

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. The foreground shows a paved plaza with geometric patterns and a few small trees.

Bermuda Overseas Partnerships

Preface

This publication has been prepared for the assistance of those who are considering conducting business in Bermuda using an overseas partnership.

This publication 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 seek legal advice in Bermuda and consult their tax, legal and other professional advisers in their own jurisdiction on their specific proposals before taking steps to implement them.

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1. INTRODUCTION

The partnership is a popular vehicle for international ventures primarily because it is regarded in most jurisdictions (including the U.S. and the U.K.) as fiscally transparent. As a general principle, tax is imposed at the partner level, not at the partnership level, and consequently the tax position of one partner does not affect the position of any other partner.

Overseas partnerships formed under a law other than the law of Bermuda may apply for a permit to carry on certain trades or businesses in Bermuda under the Overseas Partnerships Act 1995 (as amended) (the “**OPA**”).

2. OVERSEAS PARTNERSHIPS

The OPA allows an overseas partnership to apply for a permit from the Minister of Finance in Bermuda to engage in or carry on a trade or business in Bermuda. Unless authorised by its permit or unless such partnership falls within the “fund” exemption, such partnership may not participate in the domestic economy but is permitted to carry on business in connection with transactions and activities external to Bermuda. The “fund” exemption is available to a partnership fund (i.e. an overseas partnership that has the characteristics of an “investment fund” within the meaning of section 3 of the Investment Funds Act 2006) if it engages a person in Bermuda to be the fund’s administrator or registrar to perform any or all of certain prescribed services or activities for the fund in Bermuda.

2.1. Application Procedure and Administration

An applicant must show good reason for wishing to conduct business in Bermuda through an overseas partnership rather than a Bermuda exempted partnership; for example, there may be tax advantages available to the overseas partnership which would not be available to a Bermuda partnership.

2.2. Register of Overseas Partnerships

The Registrar of Companies will register the Certificate of Overseas Partnership and the permit issued by the Minister of Finance in a register of overseas partnerships. The permit is only effective on the date it is registered and it is only on this date that the partnership can commence business in Bermuda.

2.3. Maintenance of Records

Every overseas partnership is required to keep at its registered office in Bermuda such records of its business and financial affairs so that the trade or business of the overseas partnership can be identified. If the financial records of the overseas partnership are kept outside Bermuda, sufficient records must be kept at the registered office in Bermuda to enable all the partners to ascertain with reasonable accuracy the financial position of the overseas partnership at the end of every three months. The records must be kept for a period of five years from the date on which they were prepared.

2.4. Letterhead

The following details must appear on the letterhead of the overseas partnership:

- (a) its name;
- (b) the law governing such partnership; and
- (c) the address of its registered office.

2.5. Changes to Overseas Partnerships

The prior written consent of the Minister is required for any change in the general partners (but not limited partners). The general partners may, without such consent, change the name of the overseas partnership, its resident representative or its registered office.

2.6. Supplementary Certificate

If any change is made to the information contained in the Certificate of Overseas Partnership, the general partners must severally sign a supplementary Certificate of Overseas Partnership and file such certificate with the Registrar within 30 days after such change. A power of attorney is usually provided in the partnership agreement authorising the general partner to execute such certificates.

3. ECONOMIC SUBSTANCE

Entities within the scope of the Economic Substance legislation include overseas partnerships, where those entities are carrying on a 'relevant activity' as a business. Non-resident entities are not within scope. A non-resident entity is an entity which is resident for tax purposes in a jurisdiction outside Bermuda which is not designated by the EU as a non-cooperative jurisdiction for tax purposes.

In scope entities which carry on as a business any one or more of the relevant activities listed below are required to comply with economic substance requirements which are designed to ensure that income streams from certain activities are based on actual local activity substantiating the use of low tax jurisdictions:

- Banking
- Insurance
- Fund management
- Finance and leasing
- Headquarters
- Shipping
- Intellectual property
- Distribution and service centres
- Holding entity

For further information on Economic Substance, please refer to Conyers' publication [Economic Substance Requirements for Bermuda-Based Entities](#).

4. TAXATION, REGISTRATION FEES & EXCHANGE CONTROL

4.1. Taxation

At the date of this publication, there is no Bermuda income or profits tax, withholding tax, capital gains tax, capital transfer tax, estate duty or inheritance tax payable by an overseas permit partnership or their partners, other than partners ordinarily resident in Bermuda. Further, no such tax is imposed by way of withholding or otherwise on any payment to be made to or by such partnerships.

An overseas permit partnership may apply for and is likely to receive an assurance from the Minister under the Exempted Undertakings Tax Protection Act, 1966 that, in the event of there being enacted in Bermuda any legislation imposing tax computed on profits or income, or computed on any capital assets, gain or appreciation, or any tax in the nature of estate duty or inheritance tax, such tax will not be applicable to the partnership or to any of its operations or partnership interests in or other obligations of the partnership until 31st March 2035 except in so far as such tax applies to persons ordinarily resident in Bermuda and being partners of or parties to other obligations of the partnership or any land leased or let to the partnership.

4.2. Exchange Control

Bermuda is independent for the purposes of exchange control which is operated under the Exchange Control Act 1972 and related regulations. Overseas permit partnerships are designated non-resident for exchange control purposes. The non-resident designation allows such partnerships to operate free of exchange control regulations and enables them to make payments of distributions, to acquire, hold and sell any currency and foreign securities without reference to the exchange control authorities.

4.3. Fees

Information about the fee payable on registration and the annual government fee payable thereafter for an exempted or overseas partnership is available upon request.

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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