

# GUIDE TO EXEMPTED LIMITED PARTNERSHIPS IN THE CAYMAN ISLANDS

## CONTENTS

PREFACE	1
1. Introduction	2
2. Registration	2
3. Ongoing Requirements	3
4. The Role of the General Partners	4
5. The Role of the Limited Partners	4
6. Dealings with Partnership Interests	4
7. Failures to Perform	5
8. Return of Contributions	5
9. Accounts	5
10. Taxation	5
11. De-Registration	6
12. Strike Off	6
13. Dissolution	6

## PREFACE

This Guide is a summary of the law and procedures relating to the registration and operation of an exempted limited partnership in the Cayman Islands.

We recognise that this Guide will not completely answer detailed questions which clients and their advisers may have; it is not intended to be comprehensive. If any such questions arise in relation to the contents, they may be addressed to any member of the Corporate Department, using the [contact information](#) provided at the end of this Guide.

**Appleby**  
Cayman Islands  
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## 1. INTRODUCTION

### 1.1 Legislation

The Exempted Limited Partnership Law, 2014 (**ELP Law**), which came into force in July 2014, governs the formation of exempted limited partnerships in the jurisdiction.

### 1.2 Nature of an Exempted Limited Partnership

The Partnership Law (2013 Revision), which contains blanket provisions applicable to all Cayman Islands partnerships, defines a partnership as “the relation which subsists between persons carrying on a business with a view to profit”. An exempted limited partnership, which is registered as such under the ELP Law, is a partnership consisting of at least one general partner (who has responsibility for the business affairs of the partnership) and one or more limited partners.

The ELP Law makes no pronouncement to indicate that a registered exempted limited partnership is a separate legal entity. It is instead a set of contractual obligations affecting the partners *inter se* where a general partner is vested with certain powers and obligations in relation to a business and the assets of the business. While it is not strictly speaking a separate legal entity, an exempted limited partnership is not dissolved or disrupted by a change in the identity of the partners, the transfer, redemption or repurchase of, or granting of security interests over, partnership interests, the assignment of a limited partnership interests or the death, dissolution, removal, withdrawal, winding-up or bankruptcy or incapacity of a limited partner.

### 1.3 Uses of Exempted Limited Partnerships

Exempted limited partnerships have a place in many kinds of businesses and offshore structures. They are particularly popular as alternative investment funds and private equity vehicles. An exempted limited partnership may be formed for any lawful purpose “to be carried out or undertaken either in or from within the Islands or elsewhere” provided it does not undertake business with the public of the Cayman Islands. The proviso against undertaking business with the public in the Cayman Islands would not prohibit the taking of shares in a non-resident company, registered under the Companies Law, under a private offering.

Exempted limited partnerships are often treated differently than companies for onshore tax purposes, typically being treated as fiscally transparent. Onshore tax advice should always be sought by onshore potential investors prior to entering into any offshore arrangement or investment.

## 2. REGISTRATION

Registration of an exempted limited partnership is accomplished by the filing with the Registrar of a statutory statement signed by or on behalf of a general partner. This statement will contain the fundamental particulars of the exempted limited partnership: its name (including its dual foreign name, if any), a general description of its business, its registered office address, the term (if any) for which the exempted limited partnership is entered into, the date of its commencement, and the full name and address of each general partner. The statement also includes a declaration that the exempted limited partnership will not carry on business with the public in the Cayman Islands (other than to the extent necessary to facilitate its overseas business).

### 3. ONGOING REQUIREMENTS

#### 3.1 Residency Requirements

Every exempted limited partnership must have a registered office in the Cayman Islands. There are local residency requirements for at least one general partner:

- if the general partner is an individual, he or she must be resident in the Cayman Islands;
- if the general partner is a company, it must be registered under the Companies Law (whether by incorporation as a Cayman Islands company or as a foreign company having a place of business in the Islands); or
- if the general partner is itself a partnership, it must be registered under the ELP Law as an exempted limited partnership or as a foreign limited partnership.

Local presence is a logical requirement so that the Cayman courts may be vested with jurisdiction over the partnership and the partners are rendered more readily accountable to the provisions of the ELP Law.

#### 3.2 The Register of Limited Partners

The general partner has the responsibility for maintaining (or causing to be maintained) a register of limited partners. This register must contain the name and address of each limited partner, the date on which a person became a limited partner and the date on which a person ceased to be a limited partner. The register of limited partners need not be kept at the registered office, and can be kept outside of the Cayman Islands. The general partners must maintain at the registered office a record of the address at which the register is maintained. Regardless of its location, the register must still be readily accessible, as it must be made available at the registered office upon service of a notice or order for production under the Tax Information Authority Law.

The register can be kept in electronic form and must be updated within 21 days of any changes. The register (and the record of address at which the register is maintained, where applicable) is open to inspection by all partners (subject to any express or implied term of the partnership agreement) and by any other person with the consent of the general partner.

#### 3.3 The Register of Contributions

The general partner is also required to maintain (or cause to be maintained) a record of the amount and date of the contribution or contributions of each limited partner and the amount and date of any payment representing a return of the whole or any part of the contribution of any limited partner. Like the register of limited partners, this record may be kept in or outside of the Cayman Islands but must be updated within 21 days of any change and be accessible to the registered office. These records are only available for inspection by any person (including a limited partner) with the consent of the general partner.

#### 3.4 The Register of Security Interests

The general partner must also maintain (or cause to be maintained) at the registered office, a register of security interests. When a security interest is granted over the whole or any part of a limited partnership interest, notice must be given by the grantor or the grantee to the ELP at the registered office. The general partner must then enter on the register the identity of the grantor and the grantee, the relevant partnership interest, and the date on which notice of the security interest was validly served on the registered office. The register is open for inspection by any person during regular business hours. Any security interest has priority according to the time that the written notice is validly served at the registered office.

### 3.5 **Annual Requirements**

The general partner is required to file an annual return with the Registrar certifying compliance with the ELP Law and to pay an annual fee. Particulars of relevant fees are available upon request.

### 3.6 **Changes to the Partnership Statement**

The Registrar must be given notice of any changes to the statutory statement filed in connection with registration. In general, notice of any change must be filed within 60 days of the change; however, a change to the general partner must be filed within 15 days of the change and does not come into effect until such filing is completed.

### 3.7 **The Partnership Agreement**

The partnership agreement provides for the establishment and regulation of the affairs of an exempted limited partnership, the conduct of its business and the rights and obligations of the partners amongst themselves. Depending on the nature of the business, the partnership agreement may be very brief, amounting to little more than a skeleton agreement under which the general partner may exercise considerable discretion, or it may be very detailed and robust, similar to the articles of association of a company. The partnership agreement is not registered with any authority and is not open to public inspection.

## 4. **THE ROLE OF THE GENERAL PARTNERS**

The general partner is tasked with managing the business and affairs of the exempted limited partnership and must act in the partnership's best interests. In the event that the assets of the partnership are inadequate to satisfy the claims of creditors, the general partner is liable for the debts and obligations left unpaid.

A general partner must act at all times in good faith and, subject to any express provisions in the partnership agreement to the contrary, in the interests of the exempted limited partnership.

An exempted limited partnership may have more than one general partner.

## 5. **THE ROLE OF THE LIMITED PARTNERS**

A limited partner is "limited" in two fundamental ways: it may not participate in the active conduct of the partnership's business (save for some specific tasks that amount to "safe harbour" activities under the ELP Law) and it will enjoy limited liability in the event of insolvency. If, however, a limited partner steps outside of the "safe harbour" activities and in doing so engages with unknowing persons outside of the partnership, it will be regarded as having taken part in the conduct of the business and will be treated as a general partner, losing the mantle of limited liability.

A limited partner does not, unless the partnership agreement provides otherwise, owe any fiduciary duty to the partnership or any other partner.

## 6. **DEALINGS WITH PARTNERSHIP INTERESTS**

With the consent of the general partner, a limited partner may transfer or grant a security interest in its partnership interest (subject to any provisions in the partnership agreement dispensing with or modifying the requirement for consent).

In the case of a transfer of a partnership interest, the transferee is typically admitted to the partnership in accordance with the formalities prescribed in the partnership agreement. Once the requirements for admission have been met, the incoming partner is deemed to have agreed to and be bound by the terms and conditions of the partnership agreement as if all parties had together duly executed and delivered it.

A general partner may also, subject to the partnership agreement, transfer or grant a security interest in its general partnership interest with the written consent of any other general partner.

#### 7. **FAILURES TO PERFORM**

The partnership agreement may include provisions setting out the consequences that may befall a partner who fails to perform any of its obligations under the partnership agreement. For example, the partnership agreement may provide that if a limited partner fails to contribute to the partnership such funds as were committed, that partner shall forfeit its partnership interest. The ELP Law expressly stipulates that such provisions in the partnership agreement will not be unenforceable solely on the basis that they may be penal in nature.

#### 8. **RETURN OF CONTRIBUTIONS**

If a limited partner receives a payment (or is released from an obligation) in respect of its commitment and at the time that the payment or release was made the partnership is insolvent and the limited partner has actual knowledge of the insolvency, then for a period of six months the limited partner is liable to the partnership for the amount (to the extent required to settle the debts of the partnership).

#### 9. **ACCOUNTS**

The general partner is required to keep (or cause to be kept) proper books of account. The records must be sufficient to give a true and fair view of the business and financial condition of the exempted limited partnership and to explain its transactions. These records must be retained for a minimum period of five years.

Subject to the partnership agreement, each limited partner may demand and receive from the general partner a true and full picture of the state of the business and financial condition of the partnership.

#### 10. **TAXATION**

At the time of writing, there is no taxation on profits, income or dividends, nor is there any capital gains tax, corporation tax, or any tax in the form of withholdings, estate duties or inheritance tax under Cayman Islands law.

An exempted limited partnership may apply to the Financial Secretary at the Ministry of Finance & Economic Development of the Cayman Islands for a written undertaking that should a law ever be enacted in the Cayman Islands imposing any tax to be levied on profits, income, gains or appreciations, that law shall not apply to the exempted limited partnership or to any of partner in the partnership in respect of the operations or assets of the exempted limited partnership or the partnership interest of any partner. This undertaking may be granted for up to 50 years from the date of the undertaking, but is normally granted for a shorter period in the first instance. The undertaking may also provide that these taxes and any tax in the nature of estate duty or inheritance tax shall not be payable in respect of the obligations of the exempted limited partnership or the interests of the partners in the partnership.

## 11. DE-REGISTRATION

A general partner may apply to the Registrar to de-register the exempted limited partnership in the Cayman Islands and continue the partnership in another jurisdiction. For de-registration to be available, the foreign jurisdiction must permit (or not prohibit) the transfer of the exempted limited partnership. In addition, a fee must be paid and the application must be supported by an affidavit of the general partner assuring the Registrar that certain conditions, i.e. the solvency of the partnership, are met.

## 12. STRIKE OFF

Where the Registrar has reasonable cause to believe that an exempted limited partnership is not carrying on business or is not in operation, it may strike the partnership from the register. A general partner may request, upon payment of a prescribed fee, that an exempted limited partnership be struck off the register. A partner or creditor aggrieved by a striking off may apply to the court to have the exempted limited partnership restored to the register. The application must be made (a) within two years of the date the exempted limited partnership was struck off the register or (b) within a period that Cabinet may by order allow but which shall not exceed ten years of the date the exempted limited partnership was struck off the register.

## 13. DISSOLUTION

Most exempted limited partnership agreements contain provisions prescribing the automatic dissolution of the partnership upon the occurrence of a particular event. That event is typically the passing of a resolution by the general partner to the effect that the partnership's affairs be wound up and the partnership dissolved. In the absence of such a provision, a solvent partnership will continue in existence until wound up and dissolved by a resolution of all general partners and a two-thirds majority of the limited partners.

The death, bankruptcy or incapacity of the last remaining general partner will by law determine the partnership unless the limited partners take steps to replace him.

A partner or creditor can apply to the court for an order for dissolution on just and equitable principles.

In cases not involving automatic dissolution, the provisions of Part V of the Companies Law (dealing with liquidations of a company) and the Company Winding Up Rules shall be deemed to apply.

For more specific advice on exempted limited partnerships in the Cayman Islands, we invite you to contact:

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For the convenience of clients in other time zones, a list of contacts available in each of our jurisdictions may be found [here](#).