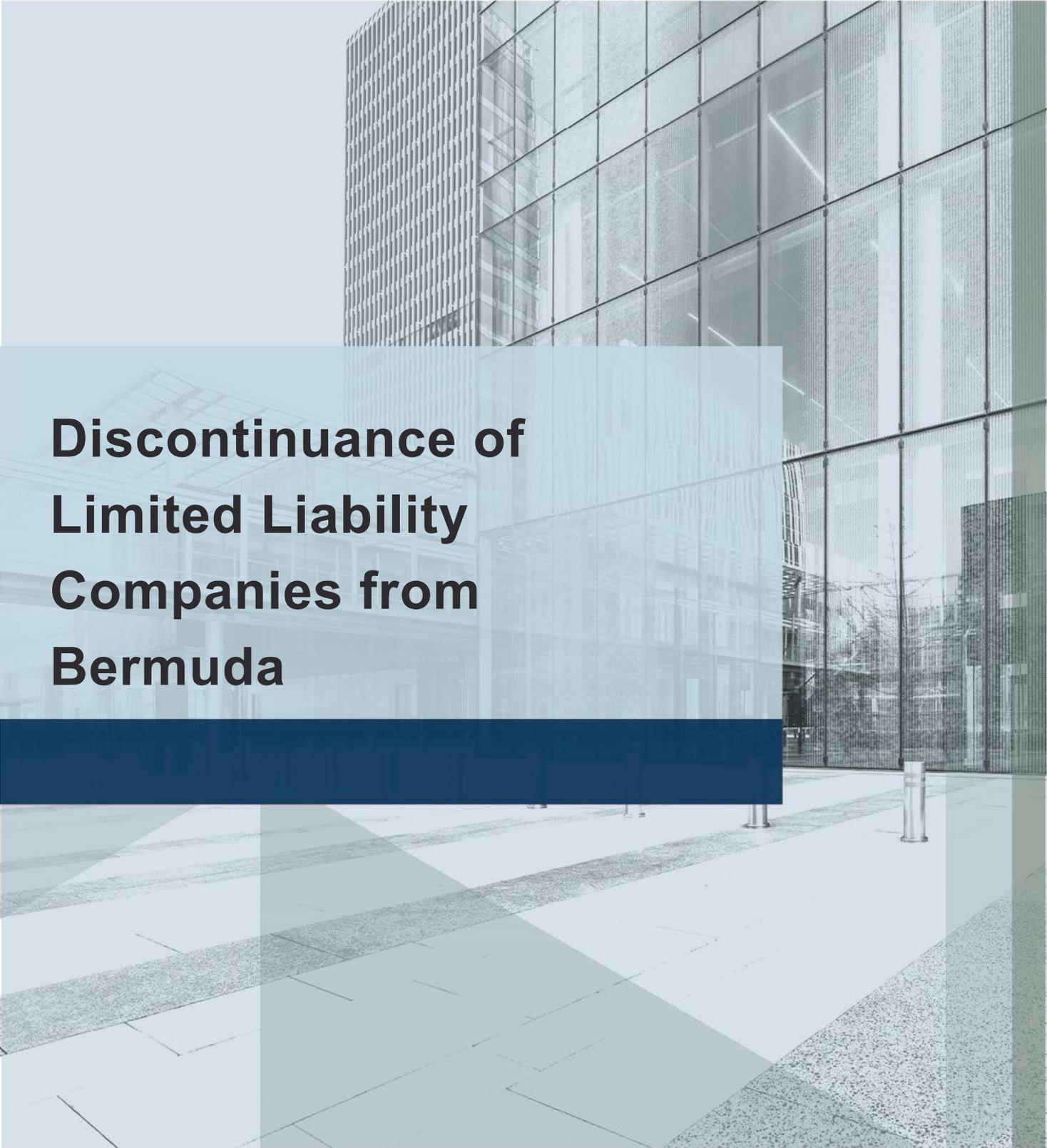


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A photograph of a modern glass skyscraper with a grid-like facade, viewed from a low angle. The building is partially obscured by a semi-transparent blue overlay containing text. The foreground shows a paved plaza with a pattern of light and dark tiles.

Discontinuance of Limited Liability Companies from Bermuda

Preface

This publication has been prepared for the assistance of those who are considering discontinuing a Bermuda exempted limited liability company to a foreign jurisdiction as a foreign entity. It deals in broad terms with the requirements and procedures under Bermuda law for effecting a discontinuance; 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 such a discontinuance, persons are advised to consult their tax, legal and other professional advisers in their respective jurisdictions.

Copies of the Bermuda Limited Liability Company Act 2016 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 Limited Liability Company Act 2016 of Bermuda (the “Act”) for a Bermuda exempted limited liability company (a “Bermuda LLC”) to discontinue from Bermuda and continue into a foreign jurisdiction as a foreign entity. Under Bermuda law, a Bermuda LLC may also merge or amalgamate with a foreign entity, with the surviving or amalgamated entity continuing as a foreign entity. A separate publication relating such mergers or amalgamations is available upon request.

In order to ensure that a Bermuda LLC will discontinue from Bermuda and continue in the foreign jurisdiction as a foreign entity at the same time, it is suggested that before any application is made, all the appropriate documentation first be completed both in Bermuda and in the jurisdiction into which the Bermuda LLC is continuing.

The foreign jurisdiction into which a Bermuda LLC is to continue must be a jurisdiction approved by the relevant Bermuda Government Minister as an “appointed jurisdiction”. Please contact Conyers Dill & Pearman for a current listing of appointed jurisdictions. The government Minister will consider approving further jurisdictions as appointed jurisdictions upon request, and will consider approving the discontinuance of a Bermuda LLC to a foreign jurisdiction which is not an appointed jurisdiction, on a case by case basis.

2. DISCONTINUANCE FROM BERMUDA

2.1. Procedure

General

To effect a discontinuance, all corporate actions must be completed pursuant to the terms of the Act and the appropriate documentation must then be filed with the Registrar of Companies in Bermuda (the “Registrar”).

At least fourteen days, and not more than three months, prior to the effective date of the discontinuance, notice must be published in an appointed newspaper in Bermuda to the effect that the Bermuda LLC intends to continue as a foreign entity in the foreign jurisdiction.

Corporate Action and Documentation

The discontinuance must be approved either: (i) in the manner provided in the LLC agreement; or (ii) by a resolution of the members, or of each class or group of members, where each LLC interest carries the right to vote in respect of such discontinuance whether or not it otherwise carries the right to vote (i.e. a non-voting LLC interest).

In addition, a manager of the Bermuda LLC must make a statutory declaration confirming that the Bermuda LLC is able to pay its liabilities as they fall due; that the realizable value of its assets will not be less than the aggregate of its liabilities; and that the discontinuance will not adversely affect the interests or rights of bona fide creditors and members of the Bermuda LLC. The Bermuda LLC and its managers must also execute an irrevocable deed poll regarding service of legal process on each of them after the Bermuda LLC discontinues.

On or before the effective date of discontinuance, a notice of discontinuance must be filed with the Registrar which must contain or have attached to it the following:

- (a) the effective date of the discontinuance;
- (b) the name of the jurisdiction into which the Bermuda LLC will continue;
- (c) the address of the registered office or the principal business address of the continued entity in the foreign jurisdiction;
- (d) a copy of the statutory declaration referred to above; and
- (e) a copy of the irrevocable deeds poll referred to above.

The continued entity must file with the Registrar, within thirty days of the date of the issue thereof, a copy of the instrument of continuance (or other documentary evidence of the continuance) issued by the appropriate authority in the jurisdiction into which the Bermuda LLC has continued. Once the Registrar has received and filed the instrument of continuance (or other documentary evidence of continuance), the Registrar will issue a confirmation of discontinuance. The effective date of the discontinuance will, however, be the date that the Bermuda LLC's continuance in the foreign jurisdiction is effective under the laws of the foreign jurisdiction.

2.2. Consequences of Discontinuance of a Bermuda LLC

The discontinuance of a Bermuda LLC under the Act and its continuation in a foreign jurisdiction does not create a new legal entity or prejudice or affect the continuity of the body corporate which was formerly a Bermuda LLC.

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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