

CONYERS

**Bermuda: Conversion of an
exempted limited partnership
with legal personality to an
exempted company**

Preface

This publication has been prepared for the assistance of those who are considering the conversion of a Bermuda exempted limited partnership with legal personality to a Bermuda exempted 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 Companies Act 1981, the Exempted Partnerships Act 1992, the Limited Partnership Act 1883 and the Partnership Act 1902 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 Exempted Partnerships Act 1992, the Limited Partnership Act 1883 and the Companies Act 1981 of Bermuda (together, the “Acts”) for an exempted limited partnership established under the Exempted Partnerships Act 1992 and the Limited Partnership Act 1883 that has elected under Section 4A of the Partnership Act 1902 to have legal personality (“partnership”) to convert to a Bermuda exempted company.

The conversion of a partnership into an exempted company requires careful planning.

2. CONVERSION OF A BERMUDA PARTNERSHIP TO AN EXEMPTED COMPANY

2.1. Procedure

Any conversion must be approved by the partners in such manner as may be authorised by the terms of the partnership agreement. Once the conversion has been approved, an application must be made to the Bermuda Monetary Authority (“BMA”) seeking consent for the partnership to convert. This application should be accompanied by the prescribed fee and the advertisement referred to below, and should include:

- (a) the name of the partnership;
- (b) the date of the filing of the original certificates of exempted partnership and limited partnership;
- (c) the new name following conversion including the word Limited or its abbreviation Ltd.;
- (d) the future effective date or time of the conversion [if it is not to be effective as of the filing date of the certificates of exempted partnership and limited partnership];
- (e) that the conversion has been approved in the manner authorised by the partnership agreement;
- (f) the memorandum of association of the exempted company;
- (g) the registered office address of the exempted company; and
- (h) confirmation that the partners have approved in writing the form of bye-laws of the continuing exempted company which conform to the requirements of the Companies Act 1981 and any other applicable law of Bermuda.

At least fourteen days prior to the date of the application to the BMA, an advertisement must be published in a newspaper in Bermuda and in national newspapers in all jurisdictions within which the partnership carries on a substantial part of its trade or business activities to the effect that the partnership intends to convert to an exempted company.

A general partner of the partnership must sign a statutory declaration confirming that the partnership is solvent, can meet all of its liabilities and obligations and that the conversion will not adversely affect the interests or rights of bona fide creditors and partners of the partnership.

Within six months following receipt of the relevant consent from the BMA, conversion of the partnership in Bermuda is effected by delivering documents to the Registrar of Companies (the “Registrar”). The submission must include:

- (a) a copy of the application for conversion filed with the BMA;
- (b) the consent of the BMA;
- (c) the statutory declaration of solvency referred to above; and
- (d) the certificates of exempted partnership and limited partnership.

Upon receipt of these documents and confirmation that the BMA has consented to the conversion, the Registrar will issue a certificate of conversion, which will specify the date of conversion of the partnership to an exempted company.

2.2. Consequences of Conversion

Upon conversion of a partnership to an exempted company under the Acts:

- (a) the property of the partnership will continue to be the property of the exempted company;
- (b) the exempted 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; 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.

The rights, privileges, powers, and interests in property of the partnership that was converted shall not be deemed, as a consequence of the conversion, to have been transferred to the exempted company.

The conversion of a partnership under the Acts does not (i) create a new legal entity; or (ii) require such partnership to wind up its affairs or cancellation. The conversion shall not constitute a dissolution of such partnership or prejudice or affect the continuity of a body corporate which was formerly a partnership now converted to an exempted 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.