

Bermuda: Conversion of
an exempted company to
an exempted limited
partnership

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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 partnership with separate legal personality. 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 Partnership Act 1902, the Exempted Partnerships Act 1992 and the Limited Partnership Act 1883 have been prepared and are available on request.

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TABLE OF CONTENTS

| | | |
|----|---|---|
| 1. | INTRODUCTION | 4 |
| 2. | CONVERSION OF A BERMUDA EXEMPTED COMPANY TO AN EXEMPTED LIMITED PARTNERSHIP | 4 |

1. INTRODUCTION

This publication outlines the steps necessary under the Companies Act 1981 of Bermuda for an exempted company established under the Companies Act 1981 to convert to a Bermuda exempted limited partnership, established under the Exempted Partnerships Act 1992 and the Limited Partnership Act 1883, which has elected to have legal personality, pursuant to the Partnership Act 1902 (the “partnership”).

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

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

2.1. Procedure

Any conversion must be authorised by the board of directors and by the shareholders of the exempted company subject to the terms of the exempted company’s bye-laws. Once the conversion has been approved, an application must be made to the Bermuda Monetary Authority (“BMA”) seeking permission for the exempted company to convert. This application should include:

- (a) the name of the exempted company;
- (b) the date of the exempted company’s certificate of incorporation;
- (c) the new name following conversion;
- (d) the future effective date or time of the conversion (if applicable);
- (e) confirmation that the conversion has been approved by the board of directors and by the shareholders in such manner as authorised by the bye-laws;
- (f) the registered office address of the partnership; and
- (g) confirmation that the partners have approved in writing a form of partnership agreement of the partnership which conforms to the requirements of the Exempted Partnerships Act 1992, the Limited Partnership Act 1883, the Partnership Act 1902 and any other applicable law of Bermuda.

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

A director of the exempted company must sign a statutory declaration confirming that the company 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 members of the company.

Once the relevant consent has been received from the BMA, application for conversion of the exempted company to a partnership in Bermuda must be made 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;
- (d) the certificate of exempted partnership; and
- (e) the certificate containing particulars of the limited partnership.

Where the Registrar receives confirmation that the BMA has consented to the conversion, the Registrar will issue a certificate of conversion, which shall specify the date of conversion of the exempted company to a partnership.

2.2. Consequences of Conversion

Upon conversion of an exempted company to a partnership pursuant to the Companies Act 1981:

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

The conversion of an exempted company to a partnership under the Companies Act 1981 (i) does not create a new legal entity; (ii) shall not constitute a dissolution of such company; and (iii) shall cause the partnership to be the same entity as the converting company. The conversion shall constitute a continuation of the existence of the company in the form of a partnership.

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

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.