

Cayman Islands exempted limited partnerships

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Introduction

The Exempted Limited Partnership Act (as amended, the **ELP Act**) governs the formation and operation of Cayman Islands exempted limited partnerships (**ELPs**).

An ELP may be formed for any lawful purpose to be carried out and undertaken either in or from within the Cayman Islands or elsewhere upon the terms, with the rights and powers, and subject to the conditions, limitations, restrictions and liabilities set forth in the ELP Act. An ELP cannot conduct business with the public in the Cayman Islands other than so far as may be necessary to carry out the business of the partnership outside of the Cayman Islands. This is the basis on which the ELP obtains its 'exempted' status.

Formation

Registration

A partnership is registered as an ELP by paying a registration fee and filing with the Registrar of Exempted Limited Partnerships (the **Registrar**) a statement (the **Registration Statement**) containing the following:

- the name of the ELP (which must include the letters 'LP', 'L.P.' or the words 'Limited Partnership');
- the general nature of the business of the ELP;
- the address in the Cayman Islands of the registered office of the ELP;
- the term, if any, for which the ELP is entered into and the date of its commencement;
- the name and address of the general partner or each general partner (if more than one); and
- a declaration that the ELP shall not undertake business with the public in the Cayman Islands other than so far as may be necessary to conduct business exterior to the Cayman Islands.

General partner

The general partner of an ELP must:

- if an individual, be resident in the Cayman Islands;
- if a company, be incorporated under the Companies Act (as amended) of the Cayman Islands or if a foreign company, be registered as such under the Companies Act;
- if a partnership, be registered as an ELP or, if a foreign limited partnership, be registered as such under the ELP Act; or
- if any other person, be registered under any law or regulation as may be prescribed.

Timing

Registration of an ELP and general partner can take place on a same-day basis, with the certificates of registration following within three to five working days. A fast-track process delivering the certificate in around 48 hours is also available.

Continuing obligations

Changes to the Registration Statement

Any change to the information contained in the Registration Statement must be filed with the Registrar within 60 days of the change. The amended statement must be signed by the general partner.

A change to the general partner must be filed with the Registrar within 15 days of the change and, until such filing, the change of general partner will be deemed not to have taken effect.

The ELP Act provides that, for any changes not filed within the specified time frames, the general partner will be liable for a daily default fine for each day that the ELP is in default of its continuing obligation to update the information in the Registration Statement.

Obligations to maintain statutory registers

Register of limited partners

The general partner is required to maintain a register of limited partners containing the name and address of the partners, together with the date upon which a person became, and ceased to be, a limited partner. The register of limited partners must be updated within 21 days of any change.

The register of limited partners is not required to be kept at the registered office. Where it is kept elsewhere, a record of the address where the register is maintained must be kept at the registered office. It is open to inspection, with consent of the general partner, by any person and, subject to any express or implied terms of the LPA, by all partners.

Record of contributions

The general partner must maintain a record of the date and amount of any contribution by, or return of contribution to, a limited partner. The record of contributions must be updated within 21 days of any change.

The record of contributions is, with the consent of the general partner, open to inspection by any person during all usual business hours in the place where the record is maintained.

Register of security interests

The general partner must also maintain a record of any agreement pursuant to which any limited partner has granted a security interest in respect of the whole or part of their partnership interest. The register must contain the identity of the grantor or grantee, the partnership interest or part thereof subject to the security interest and the date on which notice of the security interest was validly served on the ELP at its registered office.

The register of security interests shall be open to inspection, during all usual business hours in the place where the register is maintained, by any person.

Limited partnership agreement

The ELP is essentially a creature of contract and is formed by the signing of a limited partnership agreement (LPA) by the general partner and by at least one limited partner. There are no statutory restrictions on the number of limited partners that may be admitted to an ELP. As at formation, the LPA will often be a short-form document made by the general partner confirming certain basic details about the ELP and will be lodged with the Registrar along with the Registration Statement. A short-form LPA is typically amended and restated to set out the detailed commercial terms of the ELP and will form the basis upon which limited partners will be admitted into the ELP.

The general partner and the limited partners may agree between themselves the terms governing the ELP, subject to a relatively light overlay of statutory provisions contained in the ELP Act. Some of the provisions of the ELP Act are mandatory (as indicated throughout this Guide), other key provisions can be varied or waived in the LPA, as may be agreed between the partners. For example:

- The ELP Act provides that a limited partner may demand and receive from the general partner information about the ELP's business and financial condition, but the LPA may waive or vary this provision.

- A general partner or limited partner may contract with, or lend money to, or borrow from the ELP, subject to the duty of the general partner to act in good faith in the interests of the ELP and to any debt owed by the ELP to a general partner transacting in such manner ranking behind the ELP's other creditors (secured or unsecured).
- Capital contributions may be made in cash, property or other assets (but not by way of loan by a partner to the ELP).
- The general partner may take an interest in the ELP as a limited partner in addition to its interest as general partner.
- The ELP Act provides, subject to any provision of the LPA to the contrary, that the ELP shall be automatically dissolved on the expiration of 90 days following the service, by or on behalf of, the sole or last remaining general partner, of notice of the general partner's death, bankruptcy, dissolution, winding up, withdrawal or removal, unless a majority of partners (or other majority specified in the LPA) elects within that 90 day period to appoint one or more new general partners.

Save as mentioned above, the LPA may contain such terms as may be agreed between the general partner and the limited partners.

Property of the ELP

As a matter of Cayman Islands law, an ELP is not a body corporate and does not have separate legal personality distinct from its partners.

The ELP Act specifically provides that any property of the ELP that is conveyed to or vested in or held on behalf of the general partner of the ELP, or conveyed to or vested in the name of the ELP, will be deemed to be held by the general partner upon trust as an asset of the ELP in accordance with the LPA.

Liability of the general partner and limited partners

General partner

A general partner of an ELP must act at all times in good faith and, subject to any express provisions of the LPA to the contrary, in the interests of the ELP.

In the event that the assets of the ELP are inadequate to meet the partnership's obligations, the general partner will be liable for all debts and obligations of the ELP.

Limited partners

Subject to any express provisions of the LPA to the contrary, a limited partner owes no fiduciary duty in exercising its right or obligations to the ELP or any other partner. A limited partner of an ELP will not be liable for the debts or obligations of an ELP save as provided in the LPA or, in certain limited circumstances, when the limited partner engages in the conduct of the business of the ELP (discussed below).

The ELP Act provides that a limited partner shall not take part in the 'conduct of the business of an ELP' in its capacity as a limited partner. Accordingly, all letters, contracts, deeds, instruments or documents should be entered into by the general partner on behalf of the ELP.

Helpfully, the ELP Act provides a non-exhaustive list of activities which are commonly undertaken by a limited partner and which are specifically not deemed to be taking part in the conduct of the business of the ELP. These include:

- holding an office or interest in, or having a contractual relationship with, a general partner, or being a contractor for or an agent or employee of the ELP or of a general partner, or acting as a director, officer or shareholder of a corporate general partner;
- consulting with and advising a general partner or consenting or withholding consent to any action proposed, in the manner contemplated by the LPA, with respect to the business of the ELP;
- investigating, reviewing, approving or being advised as to the accounts or business affairs of the ELP or exercising any other right conferred by the ELP Act;
- acting as surety or guarantor for the ELP either generally or in respect of specific obligations;
- approving or disapproving an amendment to the LPA;
- calling, requesting, attending or participating in any meeting of the partners;
- taking any action that results in the winding up or the dissolution of the ELP;

- taking any action required or permitted by the LPA or by law to bring, pursue, settle or terminate any action or proceedings brought pursuant to section 33(2) of the ELP Act;
- appointing a person to serve on any board or committee of the exempted limited partnership, a general partner or a limited partner or removing a person therefrom;
- serving on, or appointing a representative to serve on, any board or committee of the ELP, a general partner, the limited partners or the partners, including giving advice or consenting, or refusing to consent, to any action proposed by the general partner on behalf of the ELP and exercising any powers or authorities or performing any obligations as a member of that board or committee in the manner contemplated by the LPA;
- serving on the board of directors or a committee of, consulting with or advising or being an officer, director, shareholder, partner, member, manager, trustee, agent or employee of, or by being a fiduciary or contractor for, any person in which the ELP has an interest or any person providing management, consultation, custody or other services or other products for, to, or on behalf of, or otherwise having a business or other relationship with, the ELP or a general partner of the ELP; and
- voting as a limited partner on:
 - the dissolution and winding up of the ELP;
 - the purchase, sale, exchange, lease, mortgage, pledge or other acquisition or transfer of any asset by or of the ELP;
 - the incurrence or renewal of indebtedness by the ELP;
 - a change in the nature of the business of the ELP;
 - the admission, removal or withdrawal of a general or limited partner and the continuation of business of the ELP thereafter; or
 - transactions in which one or more of the general partners have an actual or potential conflict of interest with one or more of the limited partners.

If a limited partner takes part in the conduct of the business of an ELP (ie, outside of the safe harbours noted above) in its dealings with persons who are not partners, that limited partner will be liable, in the event of the insolvency of the ELP, for all debts and obligations of that ELP incurred during the period in which that limited partner participates in the conduct of the business as though that limited partner were, for that period, a general partner. However, that limited partner will be liable only to a person who transacts business with the ELP during the period with actual knowledge of that limited partner's participation and who then reasonably believed the limited partner to be a general partner.

Legal proceedings

Legal proceedings by or against an ELP may be instituted by or against any one or more of the general partners only, and no limited partner may be a party to or named in such proceedings. However, a Cayman Islands court may, if it deems it just and equitable to do so, allow proceedings against one or more limited partners where: (a) the limited partners may be liable as a general partner for the debts or obligations of the ELP or (b) to enforce the return of partnership contributions as provided by the ELP Act.

Return of contributions

A limited partner that receives any return of its contributed capital in a period of six months prior to the ELP becoming insolvent will be liable to return the amount received (to the extent that it is needed in whole or in part to discharge a debt or obligation of the ELP incurred during the period that the capital amount in question was an asset of the ELP), together with simple interest at an annual rate of 10 per cent (or other rate specified in the LPA) if, at the time the payment was made, the ELP was insolvent and the limited partner had actual knowledge of the insolvency.

Transfers

A limited partner may transfer all or any part of its partnership interest in the manner provided by the LPA, but such transfer shall not absolve the transferor of any liability previously incurred in respect of (i) its taking part in the conduct of the ELP's business, or (ii) amounts of capital received and required to be returned (both as described above).

Dissolution

An ELP shall continue until wound up and dissolved by resolution of the general partners and a two-thirds majority of limited partners, unless the LPA provides otherwise. The provisions of the Companies Act and

the Companies Winding Up Rules shall apply to govern the winding up and dissolution of an ELP (except to the extent that such provisions are inconsistent with the ELP Act).

Contacts

A full list of contacts specialising in partnership law can be found [here](#).