

CONYERS

A photograph of a modern glass skyscraper with a grid-like facade, viewed from a low angle. The building is partially obscured by a semi-transparent blue overlay containing text. The foreground shows a paved plaza with geometric patterns and a few stanchions.

Registration by way of Continuation of Foreign Partnerships in Bermuda

Preface

This publication has been prepared for the assistance of those who are considering the continuance of a foreign partnership into Bermuda as a Bermuda exempted limited partnership. It deals in broad terms with the requirements and procedures under Bermuda law for effecting a registration by way of continuation; it is not intended to be exhaustive but merely to provide brief details and information which we hope will be of use to our clients. We recommend that our clients and prospective clients seek legal advice in Bermuda on their specific proposals before taking steps to implement them.

Before proceeding with a registration by way of continuation, persons are advised to consult their tax, legal and other professional advisers in their respective jurisdictions.

Copies of the Bermuda Exempted Partnerships Act 1992 and the Limited Partnership Act 1883 have been prepared and are available on request.

Conyers Dill & Pearman

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1. INTRODUCTION

This publication outlines the steps necessary under the Bermuda Exempted Partnerships Act 1992 and the Limited Partnership Act 1883 (together, the “Acts”) for a partnership registered outside of Bermuda (a “foreign partnership”) to continue into Bermuda as a Bermuda exempted limited partnership.

Under Bermuda law, an overseas partnership may apply for a permit from the Minister of Finance to engage in or carry on a trade or business in Bermuda. A separate publication relating to overseas partnerships is available upon request.

The continuance of a foreign partnership into Bermuda requires careful planning. Without careful planning, due to the nature of a continuance, it is possible that a partnership could become, at least for a short period, a stateless entity. To ensure that such a situation does not occur, it is suggested that before any application is made, all the appropriate documentation first be completed both in Bermuda and in the jurisdiction from which the foreign partnership is discontinuing. The end result should be that the partnership will discontinue from the foreign jurisdiction and continue in Bermuda as an exempted limited partnership at the same time.

Any foreign partnership established in an appointed jurisdiction may register by way of continuance into Bermuda in accordance with the procedures set out below.

2. REGISTRATION BY WAY OF CONTINUATION OF FOREIGN PARTNERSHIPS IN BERMUDA

2.1. Procedure

An application must initially be made to the Bermuda Monetary Authority (“BMA”) seeking consent for the partnership to continue its existence as a Bermuda exempted limited partnership under the Acts and register by way of continuation in Bermuda. This application should include:

- (a) a statement of the proposed business of the partnership;
- (b) information concerning the general partners of the partnership; and
- (c) the opinion of foreign counsel referred to below.

Prior to continuing into Bermuda, Conyers Dill & Pearman, the BMA and the Registrar of Companies in Bermuda (the “Registrar”) must be supplied with an opinion of counsel in the jurisdiction from which the foreign partnership is discontinuing to the effect that all necessary authorisations under the laws of the foreign jurisdiction have been obtained to allow the foreign partnership to continue into Bermuda.

Once the relevant consent has been received from the BMA, the request for registration of the foreign partnership in Bermuda is submitted to the Registrar. The submission must include:

- (a) the consent of the BMA;
- (b) the certificate of exempted partnership pursuant to Section 5(1) of the Exempted Partnerships Act 1992;

- (c) the certificate of limited partnership pursuant to Section 4(1) of the Limited Partnership Act 1883;
- (d) a copy of the legal opinion issued by the foreign counsel;
- (e) the appropriate annual government fee; and
- (f) the required filing fee.

With effect from the date indicated on the Certificate of Registration issued by the Registrar, the registration by way of continuance in Bermuda will become effective and the foreign partnership will become an exempted limited partnership to which the Acts and the Partnership Act 1902 apply and the partnership and the partnership interests of related parties and their rights and liabilities, as against any person who is not a partner, will cease to be governed by the laws of the foreign jurisdiction.

The partnership is typically asked to forward a copy of the Certificate of Registration issued by the Registrar to the competent authority in the country or jurisdiction from which it was discontinued. Some foreign jurisdictions also require an opinion of Bermuda counsel confirming the consequences of continuance in Bermuda (which are set out below).

Every partnership that registers by way of continuation into Bermuda is required to ensure that it adopts a partnership agreement, or effects amendments to its existing partnership agreement, conforming to Bermuda law. In particular, the partnership agreement will need to comply with the Acts. It is our policy that changes to the partnership agreement should be carried out by the foreign partnership prior to continuance, to be effective upon continuance, thus resulting in the partnership being in full compliance with Bermuda law upon its registration and continuance in Bermuda.

2.2. Consequences of Continuance

Upon continuance of a foreign partnership as an exempted limited partnership under the Acts:

- (a) the property of the foreign partnership will continue to be the property of the exempted limited partnership;
- (b) the exempted limited partnership continues to be liable for the obligations of the foreign partnership;
- (c) any existing cause of action, claim or liability to prosecution in respect of the foreign partnership is unaffected;
- (d) any civil, criminal or administrative action or proceeding pending by or against the foreign partnership may be continued by or against the exempted limited partnership; and
- (e) any conviction against, or any ruling, order or judgment in favour of or against the foreign partnership may be enforced by or against the exempted limited partnership.

The rights, privileges, powers, and interests in property of the foreign partnership that has continued in Bermuda is not deemed to have been transferred to the exempted limited partnership to which the foreign partnership has continued for any purpose under the laws of Bermuda.

The continuance of a foreign partnership under the Acts does not create a new legal entity or prejudice or affect the continuity of the entity which was formerly a foreign partnership and which has continued in Bermuda as an exempted limited partnership.

In addition, the Bermuda courts will apply the laws of evidence and the rules of procedure with the intent that no claimant against the continued foreign partnership shall be prejudiced in pursuing, in or under the laws of Bermuda, a bona fide claim that existed prior to the date of registration by way of continuance and which could have been pursued under the laws then governing such foreign partnership.

This publication should not be construed as legal advice and is not intended to be relied upon in relation to any specific matter. It deals in broad terms only and is intended merely to provide a brief overview and give general information.

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