

# Continuing obligations of a Cayman Islands exempted limited partnership closed-ended fund

## Part A – Investment fund obligations

### Automatic Exchange of Information Legislation

Note in particular that penalties frequently apply for late filings and so the registered office should be informed promptly of any notifiable changes to allow the appropriate filing/s to be made.

The following covers the requirements of an investment fund in the Cayman Islands assuming it is a 'Reporting Financial Institution'<sup>1</sup> under automatic exchange of information legislation in the Cayman Islands.

Item	Action Required	Timing
FATCA <sup>2</sup>	<p><i>GIIN application</i></p> <p>As a Reporting Financial Institution, the fund must apply for a global intermediary identification number (<b>GIIN</b>). The GIIN application and filing can be done by a director, representative or appointee of the fund.</p>	Within 30 days of commencing business.
	<p><i>Register with TIA</i></p> <p>The fund is required to register with the Cayman Islands Tax Information Authority (<b>TIA</b>) in respect of its obligations under the US Regulations.</p>	No later than 30 April in the first calendar year in which the fund is required to comply with reporting obligations.
	<p><i>Due diligence</i></p> <p>Establish and maintain arrangements that are designed to identify reportable accounts and arrangements that are designed to establish the jurisdictions of residence, and where applicable United States citizenship of a limited partner.</p>	Immediately from launch and ongoing obligation.
	<p><i>Reporting</i></p>	31 May each year in respect of the previous calendar year or prior to dissolution, if dissolved during a calendar year.

Item	Action Required	Timing
<b>Common Reporting Standard<sup>3</sup></b>	<p><i>Register with TIA</i></p> <p>The fund is required to register with the TIA in respect of its obligations under the CRS Regulations.</p>	Prior to 30 April in the relevant reporting year.
	<p><i>Written policies and procedures</i></p> <p>Establish and maintain written policies and procedures for its obligations under the CRS Regulations and implement and comply with those policies and procedures. Identify the tax residency of all account holders.</p>	Immediately from launch and ongoing obligation.
	<p><i>Reporting</i></p> <p>Nil returns must be filed for all CRS reportable jurisdictions for which a fund has no reportable accounts.</p>	31 May each year in respect of the previous calendar year. Funds which are in liquidation or being wound up must fulfil their notification and reporting obligations as normal and notify the TIA of their final dissolution.

## Anti-Money Laundering Obligations

Item	Action Required	Timing and Penalties
<p><b>Anti-money laundering regulation compliance</b></p> <p>Relevant law and regulation:</p> <ul style="list-style-type: none"> <li>The Proceeds of Crime Law (<b>PCL</b>)</li> <li>The Anti-Money Laundering Regulations</li> <li>CIMA Guidance Notes on Prevention and Detection of Money Laundering and Terrorist Financing in the Cayman Islands, and</li> <li>CIMA Statement of Guidance on Outsourcing.</li> </ul> <p>A fund will have to comply with Cayman Islands anti-money laundering legislation, including designating natural persons as AML</p>	<p>The fund must designate as AMLCO a natural person at managerial level with the requisite skills and experience, to manage the compliance programme and report to the general partner. The fund must also appoint suitable natural persons at managerial level as MLRO and DMLRO, to whom suspicious activity reports are made.</p> <p>Generally the fund will then delegate performance of customer due diligence on its investors to an administrator. The AMLCO should be provided with periodic AML reports from the administrator and also reports on the fund's downstream investment activities, from its investment manager.</p> <p>If the administrator is regulated in an "equivalent jurisdiction"<sup>4</sup>, it can apply the AML regulations of that jurisdiction or if not, the administrator, fund or other service provider will need to comply</p>	<p>Immediately from launch and ongoing obligation.</p> <p>Penalties of up to CI\$500,000 (US\$609,750) and / or imprisonment for 2 years apply for breach of AML obligations.</p> <p>CIMA also has the power under the Monetary Authority Law (<b>MAL</b>) to impose significant administrative fines of up to CI\$1 million (US\$1.2 million) for breach of certain provisions of the Anti-Money Laundering Regulations. Breaches of other Cayman regulatory laws and regulations, including the Mutual Funds Law and Securities Investment Business Law, are also expected to be classified as prescribed matters in the future, so that CIMA will then be able to impose administrative fines for their breach, using its powers under the MAL. The level of an administrative fine will depend on various factors including whether the</p>

<p>compliance officer (<b>AMLCO</b>), money laundering reporting officer (<b>MLRO</b>) and deputy money laundering reporting officer (<b>DMLRO</b>). The fund may then delegate performance of certain AML obligations, including conducting customer due diligence on its investors, to a third party fund administrator in an equivalent jurisdiction.</p>	<p>with Cayman AML regulations.</p> <p>If the administrator is applying Cayman AML procedures or the fund/other service provider are implementing the AML procedures, they are required to:</p> <ul style="list-style-type: none"> <li>▪ Assess and apply a risk-based approach to money laundering and terrorist financing risks and compliance</li> <li>▪ Establish limited partner and beneficial owner identification procedures and conduct ongoing customer due diligence</li> <li>▪ Implement suspicious transaction reporting procedures</li> <li>▪ Maintain know-your-client information and suspicious transaction records</li> <li>▪ Develop internal controls, policies, reporting, procedures and record keeping that are appropriate to prevent money laundering, and</li> <li>▪ Implement an anti-money laundering training programme for staff members.</li> </ul>	<p>breach is committed by an individual or a body corporate and if the breach is classified as minor, serious or very serious.</p>
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## Part B: Exempted Limited Partnerships

Please see our [Guide to Exempted Limited Partnerships in the Cayman Islands](#) for details of exempted limited

partnerships established in the Cayman Islands under the Exempted Limited Partnership Law (the **ELP Law**).

Item	Action Required	Timing and Penalties
<p><b>Annual return and annual fee</b></p> <p>The annual fee is either:</p> <ul style="list-style-type: none"> <li>▪ CI\$1,200/US\$1,463 if regulated under the Mutual Funds Law; or</li> <li>▪ CI\$2,000 / US\$2,439 if not regulated.</li> </ul>	<p>Annual return is required to be filed with the Registrar of Exempted Limited Partnerships (<b>Registrar</b>) with payment of the annual government fee.</p> <p>Annual return includes declaration, by or on behalf of the general partner, that the partnership has complied with section 10(1) of ELP Law by filing any changes to the registered particulars of the partnership and section 9(1)(f), confirming that the Partnership has not undertaken business with the public in the Cayman Islands other than so far as necessary for carrying on its business outside Cayman.</p>	<p>By 1 January in each year after year of registration.</p> <p>Penalties as a percentage of the annual fee will accrue if the filing is not made before 1 April in the relevant year:</p> <ul style="list-style-type: none"> <li>▪ 33.33% if the return is submitted and the fee paid between 1 April and 30 June</li> <li>▪ 66.67% if the return is submitted and the fee paid between 1 July and 30 September, and</li> <li>▪ 100% if the return is submitted and</li> </ul>

Item	Action Required	Timing and Penalties
	<p>This fee will form part of the invoice from the registered office service provider in October of the preceding year. On receipt of funds, they will arrange for it to be paid and for the annual return to be filed.</p> <p>The Registrar will not issue a certificate of good standing for a partnership if it has outstanding fees or returns due.</p>	<p>the fee paid between 1 October and 31 December.</p> <p>These are in addition to any administrative fee charged by the partnership's registered office for filing a late annual return.</p>
<p><b>Register of limited partners</b></p> <p>The general partner must maintain a register containing the name and address of each limited partner, the date on which they became a limited partner and the date on which any person ceased to be a limited partner. A partnership must have at least one limited partner (and one qualifying general partner).</p> <p>The register may be kept outside the Cayman Islands and can be maintained by a third party administrator.</p> <p>The general partner must also keep at the partnership's registered office a record of the address where the register of limited partners is maintained, if it is not at the registered office.</p>	<p>Not required to be filed with the Registrar, but register and record of address must be updated within 21 days of any changes to the details in the register/address details.</p> <p>Register of limited partners and record of address shall be open to inspection: (a) subject to any express term in the partnership agreement, by all partners; and (b) by any other person with the consent of the general partner.</p> <p>The TIA may serve notice on a general partner to make the register of limited partners available to the TIA at the partnership's registered office if it is usually kept elsewhere.</p>	<p>Within 21 days of any change including on any subscription, redemption or transfer being accepted (the register of limited partners is prima facie evidence of limited partners).</p> <p>A general partner that fails to maintain the register of limited partners or address details incurs a penalty of CI\$10,000 / US\$12,195 for each day the default continues<sup>5</sup> and the general partner shall also indemnify any person who suffers any loss as a result of the default.</p> <p>CI\$500 / US\$610 penalty plus CI\$100 / US\$122 per day of ongoing default for non-compliance with a notice from the TIA without reasonable excuse.</p>
<p><b>Record of contributions</b></p> <p>The general partner must maintain a record of the amount and date of contributions of each limited partner and the amount and date of any payment of a return of the whole or any part of the contribution of any limited partner.</p>	<p>Not required to be filed with the Registrar, but record must be updated within 21 days of any changes.</p> <p>Records shall be open to inspection during all usual business hours in the place where they are maintained by any person with the consent of the general partner.</p> <p>The TIA may serve notice on a general partner to make the register of contributions available to the TIA at the partnership's registered office if it is usually kept elsewhere.</p>	<p>Within 21 days of any change including on any subscription, redemption or transfer being accepted.</p> <p>A general partner that fails to maintain the record of contributions incurs a penalty of CI\$10,000 / US\$12,195 for each day the default continues.</p> <p>CI\$500 / US\$610 penalty plus CI\$100 / US\$122 per day of ongoing default for non-compliance with a notice from the TIA without reasonable excuse.</p>
<p><b>Changes to information contained in Section 9 registration statement</b></p>	<p>Statement signed by a general partner specifying the nature of any change to the registered details of the partnership that were submitted under section 9(1) of the ELP Law must be filed with the</p>	<p>Penalty of CI\$200 / US\$244 per day payable by each general partner in default and the general partner shall also indemnify any person who suffers any loss as a result of the default.</p>

Item	Action Required	Timing and Penalties
	<p>Registrar within 60 days of the change.</p> <p>Section 9 (1) details are:</p> <ul style="list-style-type: none"> <li>▪ Name of partnership (which must include words “limited partnership” or letters “LP” or “L.P.”), including dual foreign name and translated name</li> <li>▪ General nature of the business of the partnership</li> <li>▪ Registered office address of the partnership</li> <li>▪ Term for which the partnership is entered into, and</li> <li>▪ Full name/s and address/es of the general partner/s (including at least one qualifying general partner<sup>6</sup>).</li> </ul> <p>A statement detailing any removal, replacement or admission of a general partner in a partnership must be filed with the Registrar within 15 days and the change in general partner is only effective once the statement has been filed.</p>	
<p><b>Register of security interests</b></p> <p>The general partner must maintain a register of security interests detailing all security interests notified to the partnership.</p> <p>Written notice of any security interest granted over the whole or part of a limited partnership interest must be given by the grantor (limited partner) or grantee of the security to the partnership at its registered office. The notice must set out the agreement which grants the security interest, including the date and parties, name of the grantor and grantee and the partnership interest which is subject to the security.</p> <p>The register must contain the name of the grantor and grantee, the partnership interest / part interest subject to the security interest and the date on which notice was validly served on the partnership.</p>	<p>Not required to be filed with the Registrar, but must be updated as soon as notice of a security interest is received by the partnership.</p>	<p>Upon receiving notice of security interest.</p> <p>Each general partner in default incurs a penalty of CI\$25 / US\$30 per day of default.</p>

Item	Action Required	Timing and Penalties
<p>The register must be kept at the registered office of the partnership and may be inspected by any person during usual business hours.</p>		
<p><b>Maintenance of books and records</b></p> <p>The books of account must be such as are necessary to give a true and fair view of the partnership's business and financial condition and to explain its transactions.</p> <p>The records can be kept at the registered office of the partnership or elsewhere.</p> <p>Subject to any express or implied term of the limited partnership agreement, each limited partner may demand and shall receive from a general partner true and full information regarding the state of the business and financial condition of the partnership.</p>	<p>The general partner must maintain proper books of account with respect to all sums of money received and expended by the partnership and the matters in respect of which the receipt and expenditure takes place, all sales and purchases of goods by the partnership, and the assets and liabilities of the partnership.</p> <p>The TIA may serve notice on a general partner to make copies of the books of account available to the TIA at the partnership's registered office if they are usually kept outside the Cayman Islands.</p>	<p>Books and records must be maintained by the general partner for 5 years from the date on which they are prepared.</p> <p>Penalty of CI\$5,000 / US\$6,098 for a general partner that knowingly or wilfully breaches obligations to maintain books or fails to make them available to the TIA without reasonable excuse plus CI\$100 / US\$122 per day for ongoing default with TIA notice.</p>
<p><b>Event of withdrawal notice</b></p> <p>The general partner must promptly serve on all limited partners notice of the death; start of liquidation, bankruptcy or dissolution proceedings; or withdrawal, removal or making of a winding up or dissolution order, of the sole or last qualifying general partner.</p>	<p>Prompt notice to limited partners by general partner.</p>	<p>Penalty of CI\$25 / US\$30 per day for each general partner in default.</p>
<p><b>Registered office</b></p>	<p>Partnership must have a registered office in the Cayman Islands for service of process and to which all notices and communications may be addressed.</p>	<p>Ongoing obligation.</p>
<p><b>General partner duties</b></p> <p>General partners have a duty under the ELP Law to conduct the business of the partnership and act at all times in good faith and, subject to any express contrary provisions in the limited partnership agreement, in the interests of the partnership.</p>		<p>Ongoing duty.</p>



For more information and key contacts  
please visit [harneys.com](http://harneys.com)

<sup>1</sup> Please speak to your usual Harneys contact if you believe that your fund is not a Reporting Financial Institution.

<sup>2</sup> Tax Information Authority (International Tax Compliance) (United States of America) Regulations (**US Regulations**).

<sup>3</sup> Tax Information Authority (International Tax Compliance) (Common Reporting Standard) Regulations (**CRS Regulations**)

<sup>4</sup> Current equivalent jurisdictions approved by the Government's Anti-Money Laundering Steering Group are Argentina, Australia, Austria, Bahamas, Bahrain, Barbados, Belgium, Bermuda, Brazil, British Virgin Islands, Canada, Curacao, Cyprus, Denmark, Finland, France, Germany, Gibraltar, Greece, Guernsey, Hong Kong, Iceland, India, Ireland, Isle of Man, Israel, Italy, Japan, Jersey, Liechtenstein, Luxembourg, Malta, Netherlands, New Zealand, Norway, People's Republic of China, Portugal, Singapore, Spain, Sweden, Switzerland, United Arab Emirates, United Kingdom and United States of America.

<sup>5</sup> Where per day penalties apply, the Registrar may cap the total penalty payable at CI\$1,000 / US\$1,220 if satisfied that the failure is not due to wilful default.

<sup>6</sup> At least one general partner must be an individual resident in the Cayman Islands, a company incorporated in the Cayman Islands, a company registered as a foreign company in the Cayman Islands, a limited liability company registered under the Limited Liability Companies Law of the Cayman Islands, a foreign limited partnership registered under the ELP Law or an exempted limited partnership itself.

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