

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 a pattern of light and dark tiles.

Bermuda Exempted Limited Liability Companies

Preface

This publication has been prepared for the assistance of those who are considering the formation of exempted limited liability companies (“LLCs”) in Bermuda. It deals in broad terms with the requirements of Bermuda law for the formation and operation of such entities. It is not intended to be exhaustive but 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 the formation of an LLC in Bermuda, 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.

Persons considering establishing an LLC to be an investment fund should obtain separate advice from this Firm on that topic. An LLC may not carry on insurance business.

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1. INTRODUCTION

The principal statute governing the formation and operation of Bermuda LLCs is the Limited Liability Company Act 2016 (the “Act”).

An LLC is a separate legal entity which, subject to its LLC agreement, has the capacity, rights, powers and privileges of a natural person. Subject to the Act, any one or more persons may form an LLC for any lawful business, purpose or activity.

Bermuda law distinguishes between those LLCs which are owned predominantly by Bermudians (“local LLCs”) and those which are owned predominantly by non-Bermudians (“exempted LLCs”). Only local LLCs are permitted to carry on and compete for business which is in Bermuda without a licence. Exempted LLCs may be resident in Bermuda and carry on business from Bermuda in connection with transactions and activities which are external to Bermuda. In practice, the activities of most exempted LLCs are unlikely to infringe this requirement.

In certain cases the Act imposes different requirements on local LLCs and exempted LLCs. Further, in prescribed circumstances, an exempted LLC may obtain a licence to carry on its business activities within Bermuda. This memorandum is concerned only with the formation and operation of exempted LLCs carrying on business from Bermuda.

An exempted LLC is essentially a hybrid entity combining many of the characteristics of existing Bermuda exempted companies and exempted limited partnerships. Please see our publications entitled “Bermuda Exempted Companies” and “Bermuda Exempted and Overseas Partnerships” for further details of those entities.

The Bermuda LLC is a flexible commercial vehicle designed to enable parties to more easily reflect their commercial agreement in the entity’s constitution. It is also intended to allow for simpler and more efficient operation: the Act’s stated intention is to give the maximum effect to the principle of freedom of contract and to the enforceability of LLC agreements.

There is no formal distinction under the Act between the notion of a public LLC and a private LLC. However, certain provisions of the Act are expressed to apply exclusively to LLCs the interests in which are traded on an appointed stock exchange or which are subject to the rules and regulations of a competent regulatory authority.

Shelf LLCs are not available in Bermuda. It is, therefore, necessary for prospective members or managers to form a new LLC for their purposes.

2. PRE-FORMATION MATTERS

2.1. The Bermuda Monetary Authority - Consent to Formation

The Bermuda Monetary Authority (the “BMA”) must consent to the formation of all exempted LLCs. Each of the ultimate beneficial owners holding 10% or more of the interests in the proposed LLC must sign a declaration and provide a certified copy of their passport or other official identification. By the declaration, each beneficial owner attests to his or her good standing in any other Bermuda entity and generally. The ultimate beneficial owners’ identity must in all instances be disclosed.

2.2. LLC Name

The proposed name of the LLC must be reserved prior to the filing of the certificate of formation with the Registrar of Companies (the “Registrar”). The name reservation can usually be confirmed within 24 hours, must contain the suffix “LLC”, “L.L.C.” or “Limited Liability Company” and may contain the name of a member or manager.

The Registrar will refuse the reservation request if there is likely to be an obvious conflict with an existing registered name. Formal reservation will ensure that no other person can use the name or another similar name. The reservation lasts for three months and may be renewed.

Bermuda LLCs may adopt a secondary name in non-roman script with the approval of the Registrar. The Registrar will require an electronic copy of the secondary name, the certificate of formation of the LLC including the secondary name and a certificate signed by an authorised person and sworn before a notary public certifying the accuracy of the English translation of the secondary name and certifying that the person is fluent in the language and script in question.

2.3. Pre-Formation Contracts

Where a person purports to enter into a contract in the name of an LLC or as agent for an LLC which has not yet been formed, he will be personally liable on the contract unless there is an agreement to the contrary. After formation, the LLC may unilaterally adopt such a contract and will become a party thereto to the same extent as if the contract had been made after the formation. Such adoption by the LLC will discharge the person or agent who purported to act on its behalf.

3. FORMATION

Formation of an exempted LLC is effected by filing with the Registrar a certificate of formation executed by one or more authorized persons along with the BMA’s consent and the payment of a prescribed fee. The certificate of formation is required to state the name of the LLC and, if applicable, its secondary name, that the LLC is an exempted LLC, the address in Bermuda of its registered office, and any other matters the members determine to include.

Upon the satisfactory filing of a certificate of formation, the Registrar will issue a certificate of filing to which must be attached a facsimile of the filed certificate of formation.

An LLC will be deemed formed as at the time of the filing of the initial certificate of formation with the Registrar or at any later date or time specified in the certificate of formation.

4. REQUIREMENTS OF AN LLC

4.1. Registered Office

An LLC must have a registered office in Bermuda, the address of which is set out in its certificate of formation. A post office box cannot be used as a registered office. In general, the register of members, register of managers and records of account of the LLC must be kept at the registered office.

4.2. Register of Members

An LLC must keep and maintain up to date in its registered office a register of members containing the name and address of each person who is a member of the LLC. An LLC whose interests are traded on an appointed stock exchange or which is subject to the rules and regulations of a competent regulatory authority may keep one or more branch registers of members outside Bermuda, provided that the LLC gives written notice to the Registrar. If an LLC does not keep a branch register, the register of members must also contain the date at which each person was entered in the register as a member.

The register of members must be available for inspection by members unless the LLC agreement provides otherwise. However, there is no requirement that the register of members be available for public inspection.

4.3. Register of Managers

An LLC must keep at its registered office and file with the Registrar a register of its managers containing the name and address of each individual manager and the name and registered office of each company which is a manager. When the LLC has not named, designated or appointed a manager, the register of members must contain the names and addresses of any member who participates materially in the management of the LLC. Any changes among the managers or any changes in the particulars contained in the register must be entered on the register and the Registrar notified within 14 days of any such change. The register of managers must be available for inspection by members of the public during business hours (subject to such reasonable restrictions as the LLC may impose).

4.4. Requirements for Officers or Representatives in Bermuda

If an LLC does not have its registered office at the registered office of a corporate service provider holding an unlimited license under the Corporate Service Provider Business Act 2012, the LLC is required to have a resident representative which may be an individual or a company which is ordinarily resident in Bermuda. Otherwise, there is no requirement that an LLC have any officers or representatives in Bermuda.

4.5. Officers

An LLC may have officers who may or may not be managers or members of the LLC.

4.6. Bank Account

There is no requirement for an LLC to maintain a bank account in Bermuda.

4.7. Records of Account

An LLC must keep proper records of account with respect to its business activities. These records must be kept at the registered office or at such other place as the managers think fit. The records are required to be open for inspection by the members of the LLC (and any manager), subject to any reasonable restrictions set out in the LLC agreement or established by the manager. Where the books of account are kept outside Bermuda, the LLC must maintain sufficient records at the registered office

in Bermuda as will enable the financial position of the LLC at the end of each three-month period to be ascertained with reasonable accuracy. The records of account must be kept for a period of five years from the date on which they were prepared.

4.8. Seal

An LLC may, but need not, have a common seal and one or more duplicate common seals in or out of Bermuda. If the seal is to be affixed to a deed, instrument or document, it must be attested by at least one authorised person or in such manner as the LLC agreement may provide.

4.9. Audited Financial Statements

Unless the LLC agreement provides otherwise, an LLC must cause financial statements and an auditor's report in respect thereof to be prepared. However, these requirements may be waived in respect of a particular interval if all of the members agree in writing that no financial statements or auditor's report thereon needs to be prepared for that interval.

5. MEMBERSHIP

5.1. Admission and Resignation of Members

A person may be admitted as a member of an LLC upon the later of the formation of the LLC or the time provided in the LLC agreement or, if the LLC agreement does not so provide, upon the entry of the person's name in the register of members of the LLC.

After the formation of an LLC, a person may be admitted as a member of the LLC either by acquiring an LLC interest directly from the LLC, an assignment of an LLC interest to such person, upon an amalgamation or merger with an LLC or pursuant to a conversion of a company or exempted limited partnership to an LLC.

A person may be admitted as a member of an LLC and receive an LLC interest without making a contribution or being obligated to make a contribution. A person may also be admitted as a member of an LLC without acquiring an LLC interest.

A member may resign from an LLC only at the time or upon the happening of events specified in the LLC agreement and will cease to be a member of the LLC upon certain events of bankruptcy specified in the Act.

5.2. Members' Contributions

A contribution of a member to an LLC (if any) may be in cash, property, or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services. No member or manager of an LLC will be obligated personally for any debt, obligation or liability of the LLC solely by reason of being a member or manager of the LLC.

A person may receive an LLC interest in the LLC without making any contribution or being obligated to make a contribution to the LLC.

The LLC interest of any member who fails to make any contribution that the member is obligated to make will be subject to penalties or consequences specified in the LLC agreement, which may include the reduction, elimination, subordination, forced sale or forfeiture of the defaulting member's LLC interest.

6. OPERATION OF AN LLC

6.1. Management

The Act provides that, unless otherwise provided by the LLC agreement, the management of the LLC shall be vested in its members in proportion to their interests in the profits of the LLC with the decision of members owning more than 50 per cent of such interests controlling. However, the LLC agreement may provide for the management, in whole or in part, of the LLC, to be vested in one or more managers (who may also be members), and the manner of choosing such manager or managers. Unless otherwise provided by the LLC agreement, each member and manager has authority to bind the LLC.

The LLC agreement may provide for classes or groups of managers having such relative rights, powers and duties as the LLC agreement may provide. An LLC agreement may also contain provisions relating to notice of meetings of managers or classes or groups of managers, the waiving of any such notice, action by written consent without a meeting, the establishment of record dates, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of voting rights. However, unless otherwise provided in its LLC agreement or in the Act, any matter to be decided by a vote of the managers or class or group of managers will be decided on a simple majority of votes.

The manager may hold the offices and have the responsibilities provided in the LLC agreement. Subject to the LLC agreement, members and managers may delegate their rights and powers to manage the LLC to other persons.

To the extent that, at law or in equity, a member or manager has duties (including fiduciary duties) to an LLC or to another member or manager of the LLC such duties may be expanded, restricted or eliminated by the LLC agreement (except that fraud or dishonesty cannot be permitted).

Unless otherwise provided in an LLC agreement, where a member or manager is exercising any vote, consent or approval right in respect of such person's ownership interest in, or capacity as member of, an LLC such person may exercise such vote, consent or approval right in such person's own interests and as such person sees fit even though such vote, consent or approval may not be in the best interests of the LLC.

6.2. The LLC Agreement

The Act imposes a requirement that the member or members of an LLC enter into an LLC agreement to regulate the business and affairs of the LLC. The LLC agreement must be governed by Bermuda law. The LLC will be bound by and is entitled to enforce the LLC agreement whether or not it is executed by the LLC. An LLC agreement may be entered into at any time before, after or at the time of the filing of a certificate of formation and may be made effective at the time of filing or at another time in accordance with the LLC agreement.

The Act, however, affords flexibility to the members to agree among themselves the internal workings of the LLC, with appropriate minimum safeguards. For example, an LLC agreement may:

- expand, restrict or eliminate any member's or manager's duties (including fiduciary duties) they may owe to each other (but may not permit fraud or dishonesty);
- give exemptions or indemnities to any member or manager or other person from and against any loss or liability (other than in respect of fraud or dishonesty);
- provide that a member or manager who fails to perform in accordance with the LLC agreement shall be subject to specified penalties or consequences (including, but not limited to, a forced sale or forfeiture of some or all of the member's LLC interest);
- provide for classes or groups of members or managers with differing rights, powers and duties;
- provide for the taking of an action, including the amendment of the LLC agreement, without the vote or approval of any member or manager or class or group of members or managers and may provide that any member or class or group of members shall have no voting rights;
- grant to all or certain identified members or a specified class or group of members, the right to vote separately or with all or any class or group of members or managers on any matter; and
- provide that voting by members or managers shall be on a per capita, number, financial interest, class, group or any other basis.

The Act provides considerable flexibility on how approvals or consents of members may be obtained. For example, on a matter to be voted on, consented to or approved by members, unless otherwise provided for in the LLC agreement, the matter may be dealt with without a meeting, without prior notice and without a vote if consented to, in writing or by electronic transmission, by the members having no less than the minimum number of votes that would be necessary to authorise or take such action at a meeting at which all members entitled to vote thereon were present and voted.

An LLC agreement may provide for the manner in which it may be amended, including by requiring the approval of a person who is not a party to the LLC agreement or the satisfaction of conditions. However, if an LLC agreement does not provide for the manner in which it may be amended, it may be amended with the approval of all of the members.

6.3. Contracts

Any third party dealing with an LLC in the ordinary course of its business will, generally, be entitled to rely on any written or oral contract or agreement executed or entered into by any person acting with the express or implied authority of the LLC. In general, an LLC may, in writing, authorise any person as its agent to sign or execute deeds, investments, contracts or other documents.

An LLC may, but need not, have a common seal and one or more duplicate common seals in or out of Bermuda. If the seal is to be affixed, it shall be attested by the signature of at least one person authorised to sign, or in such other manner as the LLC agreement may provide.

7. TRANSACTIONS INVOLVING INTERESTS OF AN LLC

7.1. Issue of Interests

In certain cases, the issue of LLC interests to persons will require the consent of the BMA. The procedure for the issue of LLC interests will usually be set out in the LLC agreement.

7.2. Assignment of Interests

An LLC interest is capable of being assigned in whole or in part in accordance with the Act and the provisions of the LLC agreement. However, in certain cases, the transfer (or assignment) of LLC interests to persons will also require the consent of the BMA.

An assignee of a member's LLC interest (who is not admitted as a member) has no right to participate in the management of the business or affairs of the LLC except as provided in the LLC agreement or, where the LLC agreement is silent, upon the approval of all of the members of the LLC. An assignment of an LLC interest also does not enable the assignee to become or to exercise any rights or powers of a member, unless otherwise provided in the LLC agreement. Furthermore, unless otherwise provided in the LLC agreement, until an assignee of an LLC interest becomes a member, the assignee will have no liability as a member solely as a result of the assignment.

An assignee of an LLC interest may become a member as provided in the LLC agreement or, unless otherwise provided in the LLC agreement, following the approval of all of the members of the LLC, when the assignee's name is entered on the register of members.

7.3. Redemption and Re-Purchase of Interests

Unless otherwise provided in the LLC agreement, an LLC may acquire, by purchase, redemption or otherwise, any LLC interest or other interest of a member or manager in the LLC. Further, no acquisition by purchase, redemption, or otherwise, of any such interest may be effected if, on the date on which the acquisition is to be effected, the managers have reasonable grounds for believing that the LLC is, or after the acquisition would be, unable to pay its liabilities as they become due. Where the LLC agreement is silent, any such interest so acquired by the LLC will be deemed cancelled.

No approval of the BMA is required in connection with the redemption or re-purchase by the LLC of its LLC interests.

7.4. Distributions to Members

An LLC may not make a distribution to a member if, on the date of the distribution, the managers have reasonable grounds for believing that, after payment of such distribution, the LLC would be unable to pay its liabilities as they become due. A member who receives a distribution in violation of this solvency test and who knew of the violation at the time of the distribution will be liable to the LLC for the amount of such distribution.

The profits and losses of an LLC and distributions of cash and other assets of an LLC must be allocated among the members in the manner provided in the LLC agreement. Where the LLC agreement is silent, the profits and losses and distributions of an LLC will be allocated on the basis of the agreed value of the contributions made by each member.

8. REGISTER OF CHARGES

The Registrar maintains a register of charges in respect of every LLC. Any charge on the assets of an LLC may be filed at the office of the Registrar for registration against that LLC. A charge includes any interest created in property by way of security, including any mortgage, assignment, pledge, lien or hypothecation.

Any registered charge will have priority over any subsequently registered charge and any unregistered charge. Priority is based upon the date of registration and not the date of creation of the charge. Registration only goes to priority and there is no requirement for a charge to be registered in order to be effective.

9. PUBLIC RECORDS OF AN LLC

The following records of an LLC are available for public inspection at the office of the Registrar:

- (a) the certificate of formation (including any amendment, correction or restatement thereof);
- (b) the register of charges of the LLC; and
- (c) the register of managers.

An interest in an LLC may be held in the name of a nominee. The nominee's name only will appear on the LLC's register of members. However, the use of any such nominee does not avoid the necessity of disclosing the identity of and providing supporting information on the beneficial owners.

10. BENEFICIAL OWNERSHIP REGISTER

All Bermuda LLCs, except those that are exempted from the relevant part of the Act, must establish and maintain a beneficial ownership register at their registered offices (or at such other place in Bermuda convenient for inspection by the Registrar). In connection with this obligation, each such LLC is required to take reasonable steps to identify any individual who is a beneficial owner of the LLC and all relevant legal entities in relation to the LLC, as well as updating its beneficial ownership register when it becomes aware of a relevant change or has reason to believe that that such a change has occurred.

10.1. Who must comply and who is exempted?

The following LLCs and any subsidiary of such LLCs are exempted:

- A LLC (wherever incorporated) whose LLC interests are listed on the Bermuda Stock Exchange or an overseas stock exchange designated by the Minister of Finance;

- A closed-ended investment vehicle managed or administered by a person licensed under the Investment Business Act, 2003 or the Investment Funds Act, 2006 or registered, authorised or licensed by a foreign regulator recognised by the BMA;
- A financial institution as defined in the Third Schedule to the BMA Act 1969;
- Any other type of LLC or entity that is exempted by the Minister by order made by him.

10.2. What information is required?

The beneficial ownership register must include the minimum required information in respect of every registrable person. A registrable person means an individual beneficial owner or relevant legal entity.

10.3. Who is a beneficial owner and a relevant legal entity?

An individual is a beneficial owner of a LLC if he or she owns or controls more than 25% of the LLC interests, voting rights or interests in the LLC through direct or indirect ownership or failing that, an individual who has control over the LLC by other means. Where neither applies, the individual who holds the position of senior manager of the LLC is considered to be the beneficial owner.

A relevant legal entity is any legal entity or legal arrangement that would be a beneficial owner if it were an individual.

10.4. BMA Filing

Additionally, certain information regarding the beneficial owners of a Bermuda LLC that falls within the scope of the Act must be filed with the BMA. The BMA must be notified of any changes to such information within 14 days of the LLC becoming aware of or is notified of a change. This information is not available for public inspection.

10.5. Offences and penalties

Significant criminal and civil penalties where a LLC and /or an individual are guilty of an offence apply for non-compliance with the beneficial ownership legislation. Additionally, sanctions, where the LLC agreement allows, may also include restrictions on voting rights and other LLC interests.

It is a defence for the LLC and/or officer to show that they took reasonable steps to identify beneficial owners for the purposes of the legislation.

11. ECONOMIC SUBSTANCE

Entities within the scope of the Economic Substance legislation include LLCs, 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 that is

acceptable to the Registrar¹ and that 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](#).

12. AMALGAMATION, MERGER, CONVERSION, CONTINUANCE AND DISCONTINUANCE

12.1. Amalgamation

Amalgamation of LLCs

Unless otherwise provided in the LLC agreement, two or more Bermuda LLCs may amalgamate and continue as one LLC. On an amalgamation, none of the amalgamating LLCs cease to exist, but rather the assets and liabilities, and rights and obligations, of the amalgamating LLCs become those of a single amalgamated LLC and their separate existences cease. Each amalgamating LLC must enter into an amalgamation agreement which, subject to the LLC agreement, must be approved by the members. Following such approval, the certificate of amalgamation must be filed with the Registrar.

A short-form procedure exists for amalgamating two or more wholly-owned subsidiaries of the same parent LLC, and wholly-owned subsidiary and parent LLCs.

¹ An entity will not be deemed by the Registrar to be resident for tax purposes in a jurisdiction if that jurisdiction does not have a corporate tax regime and/or residency for tax purposes in such jurisdiction does not result in the entity being subject to the equivalent economic substance requirements in that jurisdiction. The Registrar has advised that such jurisdictions may include Anguilla, Bahamas, Bahrain, Barbados, British Virgin Islands, Cayman Islands, Turks and Caicos Islands and the United Arab Emirates.

Amalgamation into Bermuda

Unless otherwise provided in the LLC agreement, one or more Bermuda LLCs and one or more foreign entities with separate legal personality may amalgamate and continue as an LLC in Bermuda. The foreign entity must have obtained all of the necessary authorisations required under the laws of its country of incorporation or formation or present registration to enable it to amalgamate into Bermuda.

Amalgamation out of Bermuda

Unless otherwise provided in the LLC Agreement, one or more Bermuda LLCs may amalgamate with a foreign entity with separate legal personality and continue as a foreign entity. Notice of the intention to amalgamate and continue as a foreign entity must be published in a Bermuda newspaper and in a national newspaper in the jurisdiction in which the foreign entity was incorporated or formed or is presently registered (as the case may be). The foreign jurisdiction in which the amalgamated entity is to be continued must be an “appointed jurisdiction” under the Act. The procedures include steps designed to protect the interests of creditors following amalgamation and continuation in a foreign jurisdiction.

12.2. Merger

Unless otherwise provided in the LLC Agreement, one or more Bermuda LLCs and/or one or more foreign entities with separate legal personality may merge in accordance with the provisions of the Act. In a merger, the undertaking, property and liabilities of the LLCs vest in one of such LLCs (the “surviving LLC”). Procedures exist in the Act for the surviving LLC to be either a Bermuda LLC or a foreign entity, as desired.

The procedures for mergers are essentially identical to the procedures in the Act relating to amalgamations.

12.3. Conversion

Bermuda LLCs are able, with the consent of the BMA, to convert to Bermuda exempted limited partnerships with separate legal personality or to Bermuda exempted companies. In addition, such limited partnerships and companies can, with the consent of the BMA, convert to Bermuda LLCs, in each case by filing with the Registrar a certificate of conversion in accordance with the Act. The relevant conversion procedures include steps designed to protect the interests of creditors.

Upon conversion, the assets and liabilities, and rights and obligations of the converting entity continue to be those of the entity to which the converting entity has so converted.

12.4. Continuance into Bermuda

A foreign limited liability company may continue into Bermuda and become a Bermuda LLC by filing with the Registrar a certificate of continuance along with the BMA’s consent to the continuation. However, the BMA’s consent is not required where the services of a corporate service provider holding an unlimited licence has been engaged.

Prior to filing a certificate of continuance, the foreign limited liability company must obtain all necessary authorizations required under the laws of the jurisdiction in which it was formed or is presently registered, and reserve the name of the LLC in accordance with the Act.

A foreign limited liability company will be continued as a Bermuda LLC at the time of filing of its certificate of continuance (or at any later time specified in the certificate). Upon the continuance of the foreign limited liability company as a Bermuda LLC, the assets and liabilities, and rights and obligations of the foreign limited liability company continue to be those of the Bermuda LLC.

In connection with a continuance in Bermuda, the members of the LLC must enter into an LLC agreement in accordance with the Act.

12.5. Discontinuance from Bermuda

An LLC may discontinue from Bermuda and continue into, and be subject to the laws of, a foreign jurisdiction. Notice of intention to discontinue must be published by the LLC in a Bermuda newspaper at least 14 days and not more than three months prior to the effective date of the discontinuance. A manager of the LLC must execute a statutory declaration to the effect that there are reasonable grounds for believing that the LLC is solvent. The LLC and each manager (if any) must also execute an irrevocable deed poll pursuant to which the LLC and managers accept service of process in certain jurisdictions. A notice of discontinuance must be filed with the Registrar, along with the statutory declaration and the irrevocable deeds poll. The LLC will cease to be subject to the Act on the effective date of its discontinuance in the foreign jurisdiction.

13. TAXATION AND EXCHANGE CONTROL

13.1. Taxation

At the date of this memorandum, there is no Bermuda income or profits tax, withholding tax, capital gains tax, capital transfer tax, estate duty or inheritance tax payable by a Bermuda exempted LLC or its members, other than members ordinarily resident in Bermuda.

An exempted LLC may apply for and is likely to receive from the Minister of Finance under the Exempted Undertakings Tax Protection Act, 1966 an assurance 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 shall not until March 2035 be applicable to the LLC or to any of its operations or to the LLC interests, debentures or other obligations of the LLC except insofar as such tax applies to persons ordinarily resident in Bermuda and holding such LLC interests, debentures or other obligations of the LLC or any land in Bermuda leased or let to the LLC.

No stamp duty is payable in respect of any instrument executed by an exempted LLC or in respect of an instrument relating to an interest in an exempted LLC. Stamp duty may, however, be payable in respect of transactions involving Bermuda property.

13.2. Exchange Control

Bermuda is independent for the purposes of exchange control. The interests of an exempted LLC may be denominated in such currency as the exempted LLC thinks expedient.

14. DISSOLUTION

An LLC may be wound up voluntarily or by the court. An LLC will be wound up voluntarily when the LLC resolves in a meeting of the members that the LLC be wound up voluntarily or upon the expiration of the period fixed for the duration of the LLC by the LLC agreement or upon the occurrence of the event on the occurrence of which the LLC agreement provides that the LLC is to be dissolved.

Thereafter, the LLC must be dissolved in accordance with Act.

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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