

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.

Bermuda: Conversion of an Exempted Company to an Exempted Limited Liability Company

Preface

This publication has been prepared for the assistance of those who are considering the conversion of a Bermuda exempted company to a Bermuda exempted limited liability company. It deals in broad terms with the requirements and procedures under Bermuda law for effecting a conversion; 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 conversion, 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 and Companies Act 1981 have been prepared and are available on request.

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1. INTRODUCTION

This publication outlines the steps necessary under the Limited Liability Company Act 2016 (the “**LLC Act**”) and the Companies Act 1981 (the “**Companies Act**”) for an exempted company established under the Companies Act to convert to a Bermuda exempted limited liability company (“**LLC**”) established under the LLC Act.

The conversion of an exempted company into an exempted LLC requires careful planning.

2. CONVERSION OF A BERMUDA EXEMPTED COMPANY TO AN EXEMPTED LLC

2.1. Procedure

Any conversion must be duly authorised in accordance with the bye-laws (the “**Bye-laws**”) of the exempted company (the “**Company**”). In addition, an application must be made to the Bermuda Monetary Authority (“**BMA**”) seeking permission for the Company to convert (“**BMA Consent**”).

At least 14 days prior to submitting the application for BMA Consent, the Company must advertise in an appointed newspaper in Bermuda and in a national newspaper in each jurisdiction in which it carries on a substantial part of its business activities its intention to make such application (the “**Notice**”).

A director of the Company must sign a declaration (the “**Declaration**”) confirming (i) that the Company is solvent and can meet all of its liabilities and obligations and that the conversion will not adversely affect the interests of bona fide creditors and members; and (ii) that the Notice was published at least 14 days prior to the Company submitting the application for BMA Consent.

A person duly authorised by the Company must execute a certificate of conversion (the “**Certificate of Conversion**”), which states (a) the name of the LLC (and, if applicable, its secondary name); (b) the address of the registered office of the LLC; (c) the name of the Company (and, if applicable, its secondary name); (d) if applicable, the future effective date or time of the conversion; and (e) any other matters the members determine to include.

The Company is converted by filing with the Registrar of Companies (the “**Registrar**”): (a) the Certificate of Conversion; (b) the BMA Consent; (c) the Declaration; and (d) confirmation that the members of the Company have approved a form of limited liability company agreement for the LLC. The effective date of the conversion will be the date of filing with the Registrar of the Certificate of Conversion or any later date or time specified in the Certificate of Conversion.

2.2. Consequences of Conversion

Upon conversion of an exempted Company to an exempted LLC:

- (a) the property of the Company continues to be the property of the LLC;
- (b) the LLC continues to be liable for the obligations of the Company;
- (c) any existing cause of action, claim or liability to prosecution in respect of the Company is unaffected;

- (d) any civil, criminal or administrative action or proceeding pending by or against the Company may be continued by or against the LLC;
- (e) any conviction against, or any ruling, order or judgment in favour of or against the Company may be enforced by or against the LLC; and
- (f) its Certificate of Conversion is deemed its certificate of formation and the provisions of the LLC Act regarding a certificate of formation shall, mutatis mutandis, apply to the Certificate of Conversion.

The conversion of the exempted Company to an exempted LLC pursuant to the LLC Act and the Companies Act is not deemed to: (i) create a new legal entity; (ii) prejudice or affect the continuity of the LLC which was formerly the Company; (iii) wind up or dissolve the Company; or (iv) transfer the rights, privileges, powers or interests in property of the Company or the debts, liabilities or duties of the Company to the LLC for any purpose of the laws of Bermuda.

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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