



PARTNERSHIPS

Introduction

A partnership is defined by the Partnership Act, 1902 as a relationship subsisting between persons carrying on a business in common with a view of profit.

Bermuda Law

Legislation which governs all Bermuda partnerships does not attempt to regulate the affairs of a partnership to any great extent. If the partnership agreement does not provide for a particular situation, the Partnership Act 1902 would apply.

Partnerships are either local or exempted and may be general or limited.

A local partnership is composed of Bermudian partners only and is permitted to conduct business locally and abroad.

If one or more of the partners in a partnership does not possess Bermudian status, then the partnership is an exempted partnership and defined as a partnership in respect of which articles of partnership have been registered in accordance with the Partnership Act 1902, the Exempted Partnerships Act 1992 and may only conduct business outside Bermuda from a principal place of business within Bermuda.

The Partnership Agreement

The partnership agreement must state the nature of the business to be carried out by the partnership and only that business may be undertaken by the partnership.

The articles, particulars and general partners of the partnership agreement may not be altered without the prior approval of the Minister of Finance.

The amount of capital to be contributed to a partnership by the partners must be stated in the partnership agreement, and must be not less than the foreign currency equivalent of BD\$12,000.

Exempted Partnerships

In addition to the Partnership Act 1902, the Exempted Partnerships Act 1992 applies to exempted partnerships.

An exempted partnership:

- must have a registered office in Bermuda and a resident representative. The address of the office and the name of the representative must be filed with the Registrar of Companies;
- must keep at its office in Bermuda, audited accounts and business records showing the business of the partnership and produce a true accounting thereof at the end of each financial year;
- may not engage in business with any person in Bermuda save in relation to any contract which is to be wholly performed outside Bermuda;
- may acquire or deal with goods bona fide required by the partnership for the administration of its office in Bermuda and is permitted to register patents, trademarks and copyrights in Bermuda;
- is permitted to do business with another exempted partnership or exempted company or with a permit company;
- must pay a fee to the Bermuda Government upon registration and in January of each year after the year in which the partnership was registered.

General Partnerships

In a general partnership there is no limit to the liability of the partners, with each partner being liable jointly and severally with the others for the debts of the partnership incurred whilst that partner is a member of the partnership.

Limited Partnerships

The Limited Partnership Act 1883 the Partnership Act 1902 and, if applicable, the Exempted Partnerships Act 1992 apply to limited partnerships.

Under the provisions of the Limited Partnership Act, 1883 a limited partnership consists of one or more general partners and one or more limited partners. Only the general partners are authorised to transact business and sign for and bind the partnership, and only they are liable jointly and severally to an unlimited extent for the debts of the partnership. Provided that the limited partners act solely as providers of funds to the partnership, and do not take part in the management of the partnership, they are only liable to the partnership for the amount each has agreed to contribute.

The general partners' surnames may appear in the name of the partnership. If the surname of a limited partner appears in the name of the partnership, or if a limited partner engages in the management of the partnership, that partner will be deemed to be a general partner and lose the benefit of limited liability.

A limited partnership must maintain a registered office in Bermuda and must establish and maintain in the registered office a register of limited partners. This register must be open to the public for inspection during normal business hours.

All the partners of a limited partnership must sign a Certificate of Limited Partnership which must be registered with the Registrar of Companies. This certificate must state the name and address of the partnership, the names and addresses of the general partners, the general nature of the business of the partnership, the date the partnership will commence business and the date of termination.

The minimum capital prescribed by the Exempted Partnerships (Prohibition of Registration) Order 1993 is the foreign currency equivalent of BD\$12,000.

Any proposed amendment to the information contained in the certificate must be advertised in an appointed Bermuda newspaper up to three months before the change is made. Any change in the name of the limited partnership or a change of general partners or a change in the general nature of the business of the limited partnership requires the consent of the Minister. Not later than thirty days after a change is made, it must be recorded in a supplementary certificate, signed by the general partners and registered with the Registrar of Companies. The change will be effective on the date the supplementary certificate is registered.

Subject to certain exceptions outlined in the Limited Partnership Act 1883, the capital of the partnership may not be withdrawn nor any payment of profits or other compensation made to a limited partner if that withdrawal or payment would result in the amount of capital in the limited partnership below any minimum ordered by the Minister of Finance.

If in accordance with the provisions of the Limited Partnership Act 1883 a limited partner has received part or all of the capital contributed, that limited partner will remain liable to the limited partnership or its creditors for any amount, up to the amount of capital contributed, necessary to discharge the liabilities of the limited partnership incurred before the date of the return of the capital contribution.

A limited partner may, with the consent of the general partners, execute an instrument assigning part or all of the limited partner's interest in a limited partnership.

Procedure for forming a Partnership (Exempted/Limited)

- A proposed partnership may reserve a name with the Registrar of Companies for up to three months.
- A notice announcing the intention to form a partnership must be published in an appointed Bermuda newspaper not more than three months prior to the making of an application to form a partnership. The notice must specify the name of the partnership, the names and respective places of residences of the general partners and the general nature of the proposed business of the partnership.
- The proposed partners must execute a partnership agreement.
- An application to form an Exempted Partnership, either general or limited, must be submitted to the Authority and must include a copy of the partnership agreement, the nature of the business to be conducted and the amount of capital to be invested in the partnership.
- The general partners of either a general or limited partnership must complete Personal Declarations.
- In the case of a limited partnership, a copy of the certificate of limited partnership must be included with the application.
- The application is vetted by the Authority and a recommendation is made to the Minister regarding the issue of a consent/certificate to form the partnership.

- Once consent is given, a copy of the partnership agreement, a copy of the Minister's consent and, in the case of a limited partnership, the signed certificate of limited partnership must be delivered to the Registrar of Companies for registration.
- When registration is complete, the Registrar of Companies will, in the case of a general partnership, issue a certificate stating the date on which the partnership agreement was registered. In the case of a limited partnership, the limited partnership certificate mentioned in f) above will be registered.

Processing by the Authority usually takes no more than 24 hours but where a case is urgent faster processing is possible. Fees are payable in connection with the application and the issue of a certificate of partnership.

Overseas Partnerships

A partnership formed outside Bermuda may, through the Authority, apply to the Minister of Finance for a permit to operate in Bermuda or outside Bermuda from a place of business in Bermuda.

In deciding whether or not to recommend the grant of a permit, the Authority will be guided by the economic situation in Bermuda, the nature and previous conduct of the partnership and those having an interest in it, as well as any advantage or disadvantage which may result from the partnership carrying on business in or from within Bermuda. The granting of a permit will not normally be recommended if it is considered that a Bermuda exempted partnership could be formed to carry on the business proposed.

Requirements of Bermuda Law

Before commencing business in Bermuda and before 31st January of each year, so long as the permit subsists, a permit partnership must pay the appropriate Government fees.

Permits may be granted subject to such terms and conditions as the Authority may recommend and the Minister of Finance may think fit and which will be specified in the permit.

An overseas partnership must appoint a resident representative in Bermuda and must supply particulars of the resident representative, in writing, to the Authority and to the Registrar of Companies and any changes in these particulars must be notified to both parties.

The Registrar of Companies keeps a register of overseas partnerships which is open to inspection by members of the public on payment of a fee.

Having received a permit, a partnership must deliver to the Registrar of Companies a copy of its permit and a list of persons in Bermuda legally able to deal with the affairs of the partnership and must pay an annual fee. When a permit is issued after 31st August in any year, the fee payable in respect of that year shall be half the annual fee. Any changes to these details must be approved by the Minister of Finance, through the Authority, and notified to the Registrar of Companies within thirty days of the Minister's approval having been granted.

Every overseas partnership must maintain, at its place of business in Bermuda, a record of its business activities in Bermuda.

An overseas partnership may apply to the Minister of Finance, through the Authority, for a variation of any of the terms of its permit.

An overseas partnership, like all exempted undertakings, may apply to the Minister of Finance for an assurance exempting it from any taxation until 2016.

Unless authorised by any other Act, an overseas partnership may not do the following:

- acquire or hold land in Bermuda except land required for the business of the partnership and held by lease for a term not exceeding 50 years;
- take a mortgage or mortgages of land in Bermuda unless the Minister gives prior consent;
- acquire any bonds or debentures secured on any land in Bermuda other than bonds or debentures issued by the Bermuda Government or a public authority;
- acquire any shares issued by any company incorporated in Bermuda or acquire any interest in any business in Bermuda unless it is an exempted undertaking.
- carry on business of any kind in Bermuda either alone or in partnership - except business with persons outside Bermuda or business with exempted undertakings in Bermuda to be performed outside Bermuda or banking business with Bermuda banks or if the articles of partnership expressly provide for the partnership to act as manager or agent for, or consultant, or adviser to any exempted undertaking.

Examples of circumstances in which permits have been issued

Some of the circumstances in which permits have been granted are:

- where the applicant partnership wishes to take advantage of certain benefits, treaties etc which it enjoys as a result of its country of formation; and
- where it could be excessively costly for the applicant to liquidate and re-establish a partnership in Bermuda, e.g. due to broken contracts, general costs incurred as a result of relocation after years of domicile elsewhere.

Procedure for applying for a Permit

- The overseas partnership must publish in an appointed Bermuda newspaper the intention to apply for a permit, specifying its name, the names of the general partners, the law governing the partnership and stating the business it proposes to carry on from within Bermuda.
- The prescribed form must be completed and submitted to the Authority with certified copies of the partnership agreement, articles of partnership, certificate of registration, references, and a non-refundable application fee.
- The Authority then vets the application and presents it to the Minister of Finance with a recommendation concerning the grant of a permit with or without terms and conditions.
- Once the Minister of Finance has granted a permit it must be filed with the Registrar of Companies within six months from the date of the permit.
- Any changes to a permit require the consent of the Minister of Finance. Applications in this respect must be made to the Authority.

