

CAYMAN ISLANDS



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**A BILL FOR A LAW TO AMEND THE EXEMPTED LIMITED
PARTNERSHIP LAW (2007 REVISION) TO PROVIDE FOR THE
REGULATION OF DE-REGISTRATION, WINDING-UP AND
DISSOLUTION OF EXEMPTED LIMITED PARTNERSHIPS AND OF
CHANGES IN RELATIONSHIPS BETWEEN THE PARTNERS OF
EXEMPTED LIMITED PARTNERSHIPS; AND FOR INCIDENTAL AND
CONNECTED PURPOSES**

**THE EXEMPTED LIMITED PARTNERSHIP (AMENDMENT) BILL,
2009**

MEMORANDUM OF OBJECTS AND REASONS

This Bill would amend the Exempted Limited Partnership Law (2007 Revision) by providing for the regulation of de-registration, winding-up and dissolution of exempted limited partnerships and for changes in relationships between the partners of exempted limited partnerships

Clause 1 of the Bill provides the short title.

Clause 2 makes minor amendments to some definitions in the principal Law and introduces a new definition to clarify what is meant by a “majority of partners”.

Clause 3 amends section 4 of the principal Law to better define when a person is deemed to be a general partner of an exempted limited partnership.

Clause 4 of the Bill amends section 6 of the principal Law by making a minor amendment to the required phrasing of the title of an exempted limited partnership. It also deletes subsections (2) and (3) which are relocated elsewhere in the principal Law.

Clause 5 amends section 7 of the principal Law by clarifying what a limited partner may or may not do without becoming a de facto general partner. It also clarifies who may wind up the affairs of an exempted limited partnership on dissolution; makes minor amendments to the provisions governing the actions which do not amount to a dissolution; makes clarifications to the provisions governing assignments of partners’ interests; and makes further provision concerning the holding of partnership assets and the incurring of partnership debts by the general partner.

Clause 6 amends section 11 of the principal Law and makes minor amendments to the provisions governing the form of the register of the partnership contributions.

Clause 7 of the Bill amends section 12 of the principal Law by making a minor grammatical amendment to the provisions governing partners’ rights to an account.

Clause 8 makes a consequent amendment to a cross-reference.

Clause 9 amends section 14 of the principal Law and clarifies the duty of a partner who receives a refund of part or all of his contribution, within six months before an insolvency of the partnership, to repay the refund. It also makes more certain the date from which the six month period is to run.

Clause 10 of the Bill repeals and replaces the provisions governing the winding up and dissolution of an exempted limited partnership. They are brought, so far as is possible, in line with the provisions of the Companies Law (2007 Revision) as amended by the Companies (Amendment) Law 2007.

Clause 11 is a new provision clarifying the procedure to be followed on de-registration.

**THE EXEMPTED LIMITED PARTNERSHIP (AMENDMENT) BILL,
2009**

ARRANGEMENT OF CLAUSES

1. Short title
2. Amendment of section 2 of the Exempted Limited Partnership Law (2007 Revision) - definitions
3. Amendment of section 4 - constitution
4. Amendment of section 6 - name and registered office
5. Amendment of section 7 - modification of general law
6. Amendment of section 11 - register of limited partnership interests
7. Amendment of section 12 - right to account
8. Amendment of section 13 - proceedings
9. Amendment of section 14 - return of contributions
10. Repeal and substitution of section 15 - dissolution
11. Insertion of section 26 - de-registration

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A BILL FOR A LAW TO AMEND THE EXEMPTED LIMITED PARTNERSHIP LAW (2007 REVISION) TO PROVIDE FOR THE REGULATION OF DE-REGISTRATION, WINDING-UP AND DISSOLUTION OF EXEMPTED LIMITED PARTNERSHIPS AND OF CHANGES IN RELATIONSHIPS BETWEEN THE PARTNERS OF EXEMPTED LIMITED PARTNERSHIPS; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

1. This Law may be cited as the Exempted Limited Partnership (Amendment) Law, 2009. Short title

2. The Exempted Limited Partnership Law (2007 Revision), in this Law referred to as the “principal Law”, is amended in section 2 - Amendment of section 2 of the Exempted Limited Partnership Law (2007 Revision) - definitions

- (a) in the definition of the term “contribution” by inserting after the word “contributes” the words “or agrees to contribute”;
- (b) in the definition of the term “insolvency of the exempted limited partnership” by deleting the words “and “solvent” shall be construed accordingly”; and
- (c) by inserting, after the definition of the term “limited partner”, the following definition -

“majority of partners” means such voting majority as is specified in the partnership agreement or if not so specified, a simple majority of the partners calculated by reference to capital contributions;”.

Amendment of section 4
- constitution

3. The principal Law is amended in section 4 by inserting after subsection (5) the following subsection -

“(6) A limited partner of a partnership which is the general partner of an exempted limited partnership shall not, by virtue of that fact alone, be taken to be a general partner of such exempted limited partnership.”.

Amendment of section 6
- name and registered
office

4. The principal Law is amended in section 6 -

- (a) in subsection (1) by deleting “L.P.” and substituting “L.P.” or “LP” ; and
- (b) by repealing subsections (2) and (3).

Amendment of section 7
- modification of general
law

5. The principal Law is amended in section 7 -

- (a) in subsection (1), by inserting, after the words “entered into by” the words “or on behalf of”;
- (b) in subsection (3) -
 - (i) in paragraph (a), by inserting at the beginning the words “holding an office or interest in, or having a contractual relationship with, a general partner or”;
 - (ii) in paragraph (b), by inserting after the words “general partner” the words “or consenting or withholding consent to any action proposed, in the manner contemplated by the partnership agreement,”; and
 - (iii) by deleting the word “or” appearing at the end of paragraph (e) and inserting after paragraph (e), the following paragraphs -
 - “(ea) calling, requesting, attending or participating in any meeting of the partners;
 - (eb) taking any action that results in the winding up or the dissolution of the exempted limited partnership;
 - (ec) taking any action required or permitted by the partnership agreement or by law to bring, pursue, settle or terminate any action or proceedings brought pursuant to section 13(2); or
 - (ed) appointing a person to serve on any board or committee of the exempted limited partnership, a

- general partner or a limited partner or removing a person therefrom; or”;
- (c) in subsection (5) -
 - (i) by inserting after the words “the general partner” the words “or such other person as may be appointed pursuant to the partnership agreement”; and
 - (ii) by deleting the words “section 15(2) or unless the business of the exempted limited partnership is assumed and continued in accordance with the proviso to section 15(3)” and substituting the words “section 15(4)(f)”;
 - (d) in subsection (6) -
 - (i) by deleting the words “and to section 15(3)”;
 - (ii) by repealing paragraph (a) and substituting the following paragraph -
 - “(a) an exempted limited partnership shall not be dissolved by -
 - (i) changes in, additions to or substitutions of any one or more of the partners;
 - (ii) the assignment of the whole or part of the partnership interest of a limited partner;
 - (iii) the death, bankruptcy, dissolution, removal, withdrawal or winding up of a limited partner or a partner’s withdrawal or redemption of, or repurchase by the partnership of, any partnership interest;
 - (iv) the incapacity of a limited partner;
 - (v) any one or more of the limited partners granting a mortgage, charge or other form of security interest over the whole or part of his partnership interest;
 - (vi) the sale, exchange, lease, mortgage, pledge or other transfer of any of the assets of the exempted limited partnership; or
 - (vii) a de-registration of the exempted limited partnership pursuant to section 26;”;
 - (iii) in paragraph (b) by deleting the words “by a majority in interest of the general partners” and substituting the words “by such majority of the general partners, as is provided in the partnership agreement”;
 - (e) in subsection (7) -
 - (i) by repealing paragraph (a) and substituting the following paragraphs -

- “(a) Upon assignment of a limited partnership interest in whole or in part either absolutely or by way of mortgage, in accordance with the terms of the partnership agreement, an assignee shall, to the extent of such assignment, become a limited partner with the rights and subject to the obligations of the assignor (and, subject to paragraph (aa), wholly or partly in place of and to the exclusion of the assignor as the case may be) in accordance with the partnership agreement and this Law in respect of the partnership interest or part thereof assigned.
- (aa) An assignee referred to in paragraph (a) shall not assume any liability of the assignor arising pursuant to subsection (2) or section 14(1), and no such assignment shall relieve the assignor of any liability arising under such subsections.”; and
- (ii) in paragraph (b) -
 - (A) by deleting the words “Subject to paragraph (a)” and substituting the words “Subject to paragraphs (a) and (aa)”;
 - (B) by deleting the words “in writing on one or more sheets, whether bound or unbound.”; and
- (f) by inserting after subsection (7) the following subsections -
 - “(8) Any property of the exempted limited partnership that is conveyed to or vested in or held on behalf of any one or more of the general partners or which is conveyed into or vested in the name of the exempted limited partnership shall be held or deemed to be held by the general partner, and if more than one then by the general partners jointly, upon trust as an asset of the exempted limited partnership in accordance with the terms of the partnership agreement.
 - (9) Any debt or obligation incurred by a general partner in the conduct of the business of an exempted limited partnership shall be a debt or obligation of the exempted limited partnership.”.

Amendment of section
11 – register of limited
partnership interests

6. The principal Law is amended in section 11 -

- (a) in subsection (1) by deleting the words “a register, in writing on one or more sheets, whether bound or unbound, and there shall be set forth therein the name and address” and substituting the words “a register which shall contain the name and address”; and

- (b) in subsection (2) -
 - (i) by deleting the words “by any person”; and
 - (ii) by inserting after the words “usual business hours” the words “by all partners or by any other person with the consent of the general partner”.

- 7. The principal Law is amended in section 12 by deleting the words “to the contrary”. Amendment of section 12 – right to account

- 8. The principal Law is amended in the proviso to section 13(1) by deleting “14(2)” and substituting “14(1)”. Amendment of section 13 - proceedings

- 9. The principal Law is amended in section 14 - Amendment of section 14 – return of contributions
 - (a) by repealing subsections (1) and (2) and substituting the following subsection –

“(1) 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 the exempted limited partnership 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 otherwise 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 exempted limited partnership incurred during the period that the contribution represented an asset of the exempted limited partnership.”; and
 - (b) by inserting after subsection (3) the following subsection -

“(4) Where an exempted limited partnership is voluntarily wound up and dissolved under section 15(1) the period of six months referred to in subsection (1) shall be calculated from -

 - (a) the time of the passing of a resolution for winding up;
 - (b) the time or the occurrence of the event specified in the partnership agreement; or
 - (c) the insolvency of the exempted limited partnership,

whichever is the earlier.”.

- 10. The principal Law is amended by repealing section 15 and substituting the following section - Repeal and substitution of section 15 - dissolution

“Dissolution

15. (1) An exempted limited partnership shall be wound up at the time or upon the occurrence of any event specified in the partnership agreement and dissolved in accordance with the terms thereof.

(2) The exempted limited partnership shall continue until wound up and dissolved by resolution of all the general partners and a two-thirds majority of partners, unless otherwise specified in the partnership agreement.

(3) An exempted limited partnership shall not be dissolved by an act of the partners or otherwise until a notice of dissolution signed by a general partner or liquidator has been filed with the Registrar on completion of the winding up of the partnership.

(4) Except to the extent that such provisions are not consistent with this Law (and in the event of any inconsistencies, this Law shall prevail) and subject to any express provisions of this Law to the contrary, the provisions of Part V of the Companies Law (2007 Revision) and the Companies Winding Up Rules 2008 shall apply to the winding up and dissolution of an exempted limited partnership, and for which purpose -

(2007 Revision)

- (a) references in Part V to a company shall include references to an exempted limited partnership;
- (b) the limited partners shall be treated as if they were shareholders of a company and references to ‘contributories’ in Part V shall be construed accordingly, except that the application of such provisions shall not cause a limited partner to be subject to any greater liability than he would otherwise bear under this Law, but for the application of this paragraph;
- (c) references in Part V to a director or officer of a company shall include references to the general partner of an exempted limited partnership;
- (d) except for sections 123 (excluding paragraphs (b) and (c)), 140, 145, and 146

thereof, Part V shall not apply to a voluntary dissolution and winding up under subsection (1);

- (e) the Insolvency Rules Committee established pursuant to the Companies Law (2007 Revision) shall have the power to make rules and prescribe forms for the purpose of giving effect to this section or its interpretation; and
- (f) on application by a partner or a creditor, the court may make such orders and give such directions for the winding up and dissolution of an exempted limited partnership as may be just and equitable.

(5) Subject to any express or implied term of the partnership agreement to the contrary, and subject to subsection (6), an exempted limited partnership shall be immediately dissolved on the date (the “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).

(6) 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 exempted limited partnership may be resumed and continued as provided for in the partnership agreement or any subsequent agreement.

(7) Unless the partnership agreement provides otherwise, if a new general partner is not elected by the automatic dissolution date the exempted limited partnership shall be wound up and dissolved in accordance with the partnership agreement or such orders or directions as the court may make or give in accordance with subsection (4).”.

Insertion of section 26 –
de-registration

11. The principal Law is amended by inserting after section 25 the following section -

“De-registration

26. A general partner of an exempted limited partnership may at any time de-register the partnership, if such de-registration is permitted under the terms of the partnership agreement, by filing a written notice of de-registration with the Registrar together with written confirmation that such action is authorised by the partnership agreement.”

Passed by the Legislative Assembly the day of , 2009.

Speaker.

Clerk of the Legislative Assembly.