

## Exempted Limited Partnership Law, 2014

The new Exempted Limited Partnership Law, 2014 (the new “ELP Law”), which repeals and replaces the current law, is shortly expected to come into force in the Cayman Islands. The ELP Law recognises developments in commercial practice, clarifies certain matters in order to ensure consistency of advice and allows for greater contractual flexibility to accommodate developing trends in the formation, regulation and operation of exempted limited partnerships.

This advisory is intended for general guidance only and is not, nor should it be used for, a substitute for specific legal advice on any particular transaction or set of circumstances. It has been prepared on the basis of a draft of the bill which has not yet been signed into Law, such that the section numbers may change.

### Background

The Cayman Islands first enacted legislation allowing for the creation of exempted limited partnerships in 1991. After several legislative revisions, the law has been replaced by the Exempted Limited Partnership Law, 2014 (the “new ELP Law”). The new ELP Law clarifies certain matters in order to ensure consistency of advice. This new ELP Law allows greater contractual flexibility to accommodate developing trends in the formation, regulation and operation of such entities.

Many of the provisions of the new ELP Law are the same as in the former law; as such this advisory focuses on the changes.

### Transitional Provisions

Existing exempted limited partnerships are treated as if they were established under and benefit from all the provisions of the new ELP Law.

### Issues Addressed

#### Section 2

There is a new definition of commitment that includes services rendered, and the revised definition of “contribution” also includes “services”. This makes clear that employees of the general partner can receive a limited partnership interest in return for services performed.

#### Section 4(6)

Clarifies that the limited liability of limited partners is not lost simply by reason of the partnership ceasing to have

a qualifying general partner.

### **Section 15**

Where there are multiple general partners, the partnership agreement may specify which general partner may exercise an authority, consent or power, and allow for specific and separate authorities. This gives statutory basis for provisions such as those appointing a tax matters partner with authority to make all tax filings on behalf of the partnership.

This does not in any way limit the liability of another general partner for such acts (even though it may not have the authority or power to carry out the act), and general partners continue to have unlimited joint and several liability for the acts or omissions of other general partners.

### **Section 16(3)**

Expressly confirms the ability of exempted limited partnerships to create floating charges over the assets of the partnership.

### **Section 17(2)**

Vests all rights or property of the exempted limited partnership in any incoming general partner(s) by operation of law without the requirement for further formalities (at least as a matter of Cayman Islands law). Likewise, on the withdrawal of any general partner, all rights or property of the exempted limited partnership will vest in the remaining general partner(s) by operation of law without the requirement for further formalities (again, at least as a matter of Cayman Islands law).

### **Section 19(1)**

Allows the partnership agreement to contractually vary the statutory duty of a general partner to act in good faith so as to allow the partnership to deal in a practical manner with issues such as conflicts of interest.

### **Section 19(2)**

Provides confirmation that, subject to any express provision of the partnership agreement, a limited partner does not owe fiduciary duties to any other partner arising from its rights or obligations under the partnership agreement.

### **Section 25**

Allows wide discretion in specifying the consequences of a breach of partnership agreement (for example default sanctions) and provides that such provisions are not to be unenforceable solely because they are penal in nature.

### **Section 27**

Simplifies the formalities associated with the execution of partnership agreements, and documents executed on behalf of a partnership, by providing that the same will have been validly executed if executed in the manner contemplated by the parties.

### **Section 28**

Provides that if a partnership agreement incorporates the grant of a power of attorney it shall be effective as if

executed as a deed, even if the formalities otherwise required under Cayman law for the execution of a power of attorney have not been followed. This provision has retrospective effect.

### **Section 32**

Simplifies and clarifies the formalities associated with the admission and transfer of partnership interests, by providing that admission is effective as long as it is in compliance with the partnership agreement's prescribed protocol, even though formalities otherwise required have not been complied with. These provisions have retrospective effect. It also provides that a transferee shall not assume any liability of the transferor and that a transferee is not relieved of any liability unless otherwise agreed.

### **Section 34**

Clarifies the time period to that applies to 'statutory clawbacks' in the event of the insolvency of an exempted limited partnership. If a limited partner receives a payment representing a return of any part of its contribution (or is released from any outstanding obligation in respect of its commitment) at a time when the exempted limited partnership is insolvent and the limited partner has actual knowledge of such insolvency, such limited partner shall be liable to repay such amount for a period of six months commencing on the date of that the payment was made.

### **Section 36**

Clarifies and streamlines the provisions for the dissolution of an exempted limited partnership (see also the new 'strike off' procedure at Section 37 (set out below)).

## **New Provisions of the ELP Law**

### **Section 6(1)**

Exempted limited partnerships may now have a dual name in another language (in line with Cayman Islands companies). The dual name does not need to be an exact translation of the English name of the partnership.

### **Section 20(2)(j) and (k)**

Expands the express limited liability 'safe harbour' for limited partners serving on any board or advisory committee, or being an officer, director, shareholder, partner, member, manager, trustee, agent or employee of, or a fiduciary or contractor for, any person in which the exempted limited partnership has an interest, or any counterparty to the exempted limited partnership or a general partner. (There are additional provisions with regard to advisory boards, see Section 24 below.)

### **Section 24(1) and 24(2)**

Provides that the benefit of the terms relating to advisory boards under the partnership agreement may be enforced by the members of the boards notwithstanding that they may not be parties to the partnership agreement, and that, subject to the partnership agreement, members of the advisory committees do not owe fiduciary duties as a result of exercising rights / obligations under such committees.

### **Section 26**

Gives the express ability to a third party to execute the partnership agreement in order to take the benefit of a provision or obligation thereunder without being deemed a partner.

### **Sections 29 & 30**

Under the former law details of the contributions of the limited partners required to be included in the register of partnership interests which was open for inspection by partners (and other persons with the consent of the general partner). The new ELP Law provides that the register of limited partners need only contain the name and address of each person who is a limited partner, the date on which such person became a limited partner and the date it ceased to be a limited partner. Details of contributions may now be kept in a separate register which may only be inspected with the consent of the general partner, preserving the confidentiality of such information. This applies also to existing partnerships registered under the former law.

In accordance with an earlier revision these registers may be kept outside the Cayman Islands. Where these registers are kept at a place other than at the registered office, the general partner must make them available at the registered office pursuant to an order or notice from the Cayman Islands Tax Information Authority pursuant to the Tax Information Authority Law (2013 Revision).

### **Section 37**

Allows an application to be made to have an exempted limited partnership that is no longer carrying on business struck from the register. A partner or creditor may apply to the Court to restore an exempted limited partnership within certain timeframes.

### **Section 42**

Enables a foreign limited partnership to be registered in the Cayman Islands in order that it may act as the general partner of a Cayman Islands exempted limited partnership. Previously, only Cayman Islands persons or foreign companies registered in the Cayman Islands under Part IX of the Companies Law could act as a general partner of a Cayman Islands exempted limited partnership.

### **Section 43**

Introduces a specific process for a Cayman Islands exempted limited partnership to transfer to another jurisdiction by way of continuation (which previously was accomplished by de-registering the partnership in the Cayman Islands and at the same time registering it in another jurisdiction). The new procedure is equivalent to the procedure which exists for Cayman Islands companies.

Should you have any queries regarding the above, or if we can be of any assistance, please do not hesitate to contact your usual Campbells contact or any of the following:



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