

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 a pattern of light and dark tiles.

Discontinuance of Companies from Bermuda

Preface

This publication has been prepared for the assistance of those who are considering the discontinuance of a Bermuda exempted company to a foreign jurisdiction as a foreign corporation. 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 Companies Act 1981 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 Companies Act 1981 of Bermuda (the “**Act**”) for a Bermuda exempted company to discontinue from Bermuda and continue into a foreign jurisdiction as a foreign entity. Under Bermuda law, a Bermuda exempted company may also merge or amalgamate with a foreign entity, with the surviving or amalgamated entity continuing as a foreign entity. A separate publication relating to such mergers or amalgamations is available upon request.

In order to ensure that a Bermuda exempted company 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 exempted company is continuing.

The foreign jurisdiction into which a Bermuda company 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 exempted company 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 prior to the effective date of discontinuance, notice must be published in a newspaper in Bermuda and in national newspapers in all jurisdictions within which the company carries on a substantial part of its trade or business activities, to the effect that the company intends to discontinue from Bermuda and continue in the named jurisdiction outside of Bermuda.

Corporate Action and Documentation

The discontinuance must be approved either: (i) in the manner provided in the company’s bye-laws; or (ii) by a resolution of the shareholders, or each class of shareholders where each share carries the right to vote in respect of such discontinuance whether or not it otherwise carries the right to vote.

In addition, a director of the company must make a statutory declaration confirming that the company is solvent, can meet all of its liabilities and obligations and that the discontinuance will not adversely affect the interests or rights of bona fide creditors and shareholders of the company. The company and its directors must also execute an irrevocable deed poll regarding service of legal process on each of them after the company 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 company will continue;
- (c) the address of the registered office or the principal business address of the continued company 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 company 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 company has continued. Once the Registrar has received and filed the instrument of continuance (or other documentary evidence of continuance), the Registrar will issue a Certificate of Discontinuance. The effective date of the discontinuance will, however, be the date that the company's continuance in the foreign jurisdiction is effective under the laws of the foreign jurisdiction.

2.2. Consequences of Discontinuance of a Bermuda Company

The discontinuance of a Bermuda exempted company 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 company.

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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