

July 2009

Bermuda Streamlines its Company and Partnership Legislation

On 8 July 2009, the Bermuda House of Assembly passed six bills which aim to improve the operations of businesses in Bermuda. The Bills before the Senate are:

Companies

- The Companies Act Amendment Bill 2009

Partnerships

- The Partnership Amendment Bill 2009
- The Exempted Partnerships Amendment Bill 2009
- The Limited Partnership Amendment Bill 2009
- The Overseas Partnerships Amendment Bill 2009

Stamp Duty

- The Stamp Duties Amendment Bill 2009

It is anticipated that the Bills will receive Senate approval within the next few months.

The passage of these Bills will greatly improve Bermuda's already high standing and increase its competitiveness with other offshore jurisdictions thereby continuing to make Bermuda a premier location in which to do business.

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Companies

The proposals to amend the Companies Act 1981 (the “Companies Act”) will improve the electronic filing requirements for companies and are designed to bring the Bermuda legislation more in line with the US Securities and Exchange Commission’s e-commerce provisions.

Documents posted on a website will now be deemed to have been delivered under Bermuda law provided that the company has given notice to the recipient that the document is online and has given instructions on how to access it. A shareholder will retain the option to receive the document in physical form having received notice of its posting on a website should the shareholder elect to do so.

Having the flexibility to choose whether or not to receive printed or electronic copies of documents will improve the efficiency of the distribution of notices and other correspondence by Bermuda companies.

The provisions regarding residency requirements of exempted companies will also be relaxed. An exempted company will now only need to appoint either one Bermuda-based director, secretary or resident representative in order to satisfy the provisions of the Companies Act and the secretary may be an individual or a company.

Partnerships

Changes will be made to the Partnership Act 1883 (the “Partnership Act”), the Exempted Partnerships Act 1992 (the “Exempted Partnerships Act”), the Limited Partnership Act 1883 (the “Limited Partnership Act”) and the Overseas Partnerships Act 1995 (the “Overseas Partnerships Act”) to provide options for partnerships needing flexibility in structuring their deals.

The proposed amendments to the Partnership Act will clarify the provisions on liability for partnership debts where the partnership has legal personality. The Partnership Act will be amended to change the definition of “judgement debt”. The term will now cover all obligations rather than only a debt of the partnership and the change will make it clearer that such a debt is enforceable against an individual partner even if the judgement was for something other than a debt of the partnership.

Registration requirements for exempted partnerships and limited partnerships will be brought more into line with the requirements that exist for the registration of exempted companies, the aim being to reduce complex registration and the data collection burden for these entities. The consent for registration of such partnerships will be changed from the Minister of Finance (the “Minister”) to the Bermuda Monetary Authority (the “Authority”). There will be no need to state the nature of the business it is proposed that the partnership carry on, to file articles of partnership or to specify a term for the partnership on registration.

Changes to the form of an exempted partnership or a limited partnership will be required be notified to and filed with the Registrar before the change is made rather than within 30 days after the change, as was the previous position. Changes will be deemed to be effective on the date of registration of the supplementary certificate by the Registrar. Going forward, only a change in the general partner of a partnership will require the prior consent of the Authority.

Other amendments to the Exempted Partnerships Act and the Limited Partnership Act mean that certain provisions of the Companies Act relating to restricted and prohibited business activities will apply to exempted partnerships and limited partnerships as they do to exempted companies.

For limited partnerships only, there will no longer be any need to register particulars of the value of money and other property contributed by each limited partner as capital. Section 20 of the Limited Partnership Act relating to rights and liabilities of the partners will be replaced with a more general provision based on a similar provision under UK law.

Changes will also be made to the Overseas Partnerships Act. The permit application procedure will be streamlined so that there will no longer be a requirement to notify the Minister on application of the nature of the business, the term of the overseas partnership or an address outside of Bermuda. Only a change in the general partner of an overseas partnership will require prior approval of the Minister and there will be no need for an overseas partnership to notify the Minister of a change in the resident representative of the partnership. The Minister has also been given additional grounds to revoke an overseas partnership's permit.

Clarity will be given to the activities that may be carried on by an overseas partnership which is a partnership fund (an investment fund as defined by the Investment Funds Act 2006) without the need to obtain a permit from the Minister. These activities are similar to the provisions relating to overseas companies carrying on business in Bermuda under the Companies Act. Overseas partnerships which are partnership funds will be able to offer their securities, accept subscriptions and distribute information and advertisements without the need for a permit. Restrictions on business activities have been qualified and may be allowed if authorised by legislation or the overseas partnership's permit.

Stamp Duty

Previously, stamp duty relief was available with respect to instruments relating to the sale, transfer or disposition, by mortgage or otherwise, of vessels or any vessel under construction. The proposed change to the Stamp Duties Act 1976 will place aircraft and ships on the same footing by allowing aircraft to also benefit from the exemptions provided by that Act.

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