

GUIDANCE NOTE

Duties and Liabilities of General
Partners of Cayman Islands
Exempted Limited Partnerships



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DUTIES AND LIABILITIES OF GENERAL PARTNERS OF CAYMAN ISLANDS EXEMPTED LIMITED PARTNERSHIPS

INTRODUCTION

An Exempted Limited Partnership (“**Partnership**”) registered in the Cayman Islands and the duties and liabilities of its general partner (“**GP**”) are governed by the Exempted Limited Partnership Law, 2014 (the “**ELP Law**”), The Partnership Law (2013 Revision) and the common law so far as it has not been amended by statutory provision.

DUTIES OF THE GENERAL PARTNER

Scope of fiduciary duty

The GP has a duty under the ELP Law to act at all times in good faith and, subject to any express provisions of the limited partnership agreement (“**LPA**”) to the contrary, in the interests of the Partnership.

There is no specific guidance in the ELP Law as to the full extent of this duty, and no decision of the Cayman Islands' courts on the point. It is reasonable to assume that the courts will look to decisions of the English and Commonwealth courts for guidance.

Decisions defining the scope of the fiduciary duties of company directors are helpful guidance. These duties include:

1. a duty to act in what the GP *bona fide* considers to be the best interests of the Partnership, subject to any express provisions of the LPA;
2. a duty to exercise its powers for the purposes for which they are conferred;
3. a duty of trusteeship of the Partnership assets (note that there is in addition a specific statutory provision to this effect under the ELP Law);
4. the duty, where possible, to avoid conflicts of interest and of duty;
5. a duty to disclose personal interest in contracts involving the Partnership;
6. a duty not to make secret profits; and
7. a duty to act with skill and care.

Standard of skill and care

There is no reported authority in the Cayman Islands that formulates a test for the standard of care applicable to a GP.

In recent years the English and Commonwealth common law authorities have placed increasing emphasis on an objective test to be considered alongside a subjective test, when considering the standard of skill and care that should be exercised by directors.

It is likely that the Cayman Islands courts would look to these authorities for guidance.



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The objective test considers the standard of skill and care that would reasonably be expected of a person in the position of the GP, and the subjective test considers the actual knowledge, experience and expertise of the GP.

Books and records

A GP has a duty to keep proper books of account including material and ongoing documentation (the "**Books of Accounts**") with respect to:

1. all sums of money received and expended by a Partnership;
2. all sales and purchases of goods by the Partnership; and
3. the assets and liabilities of the Partnership.

The Books of Account must give a fair and true view of the business and financial condition of the Partnership, explain its transactions and be maintained for at least five years.

Any GP who knowingly and wilfully fails to comply with these requirements shall be subject to a penalty.

LIABILITIES OF THE GENERAL PARTNER

Liability incurred by General Partner

Any debt or obligation incurred by a GP in the conduct of the business of the Partnership shall be a debt or obligation of the Partnership.

Extent of liability

In the event that the assets of the Partnership are inadequate, the GP shall be liable for all of the debts and obligations of the Partnership.

Partnership property

Any rights or property of every description of the Partnership (including all choses in action and any right to make capital calls and receive the proceeds thereof) that is conveyed to or vested in or held on behalf of any one or more of the GPs or which is conveyed into or vested in the name of the Partnership shall be held or deemed to be held by the GP (and if more than one then by the GPs jointly) upon trust as an asset of the Partnership in accordance with the terms of the LPA.

Account for profit

The GP shall be liable to account for any profit wrongly made in competition with the Partnership.

SPECIFIC TRANSACTIONS

Lending and borrowing

Subject to any express or implied terms of the LPA to the contrary and to the duty imposed on the GP to act in good faith and, subject to any express provisions of LPA to the contrary, in the interests of the Partnership, a partner may lend money to, borrow from and transact other business with the Partnership with or without interest or security as the GP shall determine.



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The obligations of the Partnership to repay a debt to a GP shall, at all times, be subordinated to the claims of secured and unsecured creditors of the Partnership.

Distributions to Limited Partners

The GP shall not, on winding up or otherwise, pay any LP a return of any part of his contribution to the Partnership out of the capital of the Partnership unless immediately following such payment, the Partnership is solvent.

A LP who receives a payment representing a return of any part of his contribution to the Partnership or is released from any outstanding obligation in respect of his commitment and, at the time that the payment was made or the release effected, the Partnership is insolvent (including where the payment or release causes the insolvency) and the LP has actual knowledge of the insolvency of the exempted limited partnership then, for a period of six months commencing on the date of that payment or release, the LP shall be liable to the Partnership for the amount of the payment or the due performance of the released obligation in respect of his commitment, in each case, to the extent that the repayment or performance of the released obligation is necessary to discharge a debt or obligation of the Partnership incurred during the period that the contribution or commitment represented an asset of the Partnership.

Any amount required to be repaid shall bear simple interest at the rate of ten percent per annum calculated on a daily basis. The LPA may specify that no interest shall apply, that a different rate of interest, including a compound rate shall apply or different basis for calculating interest payable.

Party to legal proceedings

Legal proceedings by or against a Partnership may be instituted by or against the GP only, and no LP shall be a party to or named in such proceedings.

However, in the event that the GP fails to bring an action against any person directly on behalf of a Partnership "*without good cause*" there is a specific provision in the ELP Law that grants to LPs the right to do so.

Discharge of liability of the General Partners

Save with the written consent of the person thereby affected, no arrangement or transaction shall take effect to the extent that it seeks to relieve or discharge a GP from his obligations with regard to any debt or obligation of the Partnership incurred before such arrangement or transaction takes effect.

REGULATORY MATTERS

Resident in Cayman Islands

At least one GP is required at all times to be either:

1. an individual resident in the Cayman Islands;
2. a company or limited liability company, incorporated in the Cayman Islands;
3. if incorporated outside the Cayman Islands, a company or corporation registered in the Cayman Islands as a foreign company pursuant to Part IX of the Cayman Islands Companies Law (as amended);
4. if registered outside the Cayman Islands, a partnership registered in the Cayman Islands as a foreign limited partnership pursuant to section 42 of the ELP Law; or



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5. a Cayman Islands Partnership.

Registration details and notification of changes

Sections 9 and 10 of the ELP Law require the GP during the continuance of the Partnership to file any changes made in any of the matters listed below with the Registrar of Exempted Limited Partnerships (the "**Registrar**"), usually within 60 days.

A statement filed specifying the particulars of such changes, shall be open to public inspection.

Changes relating to the following need to be filed:

1. the name of the Partnership (which shall include the words "Limited Partner", "L.P." or "LP");
2. the general nature of the business of the Partnership;
3. the address of the registered office in the Cayman Islands; (note that section 6(2) of the ELP Law requires every Partnership to have a registered office situated in the Cayman Islands);
4. the term, if any, for which the Partnership is entered into (or, if for unlimited duration, a statement to that effect) and the date of its commencement; and
5. the name and address of each GP, in which regard see the next paragraph.

Changes in respect of the identity of the GP

It is important to note in relation to any change in the identity of the GP (such as pursuant to the transfer of a GP interest in the Partnership) that any such change must be notified to the Registrar within fifteen days of it having been made and that no such change will be effective under the ELP Law or the LPA until the filing of a Section 10 Statement executed by the outgoing GP.

If default is made in compliance each GP in default shall incur a penalty for each day the default continues.

Notice of dissolution; winding up

The ELP Law states that a Partnership shall be wound up in accordance with the provisions of the LPA at the time or upon the occurrence of any event specified in the LPA or, unless otherwise specified in the LPA, on the passing of a resolution of all GPs and a two-thirds majority of LPs. The GP must make a number of filings within 28 days of the commencement of the winding up of the Partnership.

Subject to the ability of the Registrar to strike a Partnership from the register under the ELP Law (see below), a Partnership shall not be dissolved by an act of the partners or otherwise until a notice of dissolution signed by a GP or liquidator has been filed with the Registrar on completion of the winding up of the Partnership.



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Unless the LPA provides otherwise, if a new qualifying GP is not elected within 90 days after the notification by the GP or its representative to the LPs of the death, commencement of liquidation or bankruptcy proceedings, withdrawal, removal or making of a winding up or dissolution order of the sole or last GP (the "**automatic wind up date**"), the Partnership shall be wound up in accordance with the LPA or such orders as the court may decree pursuant to the above. Notwithstanding the foregoing, if within 90 days of the date of such notice, a majority of LPs (or such other threshold set out in the LPA) elect one or more new GPs, the Partnership shall not be required to be wound up and dissolved and the business of the Partnership may be resumed and continued as provided for in the LPA or any subsequent agreement.

The ELP Law allows the Registrar to strike a Partnership from the register if it has reasonable cause to believe that a Partnership is not carrying on business or is not in operation, whereupon the Partnership shall be dissolved. A GP may apply to have a Partnership struck from the register upon payment of the prescribed fee. Notice of any strike off will be published in the Cayman Islands Gazette and any GP, LP or creditor of a Partnership so struck off may apply to the Court to have the Partnership restored to the register. The striking off the register of a Partnership shall not affect the liability, if any, of any GP or LP which shall continue and be enforced as if the Partnership had not been dissolved.

Register of Partnership Interests

The GP is required to maintain two registers with details of the LPs, as follows.

First, the GP shall maintain or cause to be maintained in the country or territory that the GP may determine a register of LPs which shall contain the name and address of each person who is an LP of the Partnership, the date on which a person became an LP and the date on which a person ceased to be an LP, and the register shall be updated within twenty-one days of the date of any change in the particulars therein (the "**Register of LPs**").

The GP must maintain or cause to be maintained at the registered office of the Partnership a record of the address at which the Register of LPs is maintained, which record shall be updated within twenty-one days of the date of any change in the particulars therein.

A GP who defaults in complying with the duty to maintain the Register of LPs or the record of the address at the Partnership's registered office, is guilty of an offence and liable on summary conviction to a fine for each day that such default continues, and shall indemnify any person who thereby suffers any loss.

The Register of LPs (and the record of the address at which the Register of LPs is maintained) shall be open to inspection during all usual business hours in the place where the register or record is maintained by:

1. subject to any express or implied term of the LPA, all partners; and
2. any other person with the consent of the GP.

Secondly, the GP shall maintain or cause to be maintained in any country or territory that the general partner may determine, a record of the amount and date of the contribution or contributions of each LP and the amount and date of any payment representing a return of the whole or any part of the contribution of any LP, which record shall be updated within twenty-one days of the date of any change in the particulars therein (the "**Register of LP Contributions**").



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The Register of LP Contributions shall be open to inspection during all usual business hours in the place where the records are maintained by any person with the consent of the GP.

Register of Security Interests

The GP shall also maintain or cause to be maintained at the registered office, a register of security interests in which shall be registered each security interest in relation to which a valid notice has been served in accordance with section 32(9) of the ELP Law (the “**Register of Security Interests**”).

The Register of Security Interests shall contain the identity of the grantor and grantee, the partnership interest or part thereof subject to the security interest and the date on which notice of the security interest was validly served. The Register of Security Interests may be inspected by any person during all usual business hours.

If default is made by a GP in the maintenance of the Register of Security Interests, each GP in default shall incur a penalty of twenty-five dollars for each day that the default continues.

Carrying on the business of the Partnership

The GP has a duty to ensure that the Partnership does not undertake business in the Cayman Islands other than as far as may be necessary for the carrying on of the business of the Partnership exterior to the Cayman Islands.

Annual certification that changes filed

On or before 31 January in every year the GP is required cause to be filed a return certifying that the Partnership has complied with the requirement to file any changes listed above and that there has been no breach of this obligation.



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This publication is for general guidance and is not intended to be a substitute for specific legal advice. Specialist advice should be sought about specific circumstances. If you would like further information please contact:

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