

Exempted Limited Partnerships

It is generally accepted that for a partnership to be established, there must be two or more persons or entities carrying on business with a view to profit. In the case of an exempted limited partnership (ELP), the general partner must conduct the business (subject to certain defined exceptions) whilst the limited partners merely contribute capital and/or expertise. Subject to the foregoing, the limited partners generally receive the benefit of liability which is limited to the amount of their interest in the ELP. Profits are allocated amongst the partners in accordance with the provisions of the partnership agreement.

A significant characteristic of a Cayman Island exempted limited partnership (ELP) is that a limited partner's interest can be redeemed at any time without requiring dissolution of the ELP, subject only to a clawback of such redemption proceeds (plus simple interest at 10% per annum, or at such rate as may be stated in the partnership agreement) should the ELP become insolvent within 6 months. The amount to be clawed back would be such sum as is necessary to settle any debt or obligation of the ELP incurred during the period that the limited partner's contribution formed part of the assets of the ELP.

The Exempted Limited Partnerships Law, as amended, also allows partnership interests to be used as security by limited partners, and allows limited partners to lend to an ELP, thereby enabling flexible funding structures.

Establishing an Exempted Limited Partnership

An ELP is formed by means of a partnership agreement. The ELP is registered in the Cayman Islands by way of a filing with the Registrar together with certain other documentation. The filing must include:

- the name of the general partner (but not the limited partners);
- the location of the registered office of the partnership;
- the objects of the partnership; and
- the duration of the partnership.

Services

- Formation of and corporate governance services to Exempted Limited Partnerships and associated entities, including general and limited partners.
- Registered Office Services.
- Secretarial Services



General Partner

A general partner may be an individual, a company or a partnership and at least one general partner must be resident in the Cayman Islands. It is a requirement that at least one general partner must be:

- a person resident in the Cayman Islands;
- a company incorporated in the Cayman Islands;
- a partnership registered in the Cayman Islands; or
- a foreign company registered in the Cayman Islands pursuant to Part IX of the Companies Law (Revised).

Continuing Obligations

The documents that must be filed with the statement are: certificate of good standing and certificate of incorporation for each of the general partners.

A registration fee of US\$1,220 is payable to the Cayman Islands Government upon registration of an ELP.

(Continued overleaf)

(Continued from previous page) A general partner must file an annual return with the Cayman Islands Government by 31st January in each year and pay annual fee of US\$1,463 (for a regulated ELP) or \$2,439 (for a non-regulated ELP) when submitting the return. Details of IMS' fees for our assistance with the establishment of an ELP (and where required the general partner and any limited partners) as well as our annual fees for the provision of the registered office of the ELP are available upon request.

Where there is any change in respect of any information in the statement submitted at the time of registration of the ELP, a further statement must be filed with the Registrar detailing change(s) within 60 days of the change, or within 15 days where any person or entity ceases to be a general partner. Penalties accrue if such a statement is not filed within the prescribed periods and is payable by each general partner for each day of default in the obligation. General partners are also required to indemnify any party who suffers any loss as a result of such changes.

A register of limited partners and the amounts and dates of their respective contributions must be kept at the ELP's registered office. Limited partners have a statutory right to inspect the register.

A register of mortgages detailing any securities or charges granted by a limited partner over his limited partnership interest must also be kept, which governs the question of priority. The register of mortgages is open to public inspection but is not filed with the Registrar or any Cayman Islands government authority. Penalties accrue which are payable by each general partner for each day of default where such a register is not kept and maintained.

The Law also provides that any return of contribution received by a limited partner, in circumstances where the partnership becomes insolvent within the following 6 months, must be repaid (together with simple interest at 10% per annum, or otherwise as may be stated in the partnership agreement) to the extent necessary to discharge any prior obligation of the partnership. Any service provider concerned with the partnership should therefore exercise caution to ensure that the partnership is solvent (and that it is likely to remain so for at least 6 months) before any return of contribution is made.

Tax

An ELP may apply for an undertaking to be granted on behalf of the Cayman Islands' Government that, for a period not exceeding fifty (50) years from the date of the undertaking, that no law which is enacted in the Islands imposing any tax to be levied on profits or income or gains or appreciations shall apply to the ELP or to any partner thereof in respect of the operations or assets of such ELP or the partnership interest of a partner therein.

Partnership Agreement

The partnership agreement governs the operation of the ELP and details (i) the rights, powers and obligations of the general partners and the limited partners (and any limitations on their authority); (ii) the admission of additional partners and withdrawal of existing partners; (iii) the transfer of partnership interests; (iv) the accounting requirements of the ELP; and (v) the allocation and distribution of profits among the partners, as well as provisions relating to the return of contributions to the limited partners. Such provisions are subject to the terms of the Law, which include the clawback provision referred to above. It will also deal with the matters set out in the registration statement referred to above.

Contributions are not required to be made in the form of money so provided the partnership agreement provides as such, contributions of property, investments or other assets (such as expertise) may be permitted.

Since the Law provides that certain statutory powers or provisions are subject to the terms of the partnership agreement and that some such powers and provisions may not be excluded or amended by the partnership agreement, we insist that local Cayman counsel are involved in the drafting of the partnership agreement, or at the very least, review the agreement before execution.

The information contained in this document is for information only and should not be relied upon as constituting legal or other advice. None of the IMS group of companies provide legal or tax advice, and we encourage you to obtain professional advice before establishing any offshore vehicle. IMS has long-standing relationships with all of the major Cayman legal and accounting practices and can make introductions to the same where required.

Should you require further information relating to Exempted Limited Partnerships, please **contact us:**

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