

CONYERS

A photograph of a modern glass skyscraper with a grid-like facade, reflecting the sky and surrounding environment. The building is set against a clear blue sky. In the foreground, there is a paved plaza with a geometric pattern of light and dark tiles. A dark blue horizontal bar is positioned below the main title text.

Cayman Islands Exempted Limited Partnerships

Preface

This publication has been prepared for the assistance of those who are considering the formation of an exempted limited partnership in the Cayman Islands (“**Cayman**”). It deals in broad terms with the requirements of Cayman law for the establishment and operation of such an entity. It is not intended to be exhaustive but merely to provide brief details and information which we hope will be of use to our clients. We recommend that our clients and prospective clients seek legal advice in Cayman on their specific proposals before taking steps to implement them.

Before proceeding with the establishment of an exempted limited partnership in Cayman, persons are advised to consult their tax, legal and other professional advisers in their respective jurisdictions.

Persons considering establishing partnerships to carry on insurance or mutual fund business should request separate publications prepared by Conyers on these topics.

Conyers

TABLE OF CONTENTS

| | | |
|-----|-------------------------|----|
| 1. | INTRODUCTION | 4 |
| 2. | REGISTRATION | 7 |
| 3. | ECONOMIC SUBSTANCE | 9 |
| 4. | PARTNERSHIP INTERESTS | 11 |
| 5. | RECORDS AND INSPECTION | 12 |
| 6. | PROCEEDINGS | 12 |
| 7. | RETURN OF CONTRIBUTIONS | 12 |
| 8. | DISSOLUTION | 13 |
| 9. | TAX UNDERTAKING | 13 |
| 10. | ANNUAL RETURN | 13 |
| 11. | STATUTORY AUDIT | 14 |

1. INTRODUCTION

1.1. General

The principal statutes governing the formation and operation of Cayman partnerships are the Partnership Act and the Exempted Limited Partnership Act (as amended) (together the “**Act**”).

“**Partnership**” is defined in the Act as “the relation which subsists between persons carrying on a business in common with a view to profit.”

A partnership can sue and be sued in its own name and, under the laws of Cayman, a partnership can carry on business in its firm name.

The Act permits an exempted limited partnership to be formed for any lawful purpose or purposes to be carried out and undertaken, either in or from within Cayman or elsewhere, upon the terms and with the rights and powers, and subject to the conditions, limitations, restrictions and liabilities mentioned in the Act. Exempted limited partnerships must register by satisfying the registration requirements provided in the Act (see 2.1 **Registration of Exempted Limited Partnerships**, below).

An exempted limited partnership must not undertake business with the public in Cayman other than as may be necessary for carrying on its business outside Cayman. Aside from this limitation, there is no further restriction on the type of lawful business that a Cayman exempted limited partnership may carry on. An exempted limited partnership may also carry on its business by electronic means from any place of business in Cayman or through an internet service provider located in Cayman.

1.2. Composition of an Exempted Limited Partnership

The Act provides that an exempted limited partnership must consist of one or more general partners and one or more limited partners. In the event that the assets of the exempted limited partnership are inadequate, the general partners are liable for all debts and obligations of the exempted limited partnership.

Participation in an exempted limited partnership (whether as a general or limited partner) is not restricted to individuals. A body corporate with or without limited liability, and a partnership or limited partner may be a general or a limited partner.

At least one of the general partners must have a “local connection” to Cayman. In other words at least one general partner must:

- (a) if an individual, be resident in Cayman;
- (b) if a company, be registered under the Cayman Companies Act or registered as a foreign company pursuant to the Companies Act;
- (c) if a partnership, be registered in accordance with requirements of the Act; or

- (d) be a limited partnership or limited liability partnership established in a jurisdiction outside of the Islands and registered as a foreign limited partnership under the Act.¹

1.3. Liability of General and Limited Partners

A general partner must act at all times in good faith and, subject to any express provision of the partnership agreement to the contrary, in the interests of the exempted limited partnership. Subject to the express terms of the partnership agreement, a limited partner does not owe any fiduciary duty in exercising any of its rights or authorities or otherwise in performing any of its obligations under the partnership agreement to the exempted limited partnership or any other partner. In the event that the assets of the exempted limited partnership are inadequate to satisfy the claims of its creditors, the general partner(s) are liable for all debts and obligations of the exempted limited partnership. The limited partners of an exempted limited partnership will not be liable for the debts and obligations of the exempted limited partnership except as may be provided by the partnership agreement and to the extent specified in the Act as mentioned below.

All letters, contracts, deeds, instruments or documents of any kind must be entered into by the general partner(s) on behalf of the exempted limited partnership. A limited partner is not to take part in the conduct of the business of the exempted limited partnership. In the event that a limited partner does engage in the conduct of the business of the partnership and in the course of which, deals with persons who are not partners in the exempted limited partnership, that limited partner will be liable, in the event of the insolvency of the exempted limited partnership, as though he were a general partner. However, the limited partner will only be rendered liable in such circumstances to a person who transacted business with the exempted limited partnership during the relevant period with actual knowledge of such participation and who then reasonably believed that the limited partner was a general partner.

In addition, the Act provides that a limited partner is not regarded as having taken part in the conduct of the business of an exempted limited partnership within the meaning of the Act by participating in any of the following “safe harbour” activities:

- (a) 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 exempted limited partnership;
- (b) being a contractor for or an agent or employee of a general partner or consenting or withholding consent to any action proposed, in the manner contemplated by the partnership agreement;
- (c) acting as a director, officer or shareholder of a corporate general partner;
- (d) consulting and advising a general partner regarding the business of the exempted limited partnership;

¹ For additional information concerning the registration of foreign limited partnerships in Cayman, please see Conyers' publication “Registration of Foreign Limited Partnerships in the Cayman Islands”.

- (e) investigating, reviewing, approving or being advised as to the accounts or business affairs of the exempted limited partnership;
- (f) calling, requesting, attending or participating in any meeting of the partners;
- (g) taking any action required or permitted by the partnership agreement or by law to bring, pursue, settle or terminate any action or proceedings;
- (h) 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;
- (i) serving on any board or committee of the exempted limited partnership;
- (j) serving on the board of directors or a committee of any person in which the exempted limited partnership has an interest or any person providing management, consultation or other services or otherwise having a business or other relationship with the exempted limited partnership or a general partner of the exempted limited partnership;
- (k) acting as surety or guarantor for the exempted limited partnership either generally or in respect of specific obligations;
- (l) approving or disapproving an amendment to the partnership agreement; or
- (m) voting as a limited partner on the following matters:
 - (i) the dissolution and winding up of the exempted limited partnership;
 - (ii) the purchase, sale, exchange, lease, mortgage, pledge or other acquisition or transfer of any asset or assets by or of the exempted limited partnership;
 - (iii) the incurrence or renewal of indebtedness by the exempted limited partnership;
 - (iv) a change in the nature of the business of the exempted limited partnership;
 - (v) the admission, removal or withdrawal of a general or limited partner and the continuation of business of the exempted limited partnership thereafter; or
 - (vi) 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.

A limited partner of a partnership which is also a general partner of an exempted limited partnership shall not, by virtue of that fact alone, be taken to be a general partner of such exempted limited partnership.

Clearly, whether or not a limited partner is in breach of the prohibition against taking part in the conduct of business is an issue which will turn on the facts of each case.

1.4. Property of an Exempted Limited Partnership

Any rights or property of every description of the exempted limited partnership, including all choses in action and any right to make capital calls and receive the proceeds thereof that is conveyed to or vested in (or held on behalf of) any one or more of the general partners of the exempted limited partnership shall be held or deemed to be held by the general partner and if more than one then by the general partners jointly, upon trust as an asset of the exempted limited partnership in accordance with the terms of the partnership agreement.

1.5. Registered Office of an Exempted Limited Partnership

Every exempted limited partnership must have a registered office situated in Cayman for service of process and to which all notices and correspondence may be addressed.

2. REGISTRATION

2.1. Registration of an Exempted Limited Partnership

For the registration of an exempted limited partnership to be effected, the general partner must submit to the Registrar of Exempted Limited Partnerships (the “**Registrar**”) a statement (“**Statement**”) signed by or on behalf of the general partner together with the required fee. The Statement sets out the following:

- (a) the name of the exempted limited partnership;

Every exempted limited partnership must have a name which includes the words “Limited Partnership” or the letters “L.P.”. The use of certain words is restricted. The Registrar may decline to register a name which for any reason is calculated or likely to mislead. An exempted limited partnership may have an additional dual foreign name which either precedes or follows its name.

- (b) the general nature of the business of the exempted limited partnership;
- (c) the address of the registered office;
- (d) the term, if any, for which the exempted limited partnership is entered into or, if for an unlimited duration, a statement to that effect and the date of commencement;
- (e) the full name(s) and address(es) of the general partner(s) and, where the general partner is (a) a corporation, a certificate of incorporation and a certificate of good standing must be filed; (b) a partnership registered under the Act, a certificate of registration and a certificate of good standing must be filed; and (c) an individual, photographic evidence of the general partner’s identity and evidence of his residential address must be filed; and
- (f) a declaration that the exempted limited partnership will not undertake business with the public in Cayman other than so far as may be necessary for the carrying on of the business of the partnership exterior to Cayman.

If during the term of the exempted limited partnership any change is made or occurs in any of the details set out in the Statement, a revised Statement signed by a general partner specifying the nature of the change must be filed with the Registrar within 60 days.

Where a person or entity is to be removed, replaced or admitted as a general partner, a Statement to this effect must, within 15 days, be filed with the Registrar. Until such Statement is filed, the arrangement or transaction by which the general partner is to be removed, replaced or admitted is not effective. In certain instances, if the arrangement or transaction by which the general partner is to be removed, replaced or admitted seeks to relieve or discharge a general partner from his legal obligations, the written consent of any person thereby affected must be obtained.

2.2. Certificate of Registration

Once the necessary documents have been filed and the fee has been paid in accordance with registration requirements, the Registrar will issue a certificate of registration. The exempted limited partnership comes into being as of the date that is indicated on the certificate, which is generally the date of filing. The certificate is conclusive evidence that compliance has been made with all of the requirements of the Act in respect of formation and registration.

2.3. Re- registration of a Partnership established in a jurisdiction outside of Cayman as a Cayman exempted limited partnership

The Act provides that any partnership established under the laws of a jurisdiction other than Cayman (“**Foreign Laws**”) may, on effecting such amendments to the partnership agreement as are necessary to comply with the Act, paying a fee and filing the Statement, be registered as an exempted limited partnership effective from the date indicated on the certificate of registration issued by the Registrar.

Once a partnership is re-registered, the Foreign Laws cease to apply, except that acts and omissions which occurred before the effective date of re-registration will continue to be governed by the Foreign Laws and such re-registration does not operate to:

- (a) create a new legal entity;
- (b) affect the property of the partnership previously acquired by or on behalf of the exempted limited partnership;
- (c) affect any act or thing done prior to such registration or the rights, powers, authorities, functions or obligations of the exempted limited partnership, any partner or other person prior thereto; or
- (d) render defective any legal proceedings by or against the exempted limited partnership or any partner or any other person.

For current initial and annual government fees for re-registering a partnership as an exempted limited partnership in Cayman please contact us.

2.4. Express Application Process

To meet commercial demands, the Act provides for an expedited procedure to register an exempted limited partnership. On payment of a fee, the express procedure will ordinarily result in a completed registration and issue of a certificate by the Registrar on the same day. For further details on expedited applications, please contact us.

3. ECONOMIC SUBSTANCE

The International Tax Co-operation (Economic Substance) Act (2021 Revision) (the “**ES Act**”) was amended with effect from 30 June 2021 to expand its application to general partnerships, limited partnerships, exempted limited partnerships and foreign limited partnerships registered in the Cayman Islands. The ES Act is supplemented by the Guidance on Economic Substance for Geographically Mobile Activities.

The ES Act requires that all Cayman Islands entities, including partnerships, notify the Tax Information Authority (the “**TIA**”) of, amongst other things, whether or not they are carrying on certain prescribed “relevant activities” and if so, whether or not they are a “relevant entity”. The notification to the TIA is by way of an annual economic substance notification.

Relevant entities (discussed further below) are required to maintain economic substance in the Cayman Islands unless they are (i) tax resident outside the Cayman Islands (ii) an investment fund (including entities through which any such fund invests or operates); or (iii) a not-for-profit.

Pursuant to the International Tax Co-operation (Economic Substance) (Prescribed Dates) (Amendment) Regulations, 2021, the economic substance test (the “**ES Test**”) (if applicable) must be satisfied from the date the partnership commences a relevant activity where that entity did not exist as or at 30 June 2021. Entities in existence prior to 30 June 2021 were required to satisfy the ES Test by 1 January 2022. Each relevant entity that is carrying on a relevant activity and is required to satisfy the ES Test will be required to file an annual return with the TIA in respect of their status under the ES Act.

3.1. Relevant Activities

Relevant entities will be required to meet the ES Test in respect of their relevant activities in the Cayman Islands. The categories of relevant activities include the following which are further defined in the ES Act:

- (a) Banking business;
- (b) Distribution and service centre business;
- (c) Financing and leasing business;
- (d) Fund management business;
- (e) Headquarters business;
- (f) Holding company business;

- (g) Insurance business;
- (h) Intellectual property business; and
- (i) Shipping business.

3.2. Economic Substance Requirements

For relevant entities carrying on relevant activities, the ES Act requires that they:

- (a) conduct core income generating activities (“**CIGAs**”) (see further below) in relation to the relevant activity;
- (b) directed and managed appropriately in the Cayman Islands related to the relevant activity; and
- (c) with regard to the level of relevant income from the relevant activity carried out in the Cayman Islands, have an adequate –
 - (i) amount of operating expenditure incurred in the Cayman Islands;
 - (ii) physical presence (including maintaining a place of business or plant, property and equipment) in the Cayman Islands; and
 - (iii) number of full-time employees or other personnel with appropriate qualifications in the Cayman Islands.

Partnership relevant entities that only hold equity participations in other entities and only earn dividends and capital gains will have reduced requirements such that they will need to comply with all filing requirements under the Partnership Act or the Exempted Limited Partnership Act (as amended) (as applicable) and have adequate human resources and premises in the Cayman Islands for holding and managing equity participations in other entities.

3.3. Core Income Generating Activities

CIGAs are defined in the ES Act to mean activities that are of central importance to a relevant entity in terms of generating income and that are being carried out in the Cayman Islands. CIGAs may be outsourced provided that the relevant entity is able to monitor and control the carrying out of the CIGA. The TIA will only accept the relevant entity’s claim to have satisfied the ES Test by means of domestic outsourcing if the information is verified by the service provider. Such verification must be made within thirty days of the relevant entity providing the same information to the TIA.

Service providers undertaking outsourcing functions are required to register with the Cayman Islands Department of Information Tax Co-operation (“**DITC**”) so that the DITC can independently verify the engagement and nature of the services provided.

4. PARTNERSHIP INTERESTS

4.1. Register of Limited Partnership Interests

The general partner must maintain, or cause to be maintained, separate registers containing:

- (a) details of the name and address of each person who is a limited partner and the date upon which they became a limited partner and ceased as a limited partner; and
- (b) 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 a contribution of any limited partner.

The registers may be kept in or outside the Cayman Islands. If kept at a place other than the registered office (i) the general partner is required to make available at the registered office a record of where the register is maintained and (ii) each register must be made available at the registered office if a notice or order for production is made under the Tax Information Authority Act.

The registers may be kept in written or electronic form.

The registers must be updated within 21 days of any changes. The general partner is liable on summary conviction to a substantial fine for breach of these provisions and is required to indemnify any person who thereby suffers any loss. The register of limited partners and the record of the address at which the register of limited partners is maintained is, subject to the terms of the partnership agreement, open to inspection by all partners and any other person with the consent of the general partner. The register of limited partner contributions shall be open to inspection to any person with the consent of the general partner.

4.2. Transfer of and Grant of Security Interests over Partnership Interests

Partners are free to set out the appropriate transfer restrictions (if any) in the limited partnership agreement. Subject to the terms of the partnership agreement, no limited partner may transfer the whole or part of his limited partnership interest except with the written consent of the general partner.

Any transferee of a limited partnership interest will, to the extent of such transfer, become a limited partner with the rights and subject to the obligations of the transferor in accordance with the partnership agreement and the Act in respect of the partnership interest or part thereof transferred.

Subject to the terms of the partnership agreement, no limited partner may grant any security interest in the whole or part of his limited partnership interest except with the written consent of the general partner.

Once permission has been granted or is in accordance with the partnership agreement, written notice of the grant of the security interest shall be given by the grantor or the grantee to the exempted limited partnership at its registered office. The notice is not validly given unless it specifies the agreement pursuant to which the security interest is granted including the date, the parties to the agreement, the identity of the grantor and the grantee of the security interest, and the partnership interest or part thereof that is subject to that security interest.

4.3. Register of Security Interests granted by Limited Partners

The general partner must maintain a register of security interests granted by limited partners, in written or electronic form, at the registered office of the limited partnership. The register of security interests should set out the identity of the grantor, the identity of the 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 general partner. Such register shall be open to inspection by any person during all usual business hours.

Ranking amongst competing creditors in relation to security interest partnership interests is determined according to the date on which notice of the security interest is validly served at the registered office of the exempted limited partnership.

5. RECORDS AND INSPECTION

The Registrar maintains a record of each exempted limited partnership registered under the Act and a record of all Statements filed in relation to such partnerships.

On payment of a fee, any person can request a certified copy of the certificate of registration, a certificate of good standing or a copy of or extract from any Statement filed with the Registrar in relation to an exempted limited partnership.

Subject to any express or implied term of the partnership agreement, each limited partner may demand and shall receive from the general partner true and full information regarding the state of the business and financial condition of the exempted limited partnership.

6. PROCEEDINGS

Legal proceedings by or against an exempted limited partnership may be instituted by or against any one or more of the general partners only and generally no limited partner can be a party to or named in such proceedings. However, the court may permit any person to join in or otherwise institute proceedings against any one or more of the limited partners who may be liable under the Act as a general partner for the debts of the exempted limited partnership or to enforce the return of contribution, if any, required to discharge a debt or obligation of the exempted limited partnership. A limited partner can bring an action on behalf of an exempted limited partnership if any one or more of the general partners with authority to do so have, without good cause, refused to institute such legal proceedings. Where the limited partner is successful in whole or in part in such action, the court may award the limited partner reasonable expenses (including attorney's fees) from any recovery or from an exempted limited partnership.

7. RETURN OF CONTRIBUTIONS

A limited partner can only receive a payment out of the capital of the exempted limited partnership representing a return of any part of his contribution to the partnership if, at the time of and immediately following such payment, the exempted limited partnership is solvent. If a limited partner receives a payment representing a return in part of his contribution or is released from any outstanding obligation in respect of his commitment and, at the time that payment was made or release effected, (a) the

exempted limited partnership is insolvent; and (b) the limited partner had actual knowledge of the insolvency of the exempted limited partnership, then for a period of six months, but not thereafter, such limited partner shall be liable to repay such payment or perform the released obligation. Subject to the terms of the partnership agreement, any amount required to be repaid shall bear simple interest of 10 per cent. This claw-back is only available to the extent that such contribution or part thereof is necessary to discharge a debt or obligation of the exempted limited partnership incurred during the period that the contribution represented an asset of the exempted limited partnership.

8. DISSOLUTION

An exempted limited partnership shall be voluntarily wound up at the time or upon the occurrence of any event specified in the partnership agreement and dissolved in accordance with the terms thereof. If no time or event is specified, an exempted limited partnership shall continue until wound up and dissolved by resolution of all the general partners and a two-thirds majority of limited partners, unless otherwise specified in the partnership agreement.

Except to the extent that such provisions are not consistent with the Exempted Limited Partnership Act, provisions of Part V of the Companies Act dealing with liquidations and the Company Winding-Up Rules shall be deemed to apply to the winding up and dissolution of an exempted limited partnership. For voluntary dissolutions in accordance with the partnership agreement and following a vote of the partners as specified above, only certain limited reporting provisions of Part V of the Companies Act apply.

Subject to any express or implied term in the partnership agreement to the contrary and to the Act in respect of automatic dissolution, an exempted limited partnership is not terminated or dissolved by:

- (a) a change in any one or more of the limited partners or general partners;
- (b) the transfer or creation of a charge over the whole or part of the partnership interest of a limited partner; or
- (c) the incapacity, death, bankruptcy, dissolution or winding up of a limited partner.

9. TAX UNDERTAKING

On application by a general partner, the Governor in Cabinet may give an undertaking in respect of any exempted limited partnership that no law which is hereafter enacted in Cayman imposing any tax on profits, income, gains or appreciations will apply to that exempted limited partnership, or to any of its partners in respect of the operations or assets of the exempted limited partnership or the partnership interest of any of its partners. Such undertaking may also provide that the aforementioned taxes and any tax in the nature of estate duty or inheritance tax shall not be payable in respect of obligations of the exempted limited partnership or the interest of its partners. The undertaking by the Governor in Cabinet will be for a period not exceeding 50 years from the date of approval of the application.

10. ANNUAL RETURN

On or before 31 January in every year, an exempted limited partnership must file with the Registrar a fresh Statement and also confirm that the partnership has not, in the preceding year, undertaken

business with the public in Cayman other than so far as may be necessary for carrying on the business of the exempted limited partnership outside Cayman. An annual fee is also payable.

11. STATUTORY AUDIT

There is no statutory requirement that the accounts of an exempted limited partnership be audited.

This publication should not be construed as legal advice and is not intended to be relied upon in relation to any specific matter. It deals in broad terms only and is intended merely to provide a brief overview and give general information.

© Conyers May 2022