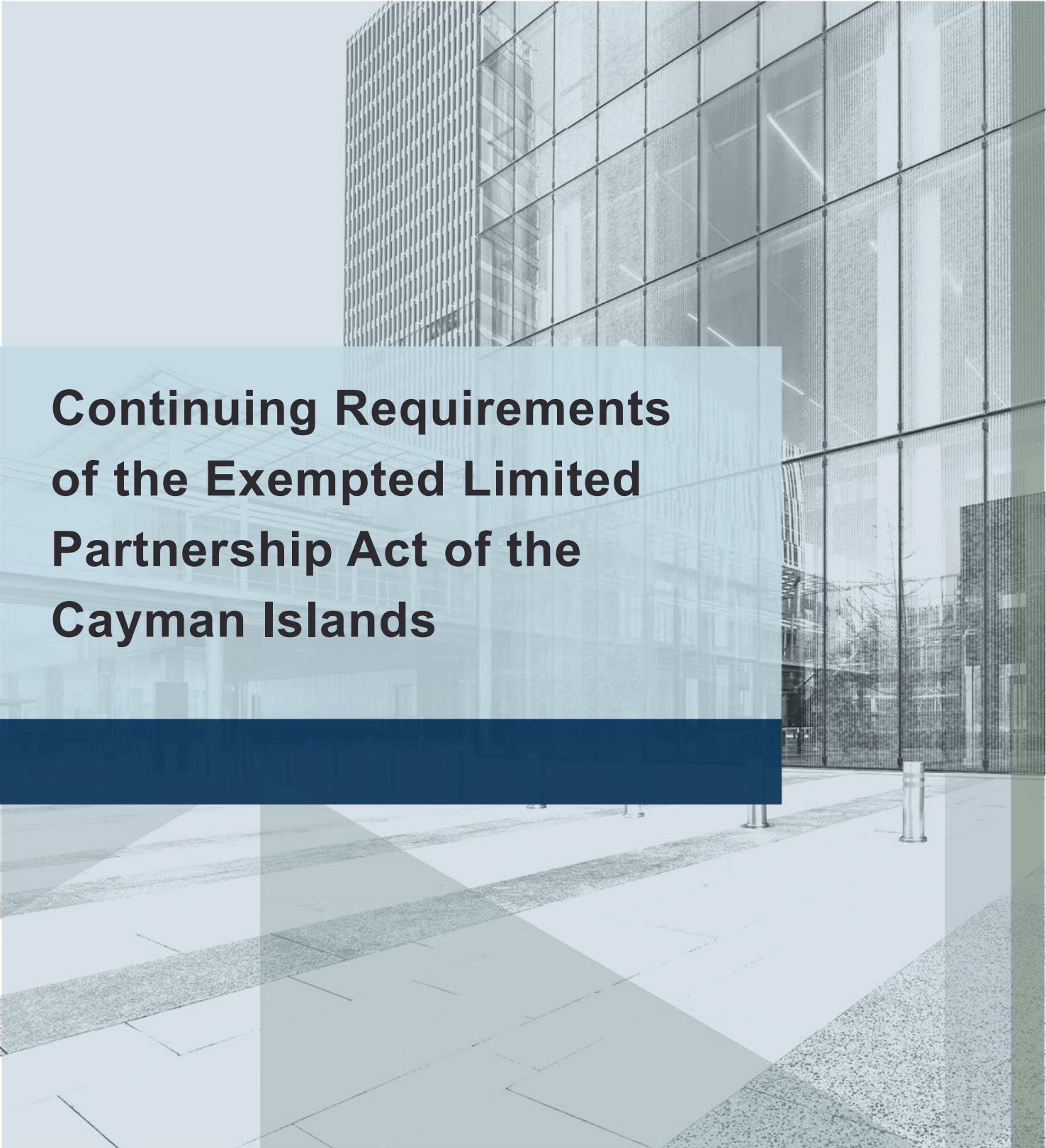


# CONYERS

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 sky. In the foreground, there is a paved plaza with a pattern of light and dark tiles. A semi-transparent blue rectangle is overlaid on the left side of the image, containing the title text. Below the title, there is a solid dark blue horizontal bar.

## **Continuing Requirements of the Exempted Limited Partnership Act of the Cayman Islands**

## Preface

This publication has been prepared for the assistance of those who are considering the operation of exempted limited partnerships in the Cayman Islands ("**Cayman**"). It deals in broad terms with the requirements of Cayman law and 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 registration 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.

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## 1. INTRODUCTION

The Cayman Islands Exempted Limited Partnership Act (the “**Act**”) imposes continuing obligations on exempted limited partnerships (“**ELPs**”) registered in the Cayman Islands. Partnerships that carry on certain regulated activities such as mutual or private funds are subject to additional regulation governing those activities, details of which are available upon request.

## 2. CONSTITUTION

ELPs are required to have at least one general partner and at least one limited partner. The general partner will be liable for all debts and obligations of the ELP in the event that the assets of the ELP are inadequate. The limited partner(s), subject to the terms of the partnership agreement and the return of contributions or commitments in the context of insolvency, will not be liable for all debts and obligations unless the limited partner(s) take part in the conduct of the business of the ELP. At least one general partner must be resident in Cayman (if an individual), registered under the Companies Act (if a company), or registered pursuant to the Act (if a partnership).

## 3. NAME

Every ELP must have a name which shall include the words “Limited Partnership” or the letters “L.P.” or “LP” and, in the case of an ELP carrying on special economic zone business, must include the words “special economic zone” or the letters “SEZ”. The name may include the name of any general partner, limited partner or any derivation thereof. An ELP may have a name which is preceded by or followed with a dual or foreign name.

## 4. REGISTERED OFFICE

Every ELP must have a registered office situated in Cayman for the service of process and to which all notices and communications may be addressed. The registered office of an ELP shall be the same as the address of a person licensed by the Cayman Islands Monetary Authority under the Banks and Trust Companies Act, the Companies Management Act or the Mutual Funds Act.

## 5. CHANGE IN PARTICULARS

If, during the continuance of an ELP, any change is made or occurs in any of the ELP’s particulars, such as the name or dual foreign name and translated name, the general nature of the business, the registered office address, the term of the ELP and the name and address of the general partner(s), a general partner must file a statement specifying the nature of the change and provide such statement to the Registrar of Exempted Limited Partnerships (the “**Registrar**”) within sixty (60) days of the change.

A general partner must provide a statement respecting any change to the general partner(s), however, within fifteen (15) days of any arrangement or transaction in consequence of which any person is removed, replaced or admitted as a general partner. No such arrangement or transaction will be effective until such statement is filed with the Registrar.

Any general partner that is in default of the requirement to provide notice of the change in particulars will incur a penalty for each day that the default continues which penalty shall be a debt due to the Registrar.

The general partner will also be required to indemnify any person who suffers any loss as a result of the default.

## **6. ACCOUNTS**

### **6.1. Books of Account**

A general partner of an ELP must keep or cause to be kept, for a period of five years from the date on which they are prepared, proper books of account including, where applicable, material underlying documentation including contracts and invoices with respect to the following:

- (a) money received and expended by the ELP and matters in respect of which the receipt of expenditure takes place;
- (b) sales and purchases of goods by the ELP; and
- (c) assets and liabilities of the ELP.

The books must provide a true and fair view of the business and financial condition of the ELP and explain its transactions.

### **6.2. Location**

The books of account need not be kept at the registered office of the ELP but if the books of account are kept at any place other than the registered office or at any other place within the Cayman Islands, the general partner must, upon service of an order or notice by the Tax Information Authority (“TIA”), make available, in electronic form or any other medium, at its registered office, copies of its books of account or any part(s) thereof specific in such order or notice.

Any general partner that defaults in complying with an order or notice by the TIA without reasonable excuse will incur a penalty and a further penalty for every day during which the non-compliance continues.

## **7. REGISTERS**

### **7.1. Register of Limited Partners**

The general partner must maintain or cause to be maintained a register of limited partners which contains the name and address of each person who is a limited partner of the ELP, 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 must be updated within twenty-one (21) days of the date of any change in the particulars therein.

The general partner must keep, at the registered office of the ELP, a record of the address at which the register of limited partners is maintained. That record must also be updated within twenty-one (21) days of the date of any change in the particulars therein.

The register of limited partners and the record of the address at which the register of limited partners is maintained shall be open to inspection during all usual business hours to all partners, subject to any

express or implied term of the partnership agreement, and any other person with the consent of the general partner.

Where the register of limited partners is kept at a place other than the registered office of the ELP, the general partner must, upon service of an order or notice by the TIA, make available, in electronic form or any other medium, at its registered office, the register of limited partners.

Any general partner that is in default of the requirement to maintain a register of limited partners or the record of the address at which the register is maintained or who fails to update the registers will commit an offence and be liable on summary conviction to a fine for each day that the default continues. The general partner is also required to indemnify any person who suffers any loss as a result of the default.

Any general partner that defaults in complying with an order or notice by the TIA without reasonable excuse will incur a penalty and a further penalty for every day during which the non-compliance continues.

## **7.2. Record of Limited Partners' Contributions**

The general partner must maintain or cause to be maintained a record of the amount and date of the contribution(s) 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. The record of limited partners' contributions must be updated within twenty-one (21) days of the date of any change in the particulars therein.

The register of limited partners' contributions shall be open to inspection during all usual business hours, in the place where the records are maintained, to any person with the consent of the general partner.

Where the register of limited partners' contributions is kept at a place other than the registered office of the ELP, the general partner must, upon service of an order or notice by the TIA, make available, in electronic form or any other medium, at its registered office, the register of limited partnership interests.

Any general partner that is in default of the requirement to maintain a register of limited partners' contributions or the record of the address at which the register is maintained will incur a penalty for each day that the default continues. The general partner will also be required to indemnify any person who suffers any loss as a result of the default.

Any general partner that defaults in complying with an order or notice by the TIA without reasonable excuse will incur a penalty and a further penalty for every day during which the non-compliance continues.

## **7.3. Register of Security Interests**

The general partner must maintain or cause to be maintained, at the registered office of the ELP, a register of security interests in which must be registered each security interest in relation to which a valid notice of the grant of a security interest over the whole or any part of a limited partnership interest has been served. The register of security interests shall contain the identity of the grantor and 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 at the ELP's registered office.

The register of security interests shall be open to inspection during all usual business hours to any person.

Any general partner that is in default of the requirement to maintain a register of security interests will incur a penalty for each day that the default continues.

Beneficial Ownership Register

#### 7.4. Beneficial Ownership Register

Unless an alternative route to compliance is available by, for example, being listed or licensed under a Cayman regulatory law, each ELP's corporate service provider ("**CSP**") has an obligation to establish and maintain a register of its beneficial owners to be kept at its registered office. Each ELP is required to take reasonable steps to identify any registrable beneficial owners which include individual beneficial owners of the ELP and all Cayman incorporated, formed or registered legal entities that would be beneficial owners if they were individuals ("**reportable legal entities**").

Beneficial owner details are uploaded to the General Registry via its Corporate Administration Platform ("**CAP**") system. The information is encrypted upon submission and further encrypted upon receipt. The data is then deleted from CAP and goes to a non-internet facing, offline server only accessible by a Government authorised competent authority.

There are significant financial penalties for failure to establish or maintain a beneficial ownership register. Administrative fines apply to 'in-scope' entities that fail to take reasonable steps to identify beneficial owners and reportable legal entities, fail to ensure their beneficial ownership register remains up to date and/or fail to provide particulars of registrable beneficial owners to their CSPs or certain notices to their registrable beneficial owners. Entities that rely upon an alternative route to compliance are not required to maintain a beneficial ownership register but may still be in breach if they fail to provide written confirmation of their alternative route to compliance and instructions to file the information required to satisfy the alternative route to compliance, or if they incorrectly seek to rely upon an alternative route to compliance that is not available to the entity. Of particular note, Cayman Islands ELPs whose beneficial ownership register indicates a status of 'Enquiries pending' for three uninterrupted months will be presumed to be in breach and liable to administrative fines. There are a number of other technical breaches for which ELPs and/ or their CSPs may be fined. The Registrar may strike an ELP from the register if a fine remains unpaid for ninety days.

### 8. ECONOMIC SUBSTANCE

The International Tax Co-operation (Economic Substance) Act (2024 Revision) (the "**ES Act**") was amended with effect from 30 June 2021 to expand its application to general partnerships, limited partnerships, ELPs 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, notify 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 by partnerships, exempted limited partnerships and foreign limited partners is by way of an annual economic substance notification ("**ESN**") which must be filed prior to an entity filing its annual return with the General Registry's Corporate Administration Portal ("**CAP**"). As general partnerships are not registered through CAP, the Department of International Tax Compliance (the "**DITC**") has advised that general partnerships must file an ESN in the form of a spreadsheet to



registered office service providers for submission to the DITC's Economic Substance Team at [DITC.EScompliance@gov.ky](mailto:DITC.EScompliance@gov.ky).<sup>1</sup> Reporting of compliance with the ES Act is then required for relevant entities carrying on one or more relevant activities on an annual basis thereafter. Reporting is due within 12 months of the relevant financial year end.

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 ELP commences a relevant activity where that entity did not exist as 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.

### 8.1. Relevant Activities

Relevant entities are 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.

### 8.2. 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;

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<sup>1</sup> This manual process for general partnerships has been adopted on the basis of advice from the DITC on 29 March 2023.



- (b) be 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.

ELP 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 Act and have adequate human resources and premises in the Cayman Islands for holding and managing equity participations in other entities.

### **8.3. 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 DITC so that the DITC can independently verify the engagement and nature of the services provided.

## **9. TRANSFER OF PARTNERSHIP INTERESTS**

A partnership interest is transferable in whole or in part in accordance with the Act and the provisions of the partnership agreement. Subject to the partnership agreement, however, no limited partner may transfer the whole or any part of their limited partnership interest except with the written consent of the general partner prior to, or at the same time as the transfer. Nor may a general partner transfer the whole or any part of their general partnership interest except with the written consent of any other general partner prior to, or at the same time as, the transfer.

## **10. SECURITY INTEREST GRANTED**

### **10.1. General Partner**

Subject to the partnership agreement, no general partner may grant any security interest in the whole or any part of their general partnership interest except with the written consent of any other general partner prior to, or at the same time as, the grant.

## 10.2. Limited Partner

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

Written notice of the grant of a security interest over the whole or any part of a limited partnership interest is required to be given by the grantor or the grantee to the ELP at its registered office. Such notice, to be validly given, must specify the agreement pursuant to which the security interest is granted, including the date thereof and the parties thereto, the identity of the grantor and grantee of the security interest, and the partnership interest or part thereof that is subject to that security interest.

Any security interest over the whole or any part of a limited partnership interest shall have priority according to the time that the written notice referred to above is validly served at the registered office of the ELP.

## 11. ANNUAL REQUIREMENTS

An annual return must be submitted to the Cayman Islands Government in January of every year together with the prescribed fee. A current listing of the annual government fees is available upon request.

The annual return must be signed by or on behalf of a general partner and must certify that the ELP has, during the prior calendar year, complied with the obligation to notify the Registrar of any change in the ELP's particulars and that there has been no breach of the registration declaration.

An ELP which fails to pay the required annual fee shall:

- (a) where the annual fee is paid or the return is filed between 1st April and 30th June, incur a penalty of 33.33% of the annual fee;
- (b) where the annual fee and penalties are paid or the return is filed between 1st July and 30th September, incur a penalty 66.67% of the annual fee; and
- (c) where the annual fee and penalties are paid or the return is filed between 1st October and 31st December, incur a penalty 100% of the annual fee.

Such penalties shall be a debt due to the Registrar.

*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.*

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