

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

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Preface

This publication has been prepared for the assistance of those who are considering the conversion of a Bermuda exempted limited partnership which has elected to have legal personality under the Partnership Act 1902 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 Limited Liability Company Act 2016, Limited Partnership Act 1883, Partnership Act 1902 and Exempted Partnerships Act 1992 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**”) for an exempted limited partnership established under the Limited Partnership Act 1883 and the Exempted Partnerships Act 1992 which has elected to have legal personality under the Partnership Act 1902 to convert to a Bermuda exempted limited liability company (“**LLC**”) under the LLC Act.

The conversion of an exempted limited partnership into an LLC requires careful planning.

2. CONVERSION OF A BERMUDA EXEMPTED LIMITED PARTNERSHIP TO AN EXEMPTED LIMITED LIABILITY COMPANY

2.1. Procedure

In order to convert to an LLC, an exempted limited partnership (the “**Partnership**”) must have elected to have legal personality under the Partnership Act 1902 and such a conversion must be duly authorised in accordance with the partnership agreement of the Partnership.

An application must be made to the Bermuda Monetary Authority (the “**BMA**”) seeking permission for the Partnership to convert to an LLC (“**BMA Consent**”).

At least 14 days prior to submitting the application for BMA Consent, the Partnership 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 the application (the “**Notice**”).

A general partner of the Partnership must sign a declaration (the “**Declaration**”) confirming: (i) that the Partnership 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 partners; and (ii) that the Notice was published at least 14 days prior to the Partnership submitting the application for BMA Consent.

Additionally, a person duly authorised by the Partnership 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 Partnership (and, if applicable, its secondary name);
- (d) if the conversion is not to be effective upon filing of the Certificate of Conversion, the future effective date or time of the conversion; and
- (e) any other matters the members determine to include.

The Partnership is converted to an LLC 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 partners 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.

In connection with the conversion of the Partnership to an LLC, the members of the LLC must enter into an LLC agreement. Upon such conversion, rights or securities of or interests in the Partnership may be exchanged for or converted into cash, property or rights or securities of or interests in the LLC.

2.2. Consequences of Conversion

Upon conversion of the Partnership to an LLC:

- (a) the property of the Partnership continues to be the property of the LLC;
- (b) the LLC 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 LLC;
- (e) any conviction against, or any ruling, order or judgment in favour of or against the Partnership 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 Partnership to an LLC pursuant to the LLC Act is not deemed to:

- (a) create a new legal entity;
- (b) prejudice or affect the continuity of the LLC which was formerly the Partnership;
- (c) wind up or dissolve the Partnership; or
- (d) transfer the rights, privileges, powers or interests in property of the Partnership or the debts, liabilities or duties of the Partnership 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.