

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.

De-registration by way of Continuation of Bermuda Partnerships in Foreign Jurisdictions

Preface

This publication has been prepared for the assistance of those who are considering the de-registration by way of continuation of a Bermuda exempted and/or limited partnership to a foreign jurisdiction as a foreign partnership. It deals in broad terms with the requirements and procedures under Bermuda law for effecting a de-registration by way of continuation; 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 such a de-registration by way of continuation, persons are advised to consult their tax, legal and other professional advisers in their respective jurisdictions.

Copies of the Bermuda Limited Partnership Act 1883, Exempted Partnerships Act 1992 and Partnership Act 1902 have been prepared and are available on request.

Conyers Dill & Pearman

TABLE OF CONTENTS

1.	INTRODUCTION	4
2.	DE-REGISTRATION BY WAY OF CONTINUATION FROM BERMUDA	4

1. INTRODUCTION

This publication outlines the steps necessary under the Exempted Partnerships Act 1992 and the Limited Partnership Act 1883 of Bermuda (together, the “Acts”) for a Bermuda exempted and/or limited partnership to de-register by way of continuation from Bermuda to a foreign jurisdiction.

The de-registration by way of continuation of a Bermuda exempted and/or limited partnership from Bermuda requires careful planning. Without careful planning, due to the nature of a de-registration by way of continuation, it is possible that a partnership could become, at least for a short period, a stateless entity. To ensure that such a situation does not occur, it is suggested that before any application is made, all the appropriate documentation first be completed both in Bermuda and in the jurisdiction into which the Bermuda partnership is continuing. The end result should be that the partnership will continue in the foreign jurisdiction and de-register from Bermuda at the same time.

The jurisdiction into which a partnership is to continue must be a jurisdiction approved by the Minister of Finance (the “Minister”) as an “appointed jurisdiction”. Please contact Conyers Dill & Pearman for a current listing of appointed jurisdictions. The Minister will consider approving further jurisdictions as appointed jurisdictions upon request, and will consider approving the de-registration of a Bermuda partnership to a foreign jurisdiction which is not an appointed jurisdiction, on a case by case basis.

2. DE-REGISTRATION BY WAY OF CONTINUATION FROM BERMUDA

2.1. Procedure

General

Ministerial consent is not generally required to de-register an exempted and/or limited partnership from Bermuda to an appointed jurisdiction. To effect a de-registration by way of continuation, all partnership actions and authorisations must be completed pursuant to the terms of the Acts and the appropriate documentation must then be filed with the Registrar of Companies in Bermuda (the “Registrar”).

At least fourteen days prior to the de-registration, 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 business activities, to the effect that the partnership intends to de-register under the relevant Act(s) and continue in the named jurisdiction outside of Bermuda.

Partnership Action and Documentation

A Bermuda exempted and/or limited partnership which proposes to de-register by way of continuation to a foreign jurisdiction must be in good standing with the Registrar and any outstanding fees due to be paid in relation to the partnership to the Registrar must be paid.

A statement or declaration must be signed by all partners confirming the intention to de-register and to continue under the laws of a foreign jurisdiction, which must be an “appointed jurisdiction”.

A partner of the exempted partnership or general partner in a limited partnership must sign a statutory declaration confirming that the partnership is solvent, can meet all of its liabilities and obligations, and that the de-registration will not adversely affect the interests or rights of *bona fide* creditors and partners of the partnership. The partner must also execute an irrevocable deed poll regarding service of legal process on the partnership and each of the partners after the partnership de-registers.

In order to be de-registered under the relevant Act(s), the statement or declaration of de-registration referred to above must be filed with the Registrar and must contain or have attached to it the following:

- (a) a certificate of compliance in respect of the partnership's good standing with the Registrar;
- (b) prescribed filing fee;
- (c) the address of the registered office or the principal business address of the partnership in the jurisdiction into which the partnership will continue;
- (d) a copy of the statutory declaration referred to above;
- (e) a copy of the irrevocable deed poll referred to above; and
- (f) a copy of the advertisement(s) referred to above.

The partnership must file with the Registrar, within thirty days of the date of the issue thereof, a copy of the instrument of continuance (or other documentary evidence of the continuance) issued by the appropriate authority of the jurisdiction into which the partnership has continued. Once the Registrar has received and filed the instrument of continuance (or other documentary evidence of continuance), the Registrar will issue a Certificate of De-registration. The effective date of the de-registration will be the effective date of the registration in the appointed jurisdiction.

With effect from the date indicated on the certificate of de-registration, the exempted and/or limited partnership and the partnership interests of the related parties and their rights and liabilities, as against any person who is not a partner, will cease to be governed by the laws of Bermuda, save in respect of any act or omission occurring before such date which will be governed by the laws of Bermuda.

2.2. Consequences of De-registration by way of continuation of a Bermuda Partnership

The registration by the Registrar in Bermuda of the de-registration of a Bermuda exempted and/or limited partnership under the Acts and its continuation in a foreign jurisdiction does not:

- (i) create a new legal entity;
- (ii) prejudice or affect the continuity of the partnership which was formerly a Bermuda partnership;
- (iii) affect the property previously acquired by or on behalf of the partnership;

- (iv) affect any act or thing done prior to such de-registration or the rights, powers, authorities, functions or obligations of the partnership, any partner or any other person prior thereto; or
- (v) render defective any legal proceedings by or against the partnership or any partner or any other person.

The rights, privileges, powers and interests in property of the exempted and/or limited partnership that has de-registered and continued overseas shall not be deemed, as a consequence of the de-registration, to have been transferred to the exempted and/or limited partnership so de-registered and continued 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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