

# AS TABLED IN THE HOUSE OF ASSEMBLY

## A BILL

entitled

### PARTNERSHIPS AND COMPANIES AMENDMENT ACT 2016

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WHEREAS it is expedient to amend the Partnership Act 1902, the Exempted Partnerships Act 1992, the Limited Partnership Act 1883 and the Companies Act 1981 to further provide for partnerships and connected matters;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

#### Citation

1 This Act may be cited as the Partnerships and Companies Amendment Act 2016.

#### Amends the Exempted Partnerships Act 1992

2 The Exempted Partnerships Act 1992 is amended—

(a) in section 13A(1)—

(i) by deleting the words “, in the case where such jurisdiction is an appointed jurisdiction”;

(ii) in subparagraph (a), by deleting the word “appointed”;

(b) in section 13B—

(i) by deleting from subsection (1) the words “pursuant to subsection (2)”;

(ii) by deleting from subsection (3) the words “referred to in subsection (2)”;

(iii) by inserting after subsection (3) the following subsection—

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“(3A) The date of the de-registration of a partnership pursuant to this section shall be the date that such partnership’s continuance in the appointed jurisdiction is effective pursuant to the laws of such other jurisdiction and that date shall be indicated on the certificate of de-registration. ”;

(iv) by inserting after subsection (5) the following subsection—

“(6) In this section, “certificate of de-registration” means the certificate of de-registration issued by the Registrar pursuant to subsection (2).”.

Amends the Limited Partnership Act 1883

3 (1) Section 8B of the Limited Partnership Act 1883 is amended by inserting after subsection (1) the following subsection—

“(1A) Subject to subsection (7) and unless it is otherwise expressly provided to the contrary in the partnership agreement, a change in a general partner or limited partner of a limited partnership does not dissolve the partnership.”.

(2) Section 8C(3) of the Limited Partnership Act 1883 is amended by deleting the word “or” at the end of paragraph (d), by deleting the full stop at the end of paragraph (e) and substituting “; or”, and by inserting after paragraph (e) the following paragraph—

“(f) investigating, approving or being advised as to the financial or business affairs of the limited partnership.”.

(3) Section 22 of the Limited Partnership Act 1883 is amended—

(a) in subsection (3), by deleting the word “A” and substituting the words “Unless a fee is otherwise provided under subsection (5) or in the First Schedule to the Exempted Partnerships Act 1992, a”;

(b) by inserting after subsection (5) the following subsection—

“(6) The Minister may, by order subject to the affirmative resolution procedure, amend the Schedule to insert new fees or vary or otherwise amend fees.”.

(4) Section 25 of the Limited Partnership Act 1883 is amended—

(a) in subsection (1), by deleting the words “, in the case where such jurisdiction is an appointed jurisdiction”;

(b) in subsection (1)(a), by deleting the word “appointed”.

(5) Section 26 of the Limited Partnership Act 1883 is amended—

(a) by deleting from subsection (1) the words “pursuant to subsection (2)”;

(b) by deleting from subsection (3) the words “referred to in subsection (2)”;

(c) by inserting after subsection (3) the following subsection—

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“(3A) The date of the de-registration of a partnership pursuant to this section shall be the date that such partnership’s continuance in the appointed jurisdiction is effective pursuant to the laws of such other jurisdiction and that date shall be indicated on the certificate of de-registration.”;

(d) by inserting after subsection (5) the following subsection—

“(6) In this section, “certificate of de-registration” means the certificate of de-registration issued by the Registrar pursuant to subsection (2).”.

Amends the Partnership Act 1902

4 (1) Section 4A of the Partnership Act 1902 is amended—

- (a) in subsection (3A)(b), by deleting the words “an appointed” and substituting the word “any”;
- (b) by repealing subsection (4);
- (c) in subsection (6), by deleting the words “; and a failure to make such an election shall be final”.

(2) Section 4B of the Partnership Act 1902 is repealed and the following section is inserted thereafter—

“Election of an existing partnership to have legal personality

4BA (1) Notwithstanding section 4A, a partnership shall have legal personality, if the partnership so elects, in accordance with this section.

(2) Where a partnership wishes to elect under this section that the partnership shall have legal personality, it shall file with the Registrar of Companies a declaration, signed by the partnership, stating that the partnership shall have legal personality.

(3) Where a partnership elects, in accordance with this section, that it shall have legal personality—

- (a) the partnership shall have legal personality;
- (b) the Registrar of Companies shall enter that fact in the register referred to under section 4A(5); and
- (c) a certificate of registration shall be issued to the partnership by the Registrar of Companies stating that the partnership has legal personality.

(4) An election made under this section that a partnership shall have legal personality shall be irrevocable.”.

(3) Section 4F(6) of the Partnership Act 1902 is amended by deleting the word “and” at the end of paragraph (b), deleting the full stop at the end of paragraph (c) and substituting “; and”, and by inserting after paragraph (c) the following paragraph—

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- “(d) any assignment of a contract of life insurance to which the Life Insurance Act 1978 applies, shall be subject to the procedures set out in the Life Insurance Act 1978 and not under this Act, and the priority of such a charge shall be determined in accordance with the Life Insurance Act 1978 and not under this Act, irrespective of whether any such charge may have been registered under this Act prior to the coming into operation of this paragraph.”.

(4) The Partnership Act 1902 is amended by inserting after section 25 the following section—

“Powers on default

25A (1) A partnership agreement may provide that where a partner fails to perform any of its obligations under, or otherwise breaches the provisions of, the partnership agreement that partner may be subject to or suffer remedies for, or consequences of, the failure or breach specified in the partnership agreement or otherwise applicable under any law.

(2) If a partnership agreement so provides, the remedies or consequences under subsection (1) may include, but are not limited to, any one or more of the following—

- (a) reducing, eliminating or forfeiting the defaulting partner's partnership interest in the partnership or any rights of the defaulting partner under the partnership agreement;
- (b) subordinating the defaulting partner's partnership interest to the interests of non-defaulting partners;
- (c) effecting a forced sale or forfeiture of the defaulting partner's partnership interest;
- (d) arranging for the lending by other partners or other persons to the defaulting partner of the amount necessary to meet the defaulting partner's commitment;
- (e) providing for the fixing of the value of the defaulting partner's partnership interest by appraisal or by formula and the redemption or sale of the defaulting partner's partnership interest at that value; or
- (f) exercising any other remedy or consequence specified in the partnership agreement or available under any applicable laws.

(3) No such remedies or consequences may be imposed on any partner unless they are conferred by express agreement between the partners.

(4) The remedies or consequences referred to in this section shall not be unenforceable solely on the basis that they are penal in nature.

(5) Subject to section 8C(8) of the Limited Partnership Act 1883 and the partnership agreement, a general partner shall not be liable for its decision to

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impose or for imposing any remedies or consequences upon any partner, or for its decision not to do so.

(6) References in this section to a partnership interest shall for the avoidance of doubt also be construed as including any part thereof.”.

### Amends the Companies Act 1981

5 Section 132N of the Companies Act 1981 is amended by inserting after subsection (11) the following subsection—

“(11A) Conversion of an exempted company to a partnership does not require such company to wind up its affairs nor does it constitute a dissolution of such company.”.

### Savings

6 For the avoidance of doubt, where a partnership existing on 8 September 2006 elected to have legal personality within the period of twelve months after that date—

- (a) nothing in the Partnerships and Companies Amendment Act 2016 shall affect that election unless it is expressly otherwise provided in that Act;
- (b) a partnership that so elected to have legal personality shall continue to have legal personality as from the date when the election was made; and
- (c) nothing in the Partnerships and Companies Amendment Act 2016 shall affect anything that was lawfully done by that partnership prior to the date of the coming into force of the Partnerships and Companies Amendment Act 2016.

## PARTNERSHIPS AND COMPANIES AMENDMENT BILL 2016

### EXPLANATORY MEMORANDUM

The purpose of this Bill is to amend the Partnership Act 1902, the Exempted Partnerships Act 1992, the Limited Partnership Act 1883 and the Companies Act 1981 to enhance provisions relating to partnerships and connected matters.

Clause 1 provides the title of the Bill.

Clause 2 amends the Exempted Partnerships Act 1992 to enable partnerships from any jurisdiction to relocate to Bermuda and as regards the effective date of de-registration.

Clause 3 amends the Limited Partnership Act 1883 as follows:

- to clarify that, subject to agreement between the partners, a change in any general or limited partner of a limited partnership that has not elected legal personality does not dissolve the partnership;
- to insert a new provision to broaden the “safe-harbour” provisions of the 1883 Act to enable a limited partner to investigate, approve or be advised as to the financial or business affairs of the limited partnership, without losing protection as a limited partner;
- to provide for all fees applicable to limited partnerships;
- to enable partnerships from any jurisdiction to relocate to Bermuda and as regards the effective date of de-registration.

Clause 4 amends the Partnership Act 1902 as follows:

- to remove a limitation on when a partnership may elect to have legal personality;
- to provide guidance on the priority and applicable procedures for any charge registered against a life insurance contract;
- to enable partners to enforce remedies included in the partnership agreement in instances where any partner fails to perform obligations as set forth in the partnership agreement.

Clause 5 amends the Companies Act 1981 to clarify that conversion of an exempted company to a partnership does not require the company to wind up its affairs nor does it constitute a dissolution of the company.

Clause 6 provides for savings.