

### 1. INTRODUCTION

A partnership is the relationship between person carry on business in common with a view to profit. Under Bermuda law two types of partnership are possible: general partnerships and limited partnerships. The purpose of this Memo is to provide an overview of the legal framework of the latter and, in particular, exempted limited partnerships.

The formation and operation of limited partnerships in Bermuda is governed by the following principal statutes:

- Partnership Act 1902
- Limited Partnership Act 1883
- Exempted Partnerships Act 1992

Bermuda Limited partnerships consist of at least one general partner and one limited partner, and the limited partnership can either be local or exempted. There is no limit to the number of general or limited partners of a limited partnership. A local partnership typically comprises only Bermudian partners, whether they are individuals or companies. A local partnership is permitted to carry on business in Bermuda. Where at least one partner does not possess Bermudian status it is possible to register a limited partnership as an exempted partnership. Exempted partnerships are resident in Bermuda and carry on business outside Bermuda however they are subject to restrictions in relation to any business they conduct in Bermuda.

#### 1.1. Liability of Partners

In general terms, the liability of a limited partner will be limited to the value of money and property that it contributes or agrees to contribute to the limited partnership. In this sense the position of a limited partner in a limited partnership is similar to that of a shareholder in a company. The liability of the general partners however is unlimited and they remain fully liable for the debts and obligations of the partnership and also for any penalties incurred by the partnership.

#### 1.2. Legal Status

Limited partnerships are generally not in themselves legal entities separate from their partners however they may function as such for all practical purposes. They can carry on business and sue or be sued in the partnership name. It is possible however for a limited partnership to irrevocably elect to have legal personality by filing a declaration with the Registrar of Companies. Such election allows a partnership to continue regardless of changes in partnership membership due to retirement, death, bankruptcy of one of the partners or other changes in its constitution.



The election can also serve to protect the limited partners of a partnership which trades outside Bermuda in jurisdictions that may not recognise the limited liability of the limited partners where that the partnership does not have a separate legal personality. The Registrar of Companies will following such election issue a Certificate stating that the partnership has a separate legal personality.

### **1.3. Register of Charges**

For Limited partnerships that have elected to have separate legal personality, charges on the partnership assets can now be registered at the Registrar of Companies. This register of charges is closely modelled after the procedures for companies. The Registrar of Companies keeps a register of charges created on the assets of the partnership, whether such assets are located in Bermuda or outside Bermuda. Priority of the charge is determined by the date of registration (not the date of creation) and has priority over unregistered charges.

### **1.4. Restructuring**

Additional flexibility has recently been granted to exempted and limited partnerships, especially when looking to restructure the business. They can be converted to an exempted company, continue overseas, or easily transfer the general partner to an affiliate.

## **2. LIMITED PARTNERSHIP REQUIREMENTS**

### **2.1. Name**

A limited partnership must include the words "Limited Partnership" or "L.P." (which may be used interchangeably) at the end of its name. Apart from this the limited partnership may conduct its business under any name chosen by the partners provided that it is approved by the Registrar of Companies. The proposed partnership name can be reserved for renewable periods of three months with the Registrar of Companies prior to submitting an application for formation.

### **2.2. Capital Requirements**

Bermuda partnerships are not subject to any minimum capital contribution requirements. A capital contribution for services is not permitted. There is no prescribed percentage of capital contribution which must be made by either the general partner or the limited partners; the general partner is not required to contribute to the capital of the partnership at all.

### **2.3. Management**

The relationship between the partners is regulated by a partnership agreement in the same way as a general partnership. Boards or committees may be created to manage the limited partnership if expressly provided for in the partnership agreement. It should also be noted that under Bermuda law, the activities of the limited and general partners must remain strictly segregated (except in specific circumstances detailed in the Bermuda partnership legislation). Only the general partner(s) are permitted to manage the business of the partnership and if a limited partner participates in the management he may become liable for the debts and liabilities of the partnership as a general partner. As the limited partners will not be involved in the management of the



partnership there is no need to review the beneficial ownership of the limited partners during the application process.

#### 2.4. Resident Representative

Bermuda law requires that all exempted partnerships have a resident representative in Bermuda. The resident representative may file documents and make any applications that can be made by the appointing partnership and must inform the Minister of Finance (**Minister**) if the partnership is not complying with specified provisions of the Exempted Partnerships Act 1992. The resident representative has a right to receive notices of and to attend, be heard at and receive copies of all partnership meetings. This position can be filled by a corporate entity and OSIRIS Limited (a corporate services provider company affiliated with ISIS Law) is available to act as the resident representative of the partnership if required.

#### 2.5. Registered Office and Ongoing Administration

Bermuda law also requires that exempted partnerships maintain a registered office in Bermuda which cannot be a post office box. The exempted partnership must maintain at its registered office such audited accounts and records relating to its financial affairs and acts which show the business and true accounting of its affairs at the end of each year. There is no requirement for such accounts to be filed with any government or other body or to be open to public inspection. A register of the limited partners containing the names and addresses of all limited partners must be maintained at the registered office. OSIRIS Limited is able to provide the registered office and ongoing administration of Bermuda partnerships to ensure compliance with the requirements of Bermuda law. The fee charged for this service is inclusive of the resident representative costs.

#### 2.6. Changes to the Partnership and Supplementary Certificates

Any change to the general partner of an exempted limited partnership requires the prior consent of the Bermuda Monetary Authority (**BMA**). However no BMA consent is required to make the following changes: the name of the partnership (provided there is no objection by the Registrar of Companies), registered office, resident representative. What is required for these changes is a supplementary certificate be signed by the general partners and submitted to the Registrar of Companies. Also if there is any change to the particulars specified in the limited partnership certificate, the general partners must file a supplementary certificate. Any change to the limited partnership becomes effective on the date of registration.

#### 2.7. Bermuda Tax

In Bermuda, no income tax, corporation or profits tax, withholding tax, capital gains tax, capital transfer tax, estate duty or inheritance tax, stamp duty or any other tax is payable by exempted partnerships, or their partners other than partners who are ordinarily resident in Bermuda. An exempted limited partnership will be designated as an "exempted undertaking" and non resident for exchange control purposes. As an exempted undertaking, the partnership will be eligible for a Tax Assurance Certificate which certifies that in the event that any legislation is enacted in Bermuda which imposes tax computed on profits or income or computed on any capital assets, gain or appreciation, or any tax in the nature of estate duty or inheritance tax, such tax shall not apply to the partnership or any of its partners until 31 March 2035.

## 2.8. Supervision

Bermuda exempted partnerships, are able to conduct their business affairs in accordance with the partnership agreement and applicable Bermuda law, and unless they are providing regulated services, neither the BMA nor any other governmental agency plays a supervisory role. Under the Exempted Partnership Act the Minister has the power to both appoint an inspector to investigate the affairs of the exempted partnership and to direct the Registrar to petition the Supreme Court of Bermuda for sanctions (including the dissolution of the partnership) when the Minister suspects that a breach has been knowingly or willfully committed. In the event of an investigation the privacy of the exempted partnership is safeguarded under the Act.

## 3. EXEMPTED LIMITED PARTNERSHIP FORMATION PROCEDURE

Generally, a Bermuda exempted limited partnership can be formed within 5-10 days of the submission of an application.

The application procedure is as follows:-

**Step 1** A Partnership Agreement should be drafted or reviewed by Bermuda counsel to ensure that it does not contravene Bermuda law. Any necessary amendments should be made and then circulated for signature. If the General Partner or a Limited Partner to the Partnership is a Bermuda exempted company it should be properly organised before it may execute the Partnership Agreement. **We would initially recommend the use of a standard short form limited partnership agreement to establish the partnership and then replace this in time with a more detailed partnership agreement tailored to the particular transaction.** The Partnership Agreement should state that the exempted partnership commences upon registration and that the law applicable to the exempted partnership is the law of Bermuda.

**Step 2** The proposed name of the exempted limited partnership must be reserved with the Registrar of Companies.

**Step 3** Application is made to the Minister, through the Bermuda Monetary Authority, for consent to form the exempted partnership. The information that must be provided in the application for consent will include details of the proposed general partner(s), names of the limited partner(s) and a draft of the partnership agreement. When making application to form a partnership, as with any Bermuda entity, disclosure must be made of the entity's beneficial ownership so the application must also include personal declarations for individuals owning 5% or more of a general partner. This disclosure is made to the Bermuda Monetary Authority, and vetted by ISIS Law for KYC purposes.

**Step 4** The Certificate of Registration is issued by the Registrar of Companies to which facsimiles of the Certificate of Exempted Partnership and Certificate of Limited Partnership are attached. The certificates include the name of the exempted partnership, details of the general partners, details of the resident representative, registered office, and whether the exempted partnership elects to assume a separate legal identity. The Certificate is a public record.

**Step 5** Upon receiving consent from the Bermuda Monetary Authority, an application must be sent to the Registrar of Companies including a letter requesting registration of the limited partnership with the requisite fee (see First Schedule - N.B. where the registration occurs after 31 August the fee payable



will be half of the amount specified in the First Schedule). The Certificate of Exempted Partnership and Certificate of Limited Partnership must be executed and filed with the application as well as confirmation of the Bermuda Monetary Authority's consent.

**Step 6** The Registrar of Companies issues a Certificate of Registration of Exempted Limited Partnership. Upon registration, the exempted limited partnership is formed.

**FIRST SCHEDULE**  
**Relevant Fees as per the Exempted Partnerships Act 1992\***

Fee on application for consent from the Bermuda Monetary Authority for an exempted limited partnership under section 11(2)	\$ 265.00
Fee payable to the Registrar of Companies on registration of a partnership as an exempted limited partnership under section 11(3) ** Fees The annual government fee for a partnership registered after 31 Aug is reduced by 50% (\$1,117.50)	\$2,235.00**
Annual fee payable to the Registrar of Companies on or before 31 January in each year by an exempted limited partnership under section 11(3)(d)	\$2,235.00
<b>Additional Fees</b>	
On delivery of documents to Registrar for registration of exempted partnership under section 9(1)	\$ 55.00
On an application for Authority's consent to change a matter under section 13(1)(a)	\$ 55.00
For preparing a copy of any document by a public officer:- for each page	\$ 1.50
For a search by a public officer of the records maintained by the Registrar for the purpose of obtaining a certificate that the Exempted Partnership Act 1992 has been complied with	\$ 64.00
For certifying and sealing a copy of any document or set of documents	\$ 64.00
For registering or recording every certificate required by this Act	\$160.00
For each inspection of the register under section 22(2)	\$ 7.00
For issuing a tax assurance under the Exempted Undertakings Tax Protection Act 1966	\$170.00

**As at 1<sup>st</sup> April 2015**



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