

## Principal changes to the Cayman Exempted Limited Partnership law

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Cayman Islands Exempted Limited Partnerships (“ELPs”) remain a popular choice of vehicle for the investment fund industry, most particularly in private equity fund structures. In recognition of their significance to the financial services industry in the Cayman Islands and in line with industry suggestions for improvement, the Exempted Limited Partnership Law (“ELP Law”) has been amended this month by the Exempted Limited Partnership (Amendment) Law, 2009.

### Overview

The amendments were introduced to make the default provisions applying to ELPs more consistent with the uses to which they are traditionally put. Notable changes include an expansion of the ‘safe harbour’ for activities of Limited Partners; clarification of the dissolution process; and the simplification of transfers of partnership interests. More amendments are anticipated in the near future.

### Expanded Safe Harbour Activities

The list of permitted or ‘safe harbour’ activities in which limited partners can engage without risking loss of their limited liability status has been expanded to include among others the following activities by Limited Partners:

- (a) appointing a person to serve on any board or committee (for example an Investment Committee) of the ELP or of a general partner or removing such person;
- (b) holding an office or interest in, or entering into contracts with the general partner(s);
- (c) giving or withholding consent to any actions proposed in accordance with the partnership agreement with respect to the partnership business;
- (d) calling, requesting, attending or participating in any meeting of the partners;

Before this amendment the general law was unclear as to whether limited partners performing these activities would risk losing their limited liability protection as they could be seen as carrying out acts of management of the ELP and would thus fall to be treated as a general partner.

### Acting as GP

The amendments clarify that where a limited partnership acts as general partner of an ELP, the limited partners of such general partnership do not by that reason alone fall to be treated as general partners.

This was another area of uncertainty under the general law.

### Dissolution as if a Company

The new provisions make a significant amendment to the provisions dealing with how an ELP is to be wound up and dissolved. The amendments have, except where such provisions would be inconsistent with the ELP Law, incorporated by reference the liquidation provisions of Part V of the Companies Law (2007 Revision) along with the associated Companies Winding Up Rules 2008.

These new provisions provide much welcomed clarity as to how the liquidation of an ELP is to be conducted, the liquidator's role and powers, the rights of competing creditors and the treatment of fraudulent preferences

### Transfers of LP interests – no consent now required

The amendments have removed the requirement that all transfers of limited partner interests be pre-approved by the general partner. Any restrictions on transfer now fall to be addressed in the partnership agreement.

This amendment will potentially assist those LPs and their lenders where security is to be taken over LP interests.

### Automatic Dissolution after 90 days

The amendments clarify the timing for the automatic dissolution of the partnership which now occurs 90 days following the service of notice by the general partner on all limited partners confirming the (a) death, (b) commencement of liquidation or bankruptcy proceedings, or (c) withdrawal, removal or making of a winding up or dissolution order, in relation to the sole or last remaining general partner (subject to any other requirements of the partnership agreement); provided that a majority of partners as being entitled to vote under the partnership agreement can elect a replacement general partner before the dissolution date is reached and continue the business of the ELP.

Under these new provisions the LPs will be much better informed about the status of the general partner and can negotiate the terms of the partnership agreement to more fully provide for how the partnership business can be appropriately continued.

### Registers

Allowance has been made for the partnership registers to be kept electronically. Also, the register of partnership interests is now restricted to inspection by all partners or by any other person with the general partner's consent.

The previous ability for members of the public to potentially inspect the register of partnership interests was inconsistent with the equivalent provisions restricting access to shareholder registers in Exempted Companies.

### Clawback of distributions of capital

The amendments to the 'clawback' provisions require limited partners receiving any part of their capital contribution within 6 months of the ELP's insolvency to repay such amount plus simple interest at 10% per year, or as otherwise specified in the partnership agreement, to the extent that such repayment is necessary in order for the partnership to discharge a debt or obligation arising during the period in which that capital contribution formed part of the assets of the partnership.

### Comment

The Exempted Limited Partnership (Amendment) Law, 2009 represents an important and timely step towards updating the legal and operational framework for Cayman exempted limited partnerships. Additional changes are anticipated on other issues such as the treatment of the "gross negligence" standard in indemnity provisions, clarification as to the extent to which default provisions in limited partnership agreements can be regarded as unenforceable penalties, and the recognition of non-contracting third party rights. Further updates will be issued as and when additional amendments are enacted.

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