

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 geometric patterns and a few stanchions.

Continuance of Foreign Limited Liability Companies in Bermuda

Preface

This publication has been prepared for the assistance of those who are considering continuing a foreign limited liability company into Bermuda as a Bermuda exempted limited liability company. It deals in broad terms with the requirements and procedures under Bermuda law for effecting a continuance; 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 continuance, 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 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 Limited Liability Company Act 2016 of Bermuda (the “Act”) for a limited liability company incorporated outside of Bermuda (a “Foreign LLC”) to continue into Bermuda as a Bermuda exempted limited liability company (a “Bermuda LLC”). Under Bermuda law, a foreign LLC may also merge or amalgamate with a Bermuda LLC with the surviving or amalgamated LLC continuing as a Bermuda LLC. A separate publication relating to such mergers or amalgamations is available upon request.

In order to ensure that a Foreign LLC will discontinue from the foreign jurisdiction and continue in Bermuda as a Bermuda LLC 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 in which the Foreign LLC is currently formed.

Any Foreign LLC may continue into Bermuda in accordance with the procedures set out below.

2. CONTINUANCE IN BERMUDA

2.1. Procedure

An application must initially be made to the Bermuda Monetary Authority (“BMA”) seeking permission for the members of the Foreign LLC to be members of a Bermuda LLC. This application should include:

- (a) a statement of the proposed business of the Bermuda LLC;
- (b) information concerning the beneficial owners of the Bermuda LLC; and
- (c) the opinion of foreign counsel referred to below.

Prior to continuing into Bermuda, Conyers Dill & Pearman Limited, the BMA and the Registrar of Companies (the “Registrar”) must be supplied with an opinion of counsel in the jurisdiction from which the Foreign LLC is discontinuing to the effect that all necessary authorisations under the laws of the foreign jurisdiction have been obtained to allow the Foreign LLC to continue into Bermuda.

Once the relevant consent has been received from the BMA, application for registration of the Foreign LLC in Bermuda is made to the Registrar. The submission must include:

- (a) the original certificate of continuance executed by an authorised person of the Foreign LLC;
- (b) a copy of the consent of the BMA;
- (c) a copy of the legal opinion of foreign counsel;
- (d) the appropriate annual government fee; and
- (e) the required filing fee.

The Foreign LLC will be continued as a Bermuda LLC at the time of filing of its certificate of continuance with the Registrar, or at any later date or time specified in the certificate of continuance. Upon continuance, the Foreign LLC will become a Bermuda LLC to which the Act and any other relevant laws of Bermuda will apply as if the Foreign LLC had been formed in Bermuda on such date or time and the certificate of continuance will be deemed the certificate of formation of the Bermuda LLC.

The members of a Foreign LLC that continues into Bermuda are required to enter into a limited liability company agreement (the “LLC Agreement”) conforming to Bermuda law. The Bermuda compliant LLC Agreement must be entered into prior to continuance, to be effective upon continuance, thus resulting in the Bermuda LLC being in full compliance with Bermuda law upon its continuance in Bermuda.

2.2. Consequences of Continuance

Upon continuance of a Foreign LLC as a Bermuda LLC under the Act:

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

The continuance of a Foreign LLC under the Act does not create a new legal entity or prejudice or affect the continuity of the Bermuda LLC which was formerly a Foreign LLC, now a Bermuda LLC continued in Bermuda.

In addition, the Bermuda courts will apply the laws of evidence and the rules of procedure with the intent that no claimant against the continued Bermuda LLC will be prejudiced in pursuing, in or under the laws of Bermuda, a bona fide claim that existed prior to the date or time of continuance and which could have been pursued under the laws then governing such Foreign LLC.

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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