



Guide to Bermuda Partnerships

Introduction

For the purposes of Bermuda law, a partnership is the relationship between two (2) or more persons carrying on a business in common with a view to profit. The purpose of this Guide is to provide an overview of the legal framework of partnerships in Bermuda, including exempted limited partnerships.

The advantage of a partnership is that it is versatile enough to handle a variety of business activities whether a small enterprise or establishing an investment fund.

The business of the partnership is carried out according to the partnership agreement and applicable Bermuda partnership law, and the partnership agreement can be oral or in writing or may even be implied by conduct.

The typical rights and responsibilities of partners include the right to be involved in decision making, to share in the profits, to examine the accounts of the business, to insist on openness and honesty from fellow partners as well as the responsibility for sharing losses made by the business. Partners must also be prepared to share with their fellow partners any profits they make from carrying on a competing business without the consent of the other partners.

Any of these rights or obligations can be varied or excluded by an agreement that governs the relationship between the partners. A written partnership agreement is invaluable as it may provide solutions should a disagreement arise between the partners. Topics that should be addressed in any such agreement include:

- the financial input of each partner and the possibility of future contributions;
- how the partners will share income, profits or losses, which will be divided equally unless there is evidence of a contrary agreement;
- whether interest might be allowed on a partner's contribution before any surplus or profit is divided between the partners; and
- profit sharing whereby a suitable ratio in which profits remaining after salary and interest on capital are to be shared.

Our partnership law closely mirrors general English partnership law. The partnership governing statutes are the Partnership Act 1902, which is similar in content to the U.K. Partnership Act 1890, the Limited Partnership Act 1883, the Exempted Partnership Act 1992 and the Overseas Partnership Act 1995.

Types of Partnerships

Bermuda law provides for the establishment and operation of five (5) types of partnerships, comprising:

1. A partnership to which the Partnership Act 1902 applies (**general partnership**);
2. A partnership which is registered as an exempted partnership under the Exempted Partnerships Act 1992 (**exempted partnership**);
3. A limited partnership which is registered under Limited Partnership Act 1883 (**limited partnership**);
4. A limited partnership which is registered under Limited Partnership Act 1883 and the Exempted Partnerships Act 1992 (**exempted limited partnership**); and
5. A partnership formed under a law other than the law of Bermuda and registered under the Overseas Partnerships Act 1995 (**overseas partnership**),

Bermuda law considers a partnership which is not registered as an exempted partnership, carries on business only in Bermuda and is not part of an MNE Group (as defined in the Economic Substance Act 2018, as set out below) to be a **'local partnership'**.

Legal personality and status

Bermuda partnerships are generally not in themselves legal entities separate from their partners however they may function as such for all practical purposes. They can carry on business (partners can bind the partnership¹) and sue or be sued in the partnership name.

It is possible however for a Bermuda partnership to irrevocably elect to have legal personality by filing a declaration with the Registrar of Companies. Such election allows a partnership to continue regardless of changes in partnership membership due to retirement, death, bankruptcy of one of the partners or other changes in its constitution².

In the case of a limited partnership, the legal personality election can also serve to protect the limited partners of a partnership which trades outside Bermuda in those jurisdictions which may not recognise the limited liability of the limited partners. The Registrar of Companies will, following such election issues a Certificate stating that the partnership has a separate legal personality. However, once legal personality has been elected then it can be removed.

The election for legal personality by new partnerships must be made at the time of formation; any failure to do so means that the ability is lost and cannot be sought at a later date.

Conversely, an exempted partnership or a limited partnership may convert to an exempted company or an exempted LLC (limited liability company) and an exempted company or an exempted LLC may convert to an exempted limited

¹ However limited partners will lose limited liability and be liable as a general partner if they take part in the management of a limited partnership, see below.

² Partnership Act 1902, Section 4A.

partnership with legal personality (further details below).

Liability of partners

The liability of partners of a general partnership is unlimited which means the partners are each fully liable for the debts and obligations of the partnership and also for any penalties incurred by the partnership.

A limited partnership will consist of one or more general partners and one or more limited partners. Generally a limited partner will be limited, in terms of liability, to the value of money and property that it contributes or agrees to contribute to the limited partnership. The liability of the general partners however is not limited. Limited partners may not participate in the management of the partnership business, and to the extent they do, a limited partner's liability may convert to that of a general partner

Formation and changes

The steps to form a Bermuda partnership include:

- Step 1** *Name reservation:* Application must be made the Registrar of Companies (**RoC**) to reserve the proposed name of the partnership.
- Step 2** *Partnership agreement.* The partnership agreement will not be filed on any public register (although the initial partnership agreement will be provided to the Bermuda Monetary Authority (**Authority**) when applying for Ministerial consent) and should state that the partnership commences upon registration and that the law applicable to the exempted partnership is the law of Bermuda. The partnership agreement should be drafted or reviewed by Bermuda counsel to ensure it does not contravene Bermuda law. We recommend the use of a standard short form partnership agreement which will contain the basic Bermuda partnership requirements and a more detailed partnership agreement can then be substituted which is tailored to the particular transaction. If the general partner or a limited partner is a Bermuda exempted entity then it should be organised prior entry into the partnership agreement.
- Step 3** *Application for Ministerial consent:* application for consent to form the partnership is made to the applicable Minister, through the Authority. This application will include details of the proposed partner(s), including the names and respective places of residences of the general partner(s) and the limited partner(s) (as applicable) and the general nature of the proposed business of the partnership as well as personal declarations for individuals owning 5% or more of the general partner(s). This disclosure is made to the Authority and vetted by our firm for AML/ATF compliance purposes.
- Step 4** *Formation:* The RoC, upon receipt of the Authority's consent together with the Certificate of Exempted Partnership and/or Certificate of Limited Partnership (prepared by persons forming/seeking to register the partnership) and the requisite fee, will issue the Certificate of Registration which will (if applicable) have attached to it the Certificates of Exempted Partnership and Limited Partnership. Upon registration the partnership is formed. The Certificate of Registration is a public record.

Any change to the general partner of an exempted limited partnership (but not to the limited partners) requires the *prior* consent of the Authority. However consent from the Authority is not required to make the following changes:

- the name of the partnership (provided there is no objection by the RoC);
- registered office;
- resident representative.

What is required for these changes is a supplementary certificate be signed by the general partner(s) and submitted to the RoC. Also if there is any change to the particulars specified in the limited partnership certificate, the general partner(s) must file a supplementary certificate. Any change to the limited partnership becomes effective on the date of registration.

Fees payable upon registration and the annual government fee payable are published by the Bermuda Government.

Dissolution

Bermuda partnerships can be dissolved upon expiration (of any fixed term, cessation of the undertaking or upon any partner giving notice of his intention to dissolve the partnership), bankruptcy or death of a partner (except if the partnership has legal personality) or grant of a charge of a partner's share of the partnership property, by illegality or by the Supreme Court of Bermuda (including in the event of impracticality following a partner's breach or on '*just and equitable*' grounds).

Within thirty (30) days after the commencement of the winding up pursuant to the dissolution of an exempted or limited partnership, a partner or person duly authorised shall deliver a Certificate of Cancellation to the Registrar of Companies for registration.

Typically the final winding up will occur contemporaneously with or shortly after dissolution but it is possible for a partnership to remain '*alive*' for an extended period of time to allow for the orderly winding up and liquidation of the assets of the partnership and the discharge of liabilities to creditors so as to allow the general partner(s) sufficient time to minimise potential losses upon liquidation or (for example) to allow for the expiration of any warranty or escrow periods. In this scenario the terms of the partnership agreement will remain in full force and effect until the cancellation certificates are filed with the RoC as noted above.

Supervision

Bermuda partnerships, are able to conduct their business affairs in accordance with the partnership agreement and applicable Bermuda law, and unless they are providing regulated services, neither the Authority nor any other governmental agency plays a supervisory role. Under the Exempted Partnerships Act 1992, the Minister has the power to both appoint an inspector to investigate the affairs of the exempted partnership and to direct the Registrar to petition the Supreme Court of Bermuda for sanctions (including the dissolution of the partnership) when the Minister suspects that a breach has been knowingly or wilfully committed. In the event of an investigation the privacy of the

exempted partnership is safeguarded under the Exempted Partnerships Act 1992.

Requirements for exempted partnerships (including Exempted Limited Partnerships)

Requirements for exempted partnerships include:

Capital

Bermuda partnerships are not subject to any minimum capital contribution requirements. A capital contribution for services (i.e. in kind) is not permitted.

Resident Representative

Bermuda law requires that all exempted partnerships have a resident representative in Bermuda. The resident representative may file documents and make any applications that can be made by the appointing partnership and must inform the applicable Minister if the partnership is not complying with specified provisions of the Exempted Partnerships Act 1992. The resident representative has a right to receive notices of, and to attend, be heard at and receive copies of all partnership meetings. This position can be filled by a corporate entity.

Registered office and ongoing administration

Bermuda law also requires that exempted partnerships maintain a registered office in Bermuda which cannot be a post office box. The exempted partnership must maintain at its registered office such audited accounts and records relating to its financial affairs and acts which show the business and true accounting of its affairs at the end of each year. There is no requirement for such accounts to be filed with any government or other body or to be open to public inspection.

A register of the beneficial owners containing the names and addresses of all partners (beneficial owners) must be maintained at the registered office save to the extent that the partnership is a financial institution as defined in the Third Schedule to the Bermuda Monetary Authority Act 1969.

Restrictions on carrying on business

Exempted partnerships may not carry on business with any person in Bermuda, save in relation to any contract which is to be wholly performed outside Bermuda, but may carry out business with another exempted undertaking in furtherance of business of the exempted partnership carried on outside Bermuda.

Requirements for limited partnerships

Requirements for limited partnerships include:

Name

A limited partnership must include the words 'Limited Partnership' or 'L.P.' (which may be used interchangeably) at the end of its name. Apart from this the limited partnership may conduct its business under any name chosen by the partners provided that it is approved (i.e. reserved) by the RoC. The proposed partnership name can be reserved for renewable periods of three (3) months with the RoC prior to submitting an application for formation.

Capital

There is no prescribed percentage of capital contribution which must be made by either the general partner or the limited partners; the general partner is not required to contribute to the capital of the partnership at all.

Registers

In addition to the requirements applicable to all partnerships (including those applicable to exempted partnerships discussed above), a register of the limited partners containing the names and addresses of all limited partners must be maintained at the registered office, which is only available to the partners (i.e. it is not open to the public for inspection).

Management

The relationship between the partners is regulated by a partnership agreement in the same way as a general partnership. Boards or committees may be created to manage the limited partnership if expressly provided for in the partnership agreement. It should also be noted that under Bermuda law, the activities of the limited and general partners must remain strictly segregated (except in specific circumstances detailed in the Bermuda partnership legislation). Only the general partner(s) are permitted to manage the business of the partnership and, if a limited partner participates in the management, he may become liable for the debts and liabilities of the partnership as a general partner.

Nevertheless, Bermuda partnership law allows a limited partner to undertake the following safe harbour activities (i.e. they permit a limited partner to investigate, approve or be advised as to the financial or business affairs of the limited partnership) without losing their protection as a limited partner:

- being a contractor or agent of a partnership;
- consulting or advising the general partner, including serving on any board or committee of the limited partnership, the general partner, the limited partner or any person in which the partnership has an interest;
- taking any actions or making any decisions in respect of any investment made by the limited partnership;
- acting as surety for the limited partnership; or
- voting on amendments to the partnership agreement or voting on certain matters, such as the dissolution of the partnership, sale, exchange, lease, mortgage, pledge or transfer of all or substantially all the assets or incurring indebtedness otherwise than in the ordinary course of business or a change in the general nature of business of the limited partnership or the removal of a general partner.

Operation by permit and registration by way of continuance (Overseas Partnerships)

Overseas partnerships (other than those structured as investment funds which engages with a Bermuda fund administrator or registrar in respect of certain investment activities) are required to obtain a permit from the Minister

(applying through the Authority) and must appoint a resident representative under the Overseas Partnerships Act 1995.

Overseas partnerships (also referred as '*foreign partnerships*') may also, by application to the Authority, be registered under the Limited Partnership Act 1883 and the Exempted Partnerships Act 1992 as an exempted limited partnership under the laws of Bermuda, pursuant to which the rights, privileges, powers, property, liabilities, claims or liabilities and pending actions or proceedings shall continue. The registration by way of continuance will not be deemed to create a new legal entity or prejudice or affect the continuity of the body corporate which was formerly an overseas/foreign partnership.

An overseas investment fund partnership which is managed or promoted in or from within Bermuda must be registered with the BMA pursuant to the Investment Funds Act 2006 as a Designated Overseas Fund (see our Investment Fund Guide for more information).

Conversion of a partnership to an exempted company or exempted LLC (and reverse)

An exempted partnership or a limited partnership may convert to an exempted company or an exempted LLC (limited liability company) and an exempted company or an exempted LLC may convert to an exempted limited partnership with legal personality, subject to an application to the Authority, payment of a prescribed fee and filing the documents required for registration (and other requirements) under the Companies Act 1981, the Limited Liability Company Act 2016 and the Partnership Act 1902, the Limited Partnership Act 1883 and the Exempted Partnerships Act 1992, as applicable, which statutes provide pursuant to which the rights, privileges, powers, property, liabilities, claims or liabilities and pending actions or proceedings (and the applicable entity) shall continue.

This conversion is permitted even if an election for legal personality was not sought on formation.

Charges

For partnerships which have elected to have separate legal personality, charges on the partnership assets can be registered at the RoC. This register of charges is closely modelled after the procedures for companies. The RoC keeps a register of charges created on the assets of the partnership, whether such assets are located in Bermuda or outside Bermuda.

Priority of the charge is determined by the date of registration (not the date of creation) and has priority over unregistered charges.

Exchange Control

Exempted partnerships are designated non-resident for exchange control purposes under the Exchange Control Act 1972 and related regulations, which means they are not subject to exchange control restrictions including on payments and transferability of securities.

Taxation

As an exempted undertaking, pursuant to the Exempted Undertakings Protection Act 1966, a partnership will be eligible

for a Tax Assurance Certificate which certifies that in the event that any legislation is enacted in Bermuda which imposes 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 apply to the partnership or any of its partners until 31 March 2035.

Accordingly a partnership In Bermuda is not subject to any income tax, corporation or profits tax, withholding tax, capital gains tax, capital transfer tax, estate duty or inheritance tax, stamp duty or any other tax is payable by exempted partnerships, or their partners other than partners who are ordinarily resident in Bermuda.

This general position is subject to the operation of corporate income tax (**CIT**) which was brought into effect in Bermuda in December 2023. The CIT aligns with the Organisation for Economic Co-operation and Development's global anti-base erosion rules and from 1 January 2025 Bermuda will apply a 15 per cent income tax to the statutory income of Bermuda businesses, including partnerships (which are tax resident or have a permanent establishment in Bermuda), which are part of a multinational enterprise (**MNE**) group with annual revenue of €750 million or more. It does not apply to excluded entities, the definition of which includes government entities and international organisations, investment funds, and pensions.

A partnership establishes tax residency when it is established in Bermuda. No taxes are imposed on tax non-resident businesses in Bermuda.

Identifying Beneficial Owners and duty to keep a Beneficial Ownership Register

Bermuda partnerships are required to take reasonable steps to identify any individual who is a beneficial owner of the partnership and all relevant legal entities that exist in relation to the partnership. Under the Partnership Act 1902 (as amended), the partnership shall give notice in writing to beneficial owners and persons it knows or has reasonable cause to believe is a registrable person and each partnership shall establish and maintain a beneficial ownership register and file with the Authority certain minimum required information in respect of each registrable person (including that entered into the beneficial ownership register, as specified in the Partnership Act 1902).

Partnerships which are exempt from the requirements in respect of identifying and maintaining the register of beneficial owners include: partnerships whose interests are listed on the Bermuda Stock Exchange or an appointed stock exchange, and financial institutions or other entities exempted by order of the Minister.

Economic Substance Requirements

Partnerships other than local partnerships (as mentioned above³) and entities which are non-resident (by being resident for tax purposes in a jurisdiction outside Bermuda) are subject to Bermuda's economic substance requirements as they are Relevant Entities to the extent that they are carrying on as a business one or more of the following Relevant Activities:

³ See page 1. In particular, an '**MNE Group**' is defined in the Economic Substance Act 2018 as a group that includes 2 or more enterprises for which the tax residence is in different jurisdictions includes an enterprise that is resident for tax purposes in one jurisdiction and is subject to tax with respect to the business carried out through a permanent establishment in another jurisdiction.

- banking
- insurance
- fund management
- financing and leasing
- headquarters
- shipping
- intellectual property
- distribution and service centres
- a holding entity (i.e. a Pure Equity Holding Entity)

To the extent that a partnership is carrying on a Relevant Activity it is required to maintain a substantial economic presence in Bermuda, which includes that the entity is managed and directed in Bermuda, core income generating activities applicable to the Relevant Activity are undertaken in Bermuda, an adequate physical presence is maintained, full time employees with suitable qualifications work and adequate operating expenditure is incurred in Bermuda (in respect of the relevant activity).

At BeesMont Law Limited we strive to provide the highest standard of legal service for our clients through our responsive, thorough and innovative approach. We have a friendly and dynamic team who are approachable and sensitive to the commercial and practical needs of our clients, for whom we seek to provide tailored solutions. BeesMont Law Limited is a professional company incorporated with limited liability in Bermuda.

If you have any queries on this Partnership Guide and its applicability, then please do not hesitate to contact the BeesMont team members below who are able to assist with your queries or your usual contact at BeesMont.



Sharon A. Beesley
Managing Partner & Head of Corporate
sabeesley@beesmont.bm
+1 441 474 9000



Bourn Collier
Senior Corporate Counsel
bcollier@beesmont.bm
+1 441 400 4747