermuda. However, Bar Council recognises that, in certain circumstances, the practice of law outside Bermuda may benefit the Bermuda Bar and Bermuda by promoting the growth of international business in Bermuda and through enabling overseas clients to obtain face-to-face and “real time” advice on Bermuda law from lawyers located in their home jurisdiction.

These Guidelines are intended to achieve a balance between Bar Council’s policy of protecting and promoting the interests of the domestic Bar and the needs of certain Bermuda law firms to have lawyers registered as an associate or issued with a practicing certificate under the Bermuda Bar Act 1974 (“the Act”) to enable such lawyers to practice Bermuda law overseas.

These Guidelines do not apply to persons who may lawfully engage in employment in Bermuda without a work permit. There is no prohibition in the Act against such persons being issued with a practicing certificate by reason of the fact that they reside or are practicing law outside Bermuda.

All persons wishing to obtain a practicing certificate or to be registered as an associate under the Act for the purposes of practicing Bermuda law outside of Bermuda must be issued with a Bermuda periodic work permit, notwithstanding that they will, for the most part, be working outside Bermuda.

These Guidelines are intended to outline the factors that Bar Council will take into account when deciding whether to support the issuance of a periodic work permit to persons who intend to practice Bermuda law outside Bermuda. These encompass, to the extent relevant, the factors that the Minister must take into account under Section 61(4) of the Bermuda Immigration and Protection Act 1956 “(BIPA)”, and on which the Minister is required to consult with Bar Council, namely:

- a) the character of the applicant and, where relevant, of his or her spouse;
- b) the existing and likely economic situation of Bermuda;
- c) the availability of the services of persons already resident in Bermuda and local companies;
- d) the desirability of giving preference to the spouses of persons possessing Bermudian status;
- e) the protection of local interests; and
- f) generally, the requirements of the community as a whole.

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In considering the Section 61(4) factors, in the context of an application for a lawyer to practice Bermuda law overseas, Bar Council shall have particular regard to the following:

1. The applicant's prior experience (if any) of the law of Bermuda;
2. The employer's "business case" for the issuance of a work permit, including whether the practice of Bermuda law by the applicant in an overseas jurisdiction is likely to promote Bermuda or the use of Bermuda law by, for example, facilitating the flow of legal work to Bermuda and thus employment opportunities for barristers in Bermuda or providing legal advice where it is impractical to service the local market from Bermuda due to external factors whether they relate to language or time zones;
3. The number of legal and other personnel employed by the employer who are based in Bermuda and the number of Bermudian legal and other personnel employed overseas relative to the number of overseas lawyers who it is proposed will practice Bermuda law on behalf of the employer overseas; and
4. The employer's record of providing opportunities for Bermudian barristers in their Bermuda and overseas offices.

Applications for work permits falling within these Guidelines should include details responsive to the above factors, in the absence of which applications are likely to be opposed by Bar Council.

In addition, Bar Council will require the following undertakings from the Bermuda employer holding the periodic work permit:

- 1) that the applicant will not practice law for more than a total of fifteen days in any calendar year while physically located in Bermuda;
- 2) that the applicant will not practice in the following areas of law: conveyancing, family law, criminal law (other than ancillary to corporate advice), corporate law pertaining to non-exempt entities, human rights and employment;
- 3) that in respect of the practice area of litigation the employer's lawyers who are based and work in Bermuda on a full time basis will play a meaningful role in any Bermuda litigation. It is permitted for overseas lawyers practising litigation to take initial instructions, provide general litigation advice, undertake administrative tasks, deal with disclosure, proof witnesses and draft affidavits outside Bermuda; and

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- 4) in respect of registered associates, an undertaking not to practice Bermuda law other than as agent for the employer (i.e. the Bermuda law firm) and in accordance with the permitted functions in Section 15 of the Act.

In the case of applications falling within these Guidelines, Bar Council will not require the position to be advertised.

All applications for work permits should be copied to Bar Council at the same time as the original application is submitted to the Department of Immigration. In the case of firms applying for multiple permits, all applications should be filed at the same time in the form of a composite application to assist the Department of Immigration and Bar Council in processing the applications.

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