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## Overseas Partnerships in Bermuda

## Foreword

This memorandum has been prepared for the assistance of those who are considering conducting business in Bermuda through an overseas partnership. It deals in broad terms with the requirements of Bermuda law for the operation of such partnerships in Bermuda. It is intended to supplement this firm's memorandum on Exempted and Overseas Partnerships, a copy of which is available on request. It is not intended to be exhaustive but merely to provide brief details and general information which we hope will be of use to our clients. We recommend that our clients seek legal advice in Bermuda on their specific proposals before taking steps to implement them.

Clients are also advised to consult their tax, legal and other professional advisers in their own jurisdictions.

This memorandum has been prepared on the basis of the law and practice as at the date referred to below.

**Conyers Dill & Pearman**

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## 1. INTRODUCTION

The Overseas Partnerships Act 1995 (as amended) (the “Act”) enables a partnership formed under a law other than the law of Bermuda to apply for a permit from the Minister of Finance to engage in or carry on a trade or business in Bermuda. Such partnerships may not generally participate in the domestic economy without special permission, but are permitted to carry on business in connection with transaction and activities external to Bermuda.

## 2. APPLICATION PROCEDURE

Application is made to the Minister of Finance for permission to carry on business in Bermuda. The application requires references on the general partners (not limited partners) and a copy of the partnership agreement (which is not made a public record).

The 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 exempted partnership.

The persons applying for a permit must severally sign a certificate (“Certificate of Overseas Partnership”) containing the following particulars:-

- (a) name of the overseas partnership;
- (b) names and addresses of all the general partners;
- (c) the name and address of the resident representative;
- (d) the address of the registered office in Bermuda of the overseas partnership;  
and
- (e) the law governing the overseas partnership.

The permit issued by the Minister of Finance must be filed with the Registrar of Companies together with the Certificate of Overseas Partnership. The Registrar of Companies will then issue a Certificate of Registration.

A permit is not required for a partnership that is an investment fund if it engages a person in Bermuda to be the fund's administrator or registrar to perform related services such as, *inter alia*, corporate secretarial, accounting or administrative services.

### **3. REGISTRATION**

The Registrar of Companies will register the Certificate of Overseas Partnership and the permit in the Register of Overseas Partnerships (the "Register"). The permit is effective as of the date it is registered and it is only on this date that the partnership can commence business in Bermuda.

The Register will be open to inspection by members of the public during ordinary business hours on payment of such fee as the Minister may determine.

### **4. REGISTERED OFFICE AND RESIDENT REPRESENTATIVE**

An overseas partnership is required to maintain a registered office in Bermuda (a post office box is not sufficient) and to appoint a resident representative.

Every overseas partnership is required to keep at its registered office 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 of 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 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.

The resident representative is required to make a written report to the Minister of Finance if the overseas partnership is in breach of the Act or has commenced winding

up proceedings. Breach of duty by the resident representative is an offence punishable by a fine.

## **5. LETTERHEAD**

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

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

## **6. CHANGES TO OVERSEAS PARTNERSHIPS**

The prior written consent of the Minister is required for any change in the general partners (but not limited partners). If any other changes are 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 this certificate with the Registrar within 30 days. A power of attorney is usually provided in the partnership agreement authorising a general partner to execute such certificates.

## **7. TAXATION AND EXCHANGE CONTROL**

### **7.1 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 an overseas partnership or its 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 made by such partnership.

An overseas partnership may apply for and is likely to receive from the Minister 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 31st March, 2035 be applicable to the overseas partnership or to any of its operations or partnership interests in or other obligations of the overseas partnership except in so far as such tax applies to persons ordinarily resident in Bermuda and being partners or parties to other obligations of the overseas partnership or any land leased or let to the overseas partnership.

Overseas partnerships are not subject to any stamp duty or other similar charge in Bermuda except in respect of Bermuda property.

## **7.2 Exchange Control**

Bermuda is independent for the purposes of exchange control which is operated under the Exchange Control Act 1972 and related regulations. Overseas 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, distribute capital and to acquire, hold and sell any currency and foreign securities without reference to the Bermuda Monetary Authority.

*This publication is not a substitute for legal advice nor is it a legal opinion. It deals in broad terms only and is intended merely to provide a brief overview and give general information.*

### **About Conyers Dill & Pearman**

Conyers Dill & Pearman advises on the laws of the Cayman Islands, British Virgin Islands, Bermuda, Mauritius and Cyprus. Conyers' lawyers specialise in company and commercial law, commercial litigation and private client matters.

The combination of Conyers' structure, culture and expertise enables the highest quality, responsive, timely and thorough legal advice. Conyers' strategic global presence in major international business centres allows a seamless 24 hour service.

Conyers' sophisticated client base includes FTSE 100 and Fortune 500 companies. Working with leading local and international firms, Conyers advises on highly complex multi-jurisdictional projects.

Affiliated companies (Codan) provide a range of trust, corporate secretarial, accounting and management services.

Founded in 1928, Conyers has 600 staff, including more than 150 lawyers.

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