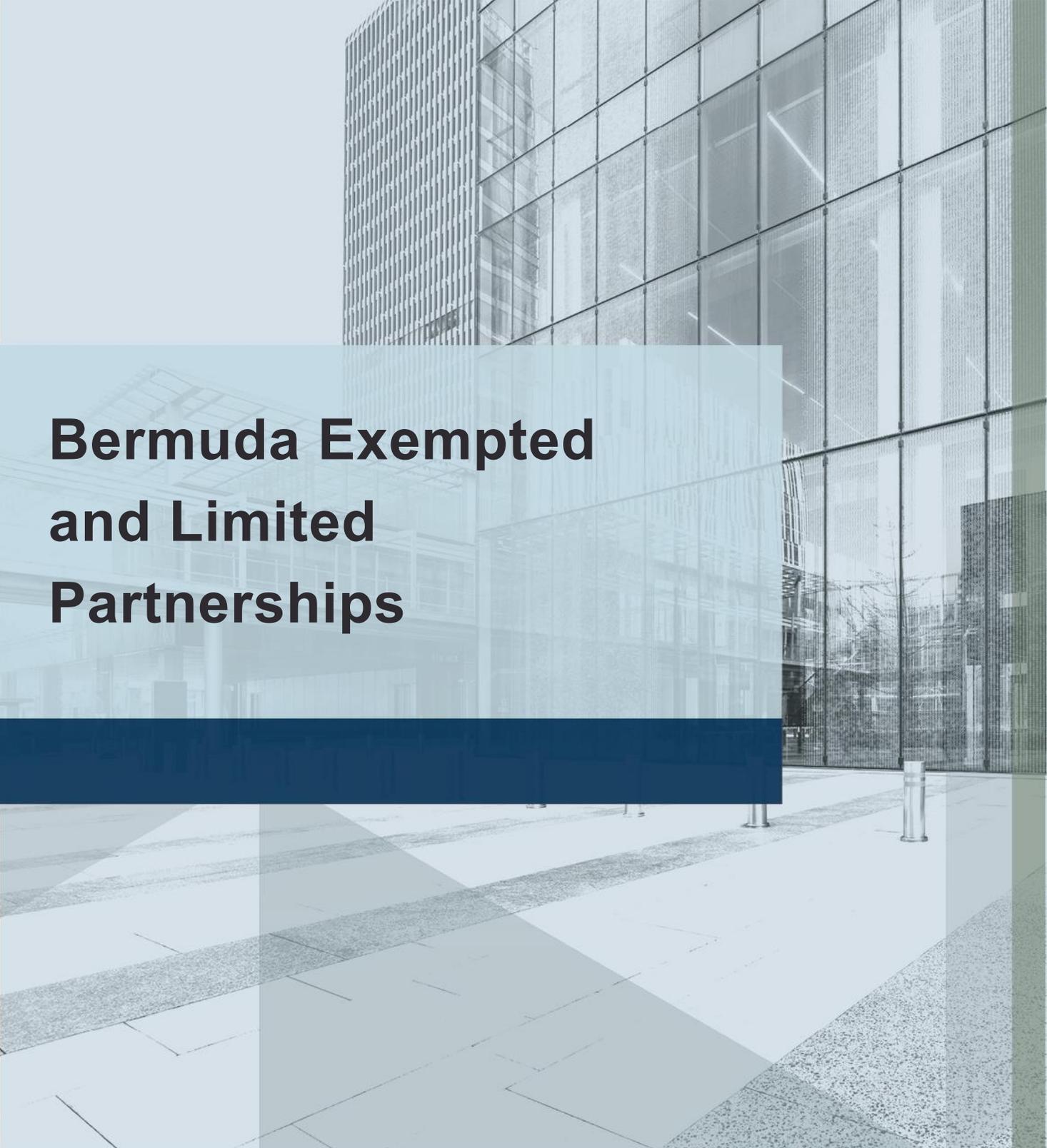


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A photograph of a modern glass skyscraper with a grid-like facade, viewed from a low angle. The building is partially obscured by a semi-transparent blue overlay containing text. The foreground shows a paved plaza with geometric patterns and a few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

Bermuda Exempted and Limited Partnerships

Preface

This publication has been prepared for the assistance of those who are considering the formation of partnerships in Bermuda. It deals in broad terms with the requirements of Bermuda law for the establishment and operation of partnerships to which the Investment Funds Act 2006 does not apply. A publication entitled “Bermuda Investment Funds”, which provides additional details relating to partnerships to which the Investment Funds Act does apply, is available upon request.

This publication 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 seek legal advice in Bermuda and consult their tax, legal and other professional advisers in their own jurisdiction on their specific proposals before taking steps to implement them.

Conyers Dill & Pearman

TABLE OF CONTENTS

1.	INTRODUCTION	4
2.	EXEMPTED PARTNERSHIPS	5
3.	LIMITED PARTNERSHIPS	7
4.	REGISTRATION BY WAY OF CONTINUANCE	8
5.	CONVERSION OF EXEMPTED LIMITED PARTNERSHIP TO AN EXEMPTED COMPANY OR EXEMPTED LIMITED LIABILITY COMPANY	9
6.	TAXATION, REGISTRATION FEES & EXCHANGE CONTROL	10
7.	BENEFICIAL OWNERSHIP REGISTER	10

1. INTRODUCTION

The partnership is a popular vehicle for international ventures primarily because it is regarded in most jurisdictions (including the U.S. and the U.K.) as fiscally transparent. As a general principle, tax is imposed at the partner level, not at the partnership level, and consequently the tax position of one partner does not affect the position of any other partner.

The principal statutes governing the formation and operation of Bermuda partnerships are:

- (1) Partnership Act, 1902 (as amended) (the “**Partnership Act**”);
- (2) Limited Partnership Act, 1883 (as amended) (the “**Limited Partnership Act**”); and
- (3) Exempted Partnerships Act, 1992 (as amended) (the “**Exempted Partnerships Act**”).

A partnership, exempted partnership or limited partnership may elect to have legal personality and file a declaration to that effect with the Registrar of Companies. In the absence of such election, the partnership is not a legal entity with any degree of legal personality, but merely a relationship between the partners. Where the partnership electing to have legal personality is an exempted partnership or a limited partnership, its election shall be specified in its Certificate. Where it is both, its election is only required to be specified in the Certificate of Exempted Partnership. Any election to have legal personality shall be irrevocable.

Even if the election to take on a separate legal personality is not made, under Bermuda law a partnership may function for all practical purposes as an entity. The rules of court permit a partnership to sue and be sued in its partnership name. Sections 5 and 6 of the Partnership Act and the laws of agency empower the partnership to carry on business in its partnership name.

Bermuda partnership law tends to follow English principles. The Partnership Act substantially codified common law on partnerships, but provides that existing rules of equity and of common law shall continue in force except so far as they are inconsistent with the express provisions of the Partnership Act. The Partnership Act generally deals with the nature of partnerships, relations of partners to persons dealing with them and relations of partners to one another. The Partnership Act provides that a “partnership is the relation which subsists between persons carrying on a business in common with a view to profit.”

Each element of the above definition is significant. A partnership must carry on a business and for this purpose investment holding is considered to constitute sufficient business activity. Further, the business must be carried on “with a view to profit”. It is immaterial whether or not the business realises a profit, so long as the intention is to make a profit.

The Partnership Act does not attempt to regulate the affairs of a partnership to any great extent. The operation of the partnership is left to agreement between the partners. However, where the agreement is silent on a matter, the Partnership Act may apply. The partnership agreement is private (except for information in the Certificates of Exempted and Limited Partnership).

There are two types of partnership under Bermuda law. In the first, all the partners have unlimited liability for the debts and obligations of the partnership (“**general partnership**”) and in the second, at

least one partner has limited liability for the debts and obligations of the partnership (“**limited partnership**”) which is formed under the Limited Partnership Act. Exempted partnerships may be of either type.

2. EXEMPTED PARTNERSHIPS

An exempted partnership is defined in the Exempted Partnerships Act as a partnership in respect of which a certificate of exempted partnership has been registered in accordance with the provisions of that Act and in which at least one partner does not possess Bermudian status.

In the case of an exempted limited partnership, the Exempted Partnerships Act preserves the limited liability of limited partners under the Limited Partnership Act. It further provides that anything to be done and any penalties incurred are the responsibility of the general partners.

Exempted partnerships may be resident in Bermuda and carry on business from Bermuda in connection with transactions and activities which are external to Bermuda. In practice, the activities carried out by international partnerships will satisfy this requirement.

Exempted partnerships will require permission of the Minister of Finance (the “**Minister**”) to carry on restricted business and the provisions relating to restricted and prohibited business under the Companies Act 1981 will apply. Except for restricted business, no Minister’s consent will be required for an exempted partnership’s business.

2.1. Formation and Registration

The proposed name of an exempted partnership must be cleared and, if available, reserved with the Registrar of Companies.

An application must be made to the Bermuda Monetary Authority (“the “**BMA**”) for consent to the formation of an exempted partnership. The application must include the identities of general partners and a personal declaration where an individual owns, directly or indirectly, 10% or more of a general partner. The BMA’s consent normally takes around one week although this may be accelerated in special circumstances.

Once the BMA’s consent has been obtained and the partnership agreement has been executed, a signed copy of the Certificate of Exempted Partnership, together with confirmation of the BMA’s consent, must be delivered to the Registrar of Companies who will then register the partnership as an exempted partnership. Such Certificate must contain the name of the Exempted Partnership, the names and addresses of general partners, the resident representative, registered office, and whether or not the partnership has elected to assume a separate legal identity. The Certificate of Exempted Partnership is a public record.

In the case of a limited partnership, the Certificate of Limited Partnership (which contains the same information as the Certificate of Exempted Partnership, save for the resident representative) is delivered for registration concurrently with the Certificate of Exempted Partnership. A limited partnership is not “formed” until the Certificate of Limited Partnership (also a public record) is registered. The Registrar of Companies will issue a certificate to confirm registration.

All the partners must sign each of these Certificates. A certificate may be signed by a single partner on behalf of the other partners under a power of attorney which may be contained in the partnership agreement.

The partnership agreement is not required to be filed with the BMA or the Registrar of Companies, but should state that the exempted partnership commences on the date of registration of the Certificate (and, if applicable, the Certificate of Limited Partnership). The Exempted Partnerships Act requires that the partnership agreement expressly provide that the law applicable to the exempted partnership is the law of Bermuda.

2.2. Amendments to the Partnership

Consent is required from the Registrar of Companies to change the name of the exempted partnership. The BMA's consent is required to change the general partners (but not limited partners) except where the transfer of a general partner interest is to an affiliate of the general partner. Once the approval has been granted, a supplementary certificate of exempted partnership has to be filed with the Registrar of Companies. Any such change or any other change in any particulars specified in the Certificate is effective on the date of registration by the Registrar of Companies of the supplementary certificate incorporating such change.

2.3. Administration

The regulation of exempted partnerships in Bermuda is reasonably straightforward. Each partnership must maintain a registered office (which cannot be a post office box address) and must appoint a "resident representative" in Bermuda. The resident representative is required to inform the Minister if the partnership is not complying with certain basic provisions of the Exempted Partnerships Act. The resident representative may be an exempted company or exempted limited liability company formed to act as general partner.

An exempted partnership is required to maintain audited financial statements in accordance with generally accepted accounting principles for such period as the partnership agreement may provide. However, these provisions may be waived as long as the partners make provision for this in the partnership agreement. An exempted partnership must also keep records of account with respect to its business including records of account with respect to its assets, liabilities and capital, cash receipts and disbursements, purchases and sales and income costs and expenses, at the registered office or such other place as the partners think fit, for a period of five years from the date on which they were prepared. The records of account are open to inspection by the partners, including limited partners, if any, and the resident representative.

2.4. Termination of Partnership

Within 30 days after the commencement of the winding up consequent upon the dissolution of an exempted partnership, a certificate of cancellation must be filed with the Registrar of Companies.

3. LIMITED PARTNERSHIPS

3.1. Generally

A limited partnership is required to use after its name the designation “Limited Partnership” or “L.P.” (which may be used interchangeably). The limited partners are not, subject to the satisfaction of certain requirements, liable for the debts and obligations of the partnership beyond the amounts they have agreed to contribute to the partnership. The position of a limited partner in a limited partnership is analogous to that of a shareholder in a company. The general partner or partners of a limited partnership are in the same position as partners of a general partnership. All suits in respect of the business of a limited partnership can generally only be brought against the general partners.

A limited partnership must have at least one general partner. In general, only the general partner or partners of a limited partnership may engage in the management or transact the business of the partnership. If a limited partner engages or is deemed to have engaged in the management of the partnership, that partner will lose the benefit of limited liability.

A limited partner will not be deemed to be engaged in “management” by reason only of the limited partner:

- (a) being a contractor or agent of a partnership;
- (b) consulting or advising the general partner;
- (c) serving on a board or committee of the partnership, the general partner, the limited partner or any person in which the partnership has an interest;
- (d) taking any actions or making any decisions in respect of any investment made by the limited partnership;
- (e) acting as surety for the partnership;
- (f) voting on amendments to the partnership agreement or voting on certain matters, such as the dissolution of the partnership, sale, exchange, lease, mortgage, pledge or transfer of all or substantially all the assets or incurring indebtedness otherwise than in the ordinary course of business or a change in the general nature of partnership business or the removal of a general partner; and
- (g) consulting or advising a general partner with respect to the business of the limited partnership including serving on any board or committee of the limited partnership; a general partner; the limited partner; the partners of any class or category of those partners; or any person in which the limited partnership has an interest, or appointing or electing or otherwise participating in the choice of a representative or any other person to serve on any such board or committee.

Every limited partnership must keep at its office in Bermuda a register of limited partners. The register must contain the name and address of each limited partner as well as the date such limited partner becomes or ceases to be a limited partner. Limited partnerships must also keep proper records of

accounts with respect to its business including records of account with respect to its assets, liabilities and capital, cash receipts and disbursements, purchases and sales and income costs and expenses, at the registered office or such other place as the partners think fit, for a period of five years from the date on which they were prepared. The records of account are open to inspection by the limited partners.

Partners' capital contributions may be made in cash or in the form of non-cash assets although contributions in the form of services are not permitted.

Provision is made in the Limited Partnership Act for the trading on international stock exchanges of limited partnership interests by allowing branch registers of limited partners to be kept outside Bermuda.

See also *EXEMPTED PARTNERSHIPS, Sections 2.1 (Formation and Registration) and 2.2 (Amendments to the Partnership) above.*

3.2. Dissolution

The registration of a limited partnership must be cancelled upon the dissolution and consequent winding up of the partnership or if there is no limited partner. A Certificate of Cancellation must specify the name and date of registration of the partnership, the date of dissolution and the effective date of cancellation. The Certificate must be signed by at least one general partner and, within thirty days after the date of dissolution, be registered with the Registrar of Companies.

4. REGISTRATION BY WAY OF CONTINUANCE

4.1. Registration by way of Continuance

Any partnership established under the laws of a jurisdiction other than Bermuda, in the case where such jurisdiction is an appointed jurisdiction (a foreign partnership) may, upon obtaining all necessary authorisations required under the laws of the appointed jurisdiction and upon application to the Bermuda Monetary Authority, be registered as an exempted limited partnership under the laws of Bermuda.

4.2. Consequences of Continuance

Upon continuance of a foreign partnership as an exempted limited partnership:

- (a) the property of the foreign partnership will so continue to be the property of the exempted limited partnership;
- (b) the exempted limited partnership continues to be liable for all 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 registration by way of continuance of a foreign partnership under the Acts shall not create a new legal entity or prejudice or affect the continuity of the partnership which was formerly a foreign partnership and which has become a Bermuda 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 partnership shall be prejudiced in pursuing, in or under the laws of Bermuda, a bona fide claim that existed prior to the date of continuance and which could have been pursued under the laws then governing such foreign partnership.

5. CONVERSION OF EXEMPTED LIMITED PARTNERSHIP TO AN EXEMPTED COMPANY OR EXEMPTED LIMITED LIABILITY COMPANY

5.1. Conversion

A partnership that is both an exempted and limited partnership and which has elected to have legal personality under the Partnership Act may, in accordance with the terms of its partnership agreement, convert to an exempted company or an exempted limited liability company. In order to do so, it is necessary for the partnership to make an application for consent to the Bermuda Monetary Authority, pay a prescribed fee and file such documents as are required for registration of an exempted company under the Companies Act.

5.2. Consequences of Conversion

Upon conversion of a partnership to an exempted company or an exempted limited liability company:

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

The conversion shall not be deemed to create a new legal entity and shall not constitute a dissolution of the partnership.

It is also possible for an exempted company or exempted limited liability company to convert to an exempted limited partnership with legal personality.

6. TAXATION, REGISTRATION FEES & EXCHANGE CONTROL

6.1. Taxation

At the date of this publication, there is no Bermuda income or profits tax, withholding tax, capital gains tax, capital transfer tax, estate duty or inheritance tax payable by a Bermuda exempted partnership or an overseas permit partnership or their partners, other than partners ordinarily resident in Bermuda. Further, no such tax is imposed by way of withholding or otherwise on any payment to be made to or by such partnerships.

A Bermuda exempted partnership may apply for and is likely to receive an assurance from the Minister under the Exempted Undertakings Tax Protection Act, 1966 that, in the event of there being enacted in Bermuda any legislation imposing tax computed on profits or income, or computed on any capital assets, gain or appreciation, or any tax in the nature of estate duty or inheritance tax, such tax will not be applicable to the partnership or to any of its operations or partnership interests in or other obligations of the partnership until 31st March 2035 except in so far as such tax applies to persons ordinarily resident in Bermuda and being partners of or parties to other obligations of the partnership or any land leased or let to the partnership.

6.2. Exchange Control

Bermuda is independent for the purposes of exchange control which is operated under the Exchange Control Act 1972 and related regulations. Bermuda exempted partnerships are designated non-resident for exchange control purposes. The non-resident designation allows such partnerships to operate free of exchange control regulations and enables them to make payments of distributions, to acquire, hold and sell any currency and foreign securities without reference to the exchange control authorities.

6.3. Fees

Information about the fee payable on registration and the annual government fee payable thereafter for an exempted partnership is available upon request.

7. BENEFICIAL OWNERSHIP REGISTER

All Bermuda limited partnerships and exempted partnerships, except those that are exempted under the Partnership Act, the Limited Partnership Act or the Exempted Partnerships Act as the case maybe, must establish and maintain a beneficial ownership register at their registered offices (or at such other place in Bermuda convenient for inspection by the Registrar). In connection with this obligation, each such partnership is required to take reasonable steps to identify any individual who is a beneficial owner of the partnership and all relevant legal entities in relation to the partnership, as well as updating its beneficial ownership register when it becomes aware of a relevant change or has reason to believe that that such a change has occurred.

7.1. Who must comply and who is exempted?

The following partnerships and any subsidiary of such partnerships are exempted:

- A partnership (wherever formed) whose interests are listed on the Bermuda Stock Exchange or an overseas stock exchange designated by the Minister of Finance;
- A closed-ended investment vehicle managed or administered by a person licensed under the Investment Business Act, 2003 or the Investment Funds Act, 2006 or registered, authorised or licensed by a foreign regulator recognised by the BMA;
- A financial institution as defined in the Third Schedule to the BMA Act 1969;
- Any other type of partnership or entity that is exempted by the Minister by order made by him.

7.2. What information is required?

The beneficial ownership register must include the minimum required information in respect of every registrable person. A registrable person means an individual beneficial owner or relevant legal entity.

7.3. Who is a beneficial owner and a relevant legal entity?

An individual is a beneficial owner of a partnership if he or she owns or controls **more** than **25%** of the interests or voting rights in the partnership through direct or indirect ownership or failing that, an individual who has control over the partnership by other means. Where neither applies, the individual who holds the position of senior manager of a general partner of the partnership is considered to be the beneficial owner.

A relevant legal entity is any legal entity or legal arrangement that would be a beneficial owner if it were an individual.

7.4. BMA Filing

Additionally, certain information regarding the beneficial owners of a Bermuda partnership that falls within the scope of the Partnership Act, the Limited Partnership Act or the Exempted Partnerships Act, as the case maybe, must be filed with the BMA. The BMA must be notified of any changes to such information within 14 days of the partnership becoming aware of or is notified of a change. This information is not available for public inspection.

7.5. Offences and penalties

Significant criminal and civil penalties where a partnership and /or an individual is guilty of an offence apply for non-compliance with the beneficial ownership legislation. Additionally, sanctions, where the Partnership Agreement allows, may also include restrictions on voting rights and other interests.

It is a defence for the company and/or officer to show that they took reasonable steps to identify beneficial owners for the purposes of the legislation.

8. ECONOMIC SUBSTANCE

Entities within the scope of the Economic Substance legislation include exempted and limited partnerships, where those entities are carrying on a 'relevant activity' as a business. Non-resident entities are not within scope. A non-resident entity is an entity which is resident for tax purposes in a jurisdiction outside Bermuda which is not designated by the EU as a non-cooperative jurisdiction for tax purposes.

In scope entities which carry on as a business any one or more of the relevant activities listed below are required to comply with economic substance requirements which are designed to ensure that income streams from certain activities are based on actual local activity substantiating the use of low tax jurisdictions:

- Banking
- Insurance
- Fund management
- Finance and leasing
- Headquarters
- Shipping
- Intellectual property
- Distribution and service centres
- Holding entity

For further information on Economic Substance, please refer to Conyers' publication [Economic Substance Requirements for Bermuda-Based Entities](#).

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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