



## Changes to the Cayman Islands Exempted Limited Partnership Law

Effective 11 May 2009, the Exempted Limited Partnership Law (2007 Revision) (“ELP Law”) has been amended by the Exempted Limited Partnership (Amendment) Law, 2009 (the “ELP 09 Law”). Many of the changes clarify the existing law and place more reliance on the expressed provisions set forth in the partnership agreement.

Significant changes brought by the ELP 09 Law are as follows:

The register of partnership interests, which must be maintained at the registered office of an exempted limited partnership (“ELP”) in the Cayman Islands, may now be kept in electronic, rather than written, form. It is open to the inspection of all partners or by any other person with the consent of the general partner.

Clarification is now provided to limited partners by changes to Section 7(3) of the ELP Law. Section 7(3) sets out activities limited partners can undertake without being at risk of being deemed to be carrying on the business of an ELP. These now include:

- holding an office or interest in or having a contractual relationship with a general partner;
- consenting or withholding consent to any action proposed in the manner contemplated by the underlying partnership agreement;
- calling, requesting, attending or participating in any meeting of the partners;
- taking any action required or permitted by the partnership agreement to bring, pursue, settle or terminate any action or proceeding; and
- appointing a person to serve on any board or committee of an ELP, a general partner or a limited partner (or removing a person there from).

The ELP 09 Law also clarifies that no limited partner of an ELP which is itself the general partner of an ELP shall, by virtue of that fact alone, be deemed to be a general partner of such ELP.

Section 7(7)(a) of the ELP Law is amended to remove the requirement that consent by the general partner must be obtained for assignments (absolute or by way of security) of a limited partnership interest. Accordingly, the partners are now free to set out any transfer or changing restrictions in the partnership agreement.

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Section 14(1) of the ELP Law has been repealed and substituted to state that a limited partner who receives a payment representing a return of any part of his contribution to the partnership within six months before an insolvency of an ELP shall be liable to repay such payment with simple interest at the rate of ten per cent per annum (calculated on a daily basis) or as may be specified in the partnership agreement to the extent that such contribution or part thereof is necessary to discharge a debt or obligation of the ELP incurred during the period that the contribution represented an asset of the ELP.

Section 15 of the ELP Law concerning the dissolution of an ELP has been amended to clarify how an ELP is to be wound up and dissolved. Under the ELP Law, the Cayman Islands court had the power to make such orders and give such directions for the winding up of an ELP's affairs as may be just and equitable. While this broad language had the advantage of allowing flexibility in the general approach to a winding up, the absence of procedural rules created some uncertainty and inconsistency of treatment.

The amended Section 15 provides that, except to the extent that such provisions are not consistent with the ELP Law, the provisions of Part V of the Companies Law dealing with liquidations and the Companies Winding Up Rules 2008 shall be deemed to apply to the winding up and dissolution of an ELP.

This means that a solvent ELP may still be wound up in accordance with the terms of its partnership agreement and only a few sections of the Companies Law (routine filings and procedures required to effect the winding up) shall be deemed to apply to such a voluntary dissolution and winding up.

The ELP 09 Law now gives greater guidance as to how the dissolution of an insolvent ELP can be commenced by limited partners or creditors, while the procedural Rules for the winding up of an insolvent ELP pursuant to a court order are now also clear.

An amendment to Section 7(5) also makes clear that even the nomination of any person as liquidator under the partnership agreement may be overridden by the court on the application of any partner or creditor for orders and directions concerning the winding up and dissolution of an ELP.

Section 15(5) now clarifies the timing of an automatic dissolution of an ELP. Section 15(5) now states that subject to any express or implied term of the partnership agreement to the contrary, an ELP shall immediately be dissolved on an automatic dissolution date falling ninety days after the date of the service of a notice by the general partner (or its legal representative) on all the limited partners informing the limited partners of (a) the death, (b) the commencement of liquidation or bankruptcy proceedings, or (c) the withdrawal, removal or making of a winding up or dissolution order, in relation to the sole or last remaining general partner (or such other date or event as may be specified in the partnership agreement); provided that if a majority of partners specified in the partnership agreement as being entitled to vote to elect a new general partner in accordance with the terms of the partnership agreement (or, if no such majority is specified in the partnership agreement, a simple majority of the partners) elects one or more new general partners before the automatic dissolution date, the business of the ELP may be resumed and continued as provided for in the partnership agreement or any subsequent agreement. This allows the limited partners greater flexibility to provide in the partnership agreement how the ELP will continue should such events occur.

The absolute prohibition on limited partners receiving capital contributions when the ELP is insolvent has been removed.

Section 26 provides that a general partner of an ELP may at any time de-register the partnership, if such de-registration is permitted to do so under the terms of the partnership agreement, by filing a written notice of de-registration together with written confirmation that such action is authorised by the partnership agreement.

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