



Guide to Exempted Limited Partnerships

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Preface

An exempted limited partnership is established under the Exempted Limited Partnership Law (2007 Revision) as amended (the "Law"). This vehicle was specifically established in response to a demand from financial institutions in the United States for a limited partnership vehicle which could be used to establish a mutual fund in the Cayman Islands with the same speed and flexibility as either an open-ended investment company or unit trust.

The Law sweeps away the cumbersome filing and gazetting requirements which are typical of any limited partnership statute based on the United Kingdom Limited Partnership Act of 1907 and brings the Cayman Islands exempted limited partnership much closer to the Delaware model.

The key feature of a Cayman Island exempted limited partnership is that the limited partner's interest may be redeemed at any time without requiring dissolution of the exempted limited partnership, subject only to a potential clawback in the event of the insolvency of the partnership within 6 months, which puts the limited partner in substantially the same position as a shareholder in a company. The Law also permits partnership interests to be used as collateral by limited partners, and allows limited partners to lend to an exempted limited partnership, thereby enabling more sophisticated funding structures.

ESTABLISHMENT OF AN EXEMPTED LIMITED PARTNERSHIP

A general partner may be an individual, a company or a partnership. The Law requires that at least one general partner must be resident in the Cayman Islands, therefore at least one general partner must be:

- a person resident in the Cayman Islands;
- a company incorporated in the Cayman Islands;
- a partnership registered in the Cayman Islands; or
- a foreign company registered in the Cayman Islands pursuant to Part IX of the Companies Law (2009 Revision).

An exempted limited partnership is formed by the usual means of a partnership agreement. It is registered in the Cayman Islands by filing a statement with the Registrar together with certain corporate documents. The statement must include:

- the name of the general partner (but not the limited partners);
- the location of the registered office of the partnership;
- the objects of the partnership; and
- the duration of the partnership.

The corporate documents that must be filed with the statement are the certificate of good standing and the certificate of incorporation for each of the general partners.

A one time fee of US\$1,220 is payable to the Cayman Islands Government upon registration of an exempted limited partnership.

CONTINUING OBLIGATIONS

A general partner (on behalf of the exempted limited partnership) must file an annual return with the Cayman Islands Government by the 31st January of each year and pay the annual fee of US\$1,220 to the Cayman Islands Government at that time. Annual fees are also payable to the entity providing the registered office of the exempted limited partnership. If the annual fee is not paid when due, penalties start to accrue.

The Law requires a general partner to file a statement with the Registrar in the event there is any change in respect of any of the matters set out in the registration statement

(except of course the declaration that the partnership will not undertake business with the public in the Cayman Islands, since that is a general prohibition under Section 4 of the Law). Such statement must specify the nature of the change and be filed within 60 days of the change, or within 15 days where any entity ceases to be a general partner. If such statement is not filed within the prescribed period a penalty of US\$32 per day is payable by each general partner for each day of default in the obligation and such general partner must indemnify any person who thereby suffers any loss.

The Law provides that a register of the names and addresses of the limited partners, together with the amounts and dates of their contributions, must be maintained at the registered office of the exempted limited partnership and must be updated within 21 business days of any change in the registered particulars occurring. Limited partners have a statutory right to inspect this register. The Law also provides that a register of mortgages describing any charges granted by a limited partner over his limited partnership should be similarly maintained, which latter register governs the question of priority. The register of mortgages is open to public inspection but is not filed with any Cayman Islands governmental authority. If such registers are not maintained in accordance with the Law a penalty of US\$32 is payable by each general partner for each day of default.

The Law also provides that any return of contribution received by a limited partner, in circumstances where the partnership becomes insolvent within the following 6 months, must be repaid (together with simple interest at 10% per annum, or otherwise as may be stated in the partnership agreement) to the extent necessary to discharge any prior obligation of the partnership. Any service provider concerned with the partnership should therefore exercise caution to ensure that the partnership is solvent (and that it is likely to remain so for at least 6 months) before any return of contribution is made.

The Law is expected to be amended further in the near future, suggested amendments include: clarification of third party beneficiary rights; a definition of "gross negligence"; and clarification of the fiduciary duties of the general partner.