

# Exempted limited partnerships in the Cayman Islands

The Exempted Limited Partnership Act (the **ELP Act**) governs the formation of exempted limited partnerships (**ELPs**) in the Cayman Islands and contains provisions relevant to the affairs of an ELP. This Guide sets out the key features of ELPs and how they can be formed under the ELP Act.

## Overview

The ELP Act defines a partnership as “the relation which subsists between persons carrying on a business with a view to profit”. An ELP is a partnership consisting of at least one general partner (who has responsibility for the business affairs of the partnership) and any number of limited partners, which is registered as such under the ELP Act.

## Uses of ELPs

ELPs are popular for investment fund and private equity structures. As noted in this guide, the ELP Act gives great flexibility to the partners of an ELP to regulate their relationship. The ELP is attractive to the private equity industry, private wealth and family offices and venture capital promoters who are looking for an alternative structure where the participants can operate a structure whose responsibility and liability can be determined by express agreement without the traditional burden of fiduciary responsibilities and associated liabilities of the directors of a company.

Please see our [Guide to Investment Funds in the Cayman Islands](#) and our [Guide to Private Funds in the Cayman Islands](#) for more information about LLCs which are established as investment funds or private equity funds.

## Establishment of an ELP

### Residency requirements

Every ELP must have a registered office in the Cayman Islands. There are also local residency requirements for at least one general partner as follows:

- if the general partner is an individual, he or she must be resident in the Cayman Islands
- if the general partner is a company, it must be registered under the Companies Act (either by incorporation as a Cayman Islands company or as a foreign company) or as a limited liability company under the Limited Liability Companies Act, or
- if the general partner is itself a limited partnership, it must be registered under the ELP Act (either by registration as an ELP or as a foreign limited partnership).

Local presence is a logical requirement so that the Cayman courts will have jurisdiction over the partnership and so that the partners are more readily accountable to the provisions of the ELP Act.

### General partner

Every ELP must have a general partner. The general partner is typically a Cayman Islands exempted company, but can be a Cayman Islands resident individual, a foreign company, a limited liability company established under the Cayman Islands Limited Liability Companies Act, another ELP or a foreign limited partnership. In the case of an exempted company, the management of the ELP ultimately rests with that entity’s board of directors. A key aspect of an ELP is that the general partner has unlimited liability in the event that the assets of the partnership are inadequate to satisfy the claims of creditors.

All documents entered into by an ELP must be executed by or on behalf of the general partner and legal proceedings for or against an ELP may be taken by or against one or more of the general partners.

A general partner has a statutory obligation to act at all times in good faith and, subject to any express provisions in the partnership agreement to the contrary, in the interests of the ELP.

## Formation and registration

Until it is registered, an ELP is a general partnership under Cayman Islands law and therefore it is crucial that registration happens immediately after the partnership is formed.

Registration of an ELP is done by paying the filing fee and filing a statutory statement (a **Section 9 Statement**) signed by or on behalf of the general partner with the Registrar of ELPs (the **Registrar**). The Section 9 Statement contains prescribed particulars of the ELP:

- its name
- a general description of its business
- its registered office address
- the term (if any) for which the ELP is entered into, and
- the particulars of its general partner.

The Section 9 Statement also includes a declaration made by the general partner that the ELP will not carry on business with the public in the Cayman Islands other than to the extent necessary to facilitate its overseas business.

On registration, the Registrar will issue a certificate of registration for the ELP. ELPs can be established on an express basis and no governmental or regulatory approvals are required. Please contact us for details of the current government fees payable.

## Name

The name of an ELP must include the words/letters "Limited Partnership" or "L.P." or "LP".

## The partnership agreement

As an ELP is effectively a contractual vehicle with a statutory overlay, the partnership agreement is the key document which deals with the way in which the business of the ELP is run and the rights and obligations of the partners among themselves. It will also deal with the admission, retirement and withdrawal of existing partners and the transfer of partnership interests, the allocation and distribution of profits of the ELP between the partners and the return of contributions to limited partners. Each limited partner will typically grant the general partner a power of attorney authorising them to take certain actions on behalf of the limited partners.

Depending on the nature of the business, the partnership agreement may be very brief, amounting to little more than a skeleton agreement under which the general partner may exercise considerable discretion, or it may be very detailed and robust, similar to the articles of association of a company. The partnership agreement is not registered with any authority and is not open to public inspection in the Cayman Islands.

## Features of an ELP

### Not a separate legal entity

An ELP is not a separate legal entity, but is a set of contractual obligations among the partners, with a general partner which manages the business, holds the assets of the ELP on trust for its parties and has unlimited liability for the ELP's debts and obligations, and limited partners who do not manage the business and have limited liability. Additionally, unlike a general

partnership, an ELP is not dissolved or disrupted by a change in the identity of the partners, the assignment of a limited partnership interest or the death or bankruptcy or incapacity of a limited partner.

## Transparent vehicle

ELPs are often treated differently than companies for onshore tax purposes, typically being treated as fiscally transparent. Onshore tax advice should always be taken prior to entering into any offshore arrangement or investment.

## Taxation

ELPs are exempted from any Cayman Islands income or gains taxes and can obtain a tax undertaking certificate from the Cayman Islands government guaranteeing no change in their tax status for a period of up to 50 years.

## Limited partners

Under the ELP Act, limited partners are partners who do not manage the business of the partnership or hold assets in the name of the partnership and whose liability for partnership obligations is typically limited to the level of their agreed commitment to the partnership. The partnership agreement may set out that contributions are payable in one single amount or in instalments, and may be payable in cash or by transfer to the partnership of non-cash assets, such as property or investments.

## Limited liability status

A limited partner does not lose its limited liability unless it takes part in the conduct of the business of the ELP in its dealings with persons who are not partners as though it were, for that period, a general partner. In such a case liability is only to a person who transacts business with the ELP with actual knowledge of the limited partner's management participation and who then reasonably believed the limited partner to be a general partner.

## What can a limited partner do in relation to the partnership without losing their limited liability?

As noted above, provided that limited partners do not take part in the conduct of the business of the partnership in its dealings with third parties, they will not lose their limited liability status. By way of example, the ELP Act sets out a non-exhaustive list of common actions which can be taken by a limited partner without them being deemed to take part in the conduct of the business of the ELP, including:

- holding an office or interest in, or having a contractual relationship with, a general partner, or being a contractor for or agent or employee of a general partner, or acting as a director, officer or shareholder of a corporate general partner
- consulting with and advising a general partner or consenting or withholding consent to any action proposed, in the manner contemplated by the partnership agreement, with respect to the business of the ELP
- investigating, reviewing, approving or being advised as to the accounts or business affairs of the ELP or exercising any right conferred under the ELP Act
- acting as surety or guarantor for the ELP generally or in respect of specific obligations
- approving or disapproving an amendment to the partnership agreement
- calling, requesting, attending or participating in any meeting of the partners
- taking any action that results in the winding up or dissolution of the ELP
- taking any action required or permitted by the partnership agreement or law to bring, pursue, settle or terminate any action or proceedings brought under certain specific circumstances under section 33(2) of the ELP Act
- appointing (or removing) a person to serve on any board or committee of the ELP, a general partner or a limited partner

- serving on any board or committee of the ELP, a general partner, the limited partners or the partners, or by appointing, electing or otherwise participating in the choice of a representative or any other person to serve on any board or committee, or by acting as a member of any board or committee either directly or by or through any representative or other person, including giving advice or consenting, or refusing to consent, to any action proposed by the general partner on behalf of the ELP and exercising any powers or authorities or performing any obligations as a member of that board or committee in the manner contemplated by the partnership agreement
- serving on the board of directors or a committee of, consulting with or advising or being an officer, director, shareholder, partner, member, manager, trustee, agent or employee of, or by being a fiduciary or contractor for, any person in which the ELP has an interest or any person providing management, consultation, custody or other services or other products for, to or on behalf of, or otherwise having a business or other relationship with, the ELP or a general partner
- voting as a limited partner on the winding up and dissolution of the ELP; the purchase, sale, exchange, lease, mortgage, pledge or other acquisition or transfer of any asset by or of the ELP; the incurrence or renewal of indebtedness by the ELP; a change in nature of the business of the ELP; admission, removal or withdrawal of a general or limited partner and the subsequent continuation of business of the ELP; or 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.

The limited partnership agreement should carefully delineate the respective roles of the general and limited partners to make sure that there is no inadvertent loss of limited liability.

The ELP Act explicitly confirms that a limited partner does not, unless the limited partnership agreement provides otherwise, owe any fiduciary duty to the partnership or any other partner.

### Dealings with partnership interests

With the consent of the general partner, a limited partner may transfer or grant a security interest in its partnership interest, subject to any provisions in the partnership agreement dispensing with or modifying the requirement for consent.

In the case of a transfer of a partnership interest, the transferee is typically admitted to the partnership in accordance with the formalities prescribed in the partnership agreement. Once the requirements for admission have been met, the ELP Act provides that the incoming partner is deemed to have agreed to and be bound by the terms and conditions of the partnership agreement as if all parties had together duly executed and delivered it.

A general partner may also, subject to the partnership agreement, transfer or grant a security interest in its general partnership interest with the written consent of any other general partner.

### Failures to perform

The partnership agreement may include provisions setting out the consequences for a partner who fails to perform any of its obligations under the partnership agreement. For example, the partnership agreement may provide that if a limited partner fails to contribute to the partnership such funds as were committed, that partner shall forfeit its partnership interest. The ELP Act expressly provides that such provisions in the partnership agreement will not be unenforceable solely on the basis that they may be penal in nature.

### Return of contributions

If a limited partner receives a payment (or is released from an obligation) in respect of its commitment and at the time that the payment or release was made the partnership is insolvent and the limited partner has actual knowledge of the insolvency, then for a period of six months the limited partner is liable to the partnership for the amount (to the extent required to settle the debts of the partnership).

## Ongoing obligations of an ELP

### Annual requirements

The general partner is required to make an annual return to the Registrar in January each year regarding compliance with the ELP Act and to pay an annual return fee. The annual return will generally be signed on behalf of the general partner by the registered office service provider. Details of relevant fees are available on request.

Please see our [Guide to continuing obligations for Cayman Islands ELPs](#) for further details of the ongoing requirements that apply

## Statutory registers

The general partner has the responsibility for maintaining (or causing to be maintained) the following statutory registers:

### *Register of limited partners*

This register must contain the name and address of each limited partner and the date on which a person became or ceased to be a limited partner. The register of limited partners can be kept anywhere in the world. If the register is kept at a place other than the registered office it must still be readily accessible, as it must be made available at the registered office should there be a notice or order for production under the Tax Information Authority Act.

The register can be kept in electronic form and must be updated within 21 days of any changes. The register (and the record of address at which the register is maintained if it is not maintained at the registered office) is open to inspection by all partners (subject to any express or implied term of the partnership agreement) and by any other person with the consent of the general partner.

### *The record of contributions and payments*

The record of contributions and payments must show 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 the contribution of any limited partner. As with the register of limited partners, this record may be kept in or outside of the Cayman Islands but must be updated within 21 days of any change and be accessible to the registered office. These records are only available for inspection by any person (including a limited partner) with the consent of the general partner.

### *The register of security interests in relation to limited partnership interests*

A register of security interests that have been granted over any limited partnership interest must be maintained at the registered office. When a security interest is granted over the whole or any part of a limited partnership interest, the ELP Act requires that notice must be given by the grantor (ie the limited partner) or the grantee (eg the lender) to the ELP at the registered office. The general partner must then enter on the register the identity of the grantor and the grantee, the relevant partnership interest, and the date on which notice of the security interest was validly served. The register must be open for public inspection during regular business hours. Any security interest has priority according to the time that the written notice is validly served at the registered office.

## Changes to the Section 9 Statement

Any changes to the Section 9 Statement must be promptly notified to the Registrar, by filing an amended statement signed by the general partner. In general, changes must be notified within 60 days; however, a change to the general partner must be filed within 15 days of the change and is not effective until that filing is made.

## Accounts

The general partner is required to keep (or cause to be kept) proper books of account. The records must be sufficient to give a true and fair view of the business and financial condition of the ELP and to explain its transactions. These records must be retained for a minimum period of five years.

Subject to the partnership agreement, each limited partner may demand and receive from the general partner a true and full picture of the state of the business and financial condition of the partnership.

There is no requirement for the accounts of an ELP to be audited each year under the ELP Act, although this may be required if the partnership is otherwise regulated, for example under the Mutual Funds Act.

## Transfers in and out of the Cayman Islands

A general partner may apply to the Registrar to de-register the ELP in the Cayman Islands and continue the partnership in another jurisdiction. For de-registration to be available, the foreign jurisdiction must permit (or not prohibit) the transfer of the ELP. In addition, a fee must be paid and the application must be supported by an affidavit of the general partner assuring the Registrar that certain conditions are met, eg the solvency of the partnership.

## Termination and Winding up of an ELP

### Strike off

Where the Registrar has reasonable cause to believe that an ELP is not carrying on business or is not in operation, it may strike the partnership from the register. A general partner may also request, upon payment of a prescribed fee, that an ELP be struck off the register. A partner or creditor aggrieved by a striking off may apply to have the ELP restored to the register. An ELP is deemed to be dissolved once it has been struck off.

### Winding up and dissolution

Most ELP agreements contain provisions prescribing the automatic winding up and dissolution of the partnership upon the occurrence of a particular event. That event is typically the passing of a resolution by the general partner to the effect that the partnership's affairs be wound up and the partnership dissolved. In the absence of such a provision, a solvent partnership will continue in existence until wound up and dissolved by a resolution of all general partners and a two-thirds majority of the limited partners.

The death, bankruptcy or incapacity of the last remaining general partner will cause an automatic dissolution of the ELP unless the limited partners take steps to replace them

A partner or creditor can also apply to the court for an order for dissolution on just and equitable principles. It is possible to include a contractual non-petition covenant in the partnership agreement to guard against this. In cases not involving automatic dissolution, the provisions of Part V of the Companies Act and the Companies Winding Up Rules are deemed to apply.

## Funds regulation and AML compliance

If an ELP is established as an open-ended investment fund and falls within the definition of a "mutual fund" under the Mutual Funds Act, or if it is a closed ended fund and falls within the definition of a "private fund" under the Private Funds Act, it may be regulated by CIMA and will also have to comply with Cayman Islands anti-money laundering legislation.

Please see our [Guide to Investment Funds in the Cayman Islands](#) and [Guide to Private Funds in the Cayman Islands](#) or contact your usual Harneys representative for more information about ELPs which are established as mutual funds or private funds.



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

---

© Harneys, September 2022

Harneys is a leading international offshore law firm. From locations around the globe, Harneys advises the world's top law firms, financial institutions and corporations on the laws of British Virgin Islands, Cayman Islands, Cyprus, Luxembourg, Bermuda, and Anguilla. For more information about Harneys please visit [harneys.com](https://www.harneys.com) or contact us at [marketing@harneys.com](mailto:marketing@harneys.com).

The foregoing is for general information only and not intended to be relied upon for legal advice in any specific or individual situation. Bermuda legal services are provided through an association with Zuill & Co which is an independently owned and controlled Bermudian law firm