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CAYMAN ISLANDS



EXEMPTED LIMITED PARTNERSHIP (AMENDMENT) (NO.2) BILL, 2020

A BILL FOR A LAW TO AMEND THE EXEMPTED LIMITED PARTNERSHIP LAW (2018 REVISION) TO ENHANCE THE OVERSIGHT OF THE KEEPING OF ACCOUNTING RECORDS; AND FOR INCIDENTAL AND CONNECTED PURPOSES

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ENACTED by the Legislature of the Cayman Islands.

Short title

1. This Law may be cited as the Exempted Limited Partnership (Amendment) (No.2) Law, 2020.

Amendment of section 2 of the Exempted Limited Partnership (2018 Revision) - interpretation

2. The *Exempted Limited Partnership Law (2018 Revision)*, in this Law referred to as the “principal Law”, is amended in section 2, by inserting, in the appropriate alphabetical sequence, the following definitions —

“**Authority**” means the Cayman Islands Monetary Authority established under section 5(1) of the *Monetary Authority Law (2020 Revision)*, and includes a person acting under the Authority’s authorization;

“**regulatory law**” means any one or more of the following —

- (a) *Banks and Trust Company Law (2020 Revision)*;

- (b) *Building Societies Law (2020 Revision)*;
- (c) *Companies Management Law (2018 Revision)*;
- (d) *Cooperative Societies Law (2020 Revision)*;
- (e) *Insurance Law, 2010 [Law 32 of 2010]*;
- (f) *Money Services Law (2020 Revision)*;
- (g) *Mutual Funds Law (2020 Revision)*; and
- (h) *Securities Investment Business Law (2020 Revision)*,

and any other laws that may be prescribed by the Cabinet by regulations made under section 46 of the *Monetary Authority Law (2020 Revision)*.”.

Amendment of section 21 - accounts

3. The principal Law is amended in section 21 by inserting after subsection (3) the following subsections —

“(3A) Where a general partner keeps the books of account described in subsection (1) outside the Islands, the general partner shall provide to the registered office, semi-annually, information regarding its books of account that will enable the general partner to ascertain the financial position of the exempted limited partnership with reasonable accuracy.

(3B) A general partner which fails to comply with subsection (3A) without reasonable excuse commits an offence and is liable on summary conviction to a fine of five thousand dollars.

(3C) Subsection (3A) shall not apply to an exempted limited partnership that complies with a requirement under any regulatory law to file information regarding its accounts to the Authority.”.

Amendment of section 39 - annual return

4. The principal Law is amended in section 39 by repealing subsection (1) and substituting the following subsection —

“(1) An exempted limited partnership shall, in January of each year after the year of its registration —

- (a) file with the Registrar a return signed by or on behalf of a general partner —
 - (i) certifying that the exempted limited partnership has, during the prior calendar year, complied with section 10(1) and that there has been no breach of the declaration given in accordance section 9(1)(f);
 - (ii) declaring that the exempted limited partnership is maintaining proper books of account;



- (iii) stating whether the exempted limited partnership is required to file with the Authority information regarding its accounts under any regulatory law;
 - (iv) stating the physical address of the place at which it keeps its books of account; and
 - (v) where applicable, confirming that the exempted limited partnership has provided to its registered office, semi-annually, information regarding its books of account that will enable the general partner to ascertain the financial position of the exempt limited partnership; and
- (b) pay to the Registrar an annual fee of the amount prescribed by regulations made by Cabinet.”.

Insertion of sections 47A, 47B, 47C, 47D, 47E, 47F, 47G and 47H - Registrar's power to impose administrative fine; administrative fine amounts etc.

5. The principal Law is amended by inserting after section 47, the following sections —

“Registrar's power to impose administrative fine

47A. The Registrar has the power to impose an administrative fine on a person who breaches a provision of this Law that is specified in the Schedule.

Administrative fine amounts

47B. The Registrar may impose under section 47A for a breach referred to in that section an administrative fine of the amount of five thousand dollars and may, in addition to the administrative fine for the initial breach, impose a further administrative fine of one thousand dollars for every month that the breach continues, until one of the following occurs —

- (a) the breach ceases or is remedied;
- (b) payment of the initial administrative fine and all additional administrative fines imposed for the continuing breach; or
- (c) the total of the initial administrative fine and all additional administrative fines for the continuing breach amounts to twenty-five thousand dollars.

Striking off for failure to pay administrative fine

47C. Where an administrative fine imposed by the Registrar in accordance with section 47A remains unpaid for ninety days after imposition of the administrative fine, the Registrar may strike the exempted limited liability partnership off the register of exempted limited partnerships and the partnership shall thereupon be dissolved.

The power to impose administrative fine

47D. For the purposes of section 47A —

- (a) an administrative fine may be imposed for a breach that is not an offence;
- (b) where a breach set out in the Schedule is also an offence, an administrative fine for the breach is not limited by the penalty under the provision or by sections 6(2)(ii) and 8 of the *Criminal Procedure Code (2019 Revision)*; and
- (c) the Registrar shall not impose an administrative fine where criminal proceedings have commenced or have been concluded in relation to the acts that constitute the breach.

Limitation period

47E.(1) The Registrar shall not impose an administrative fine after the expiration of six months after the date on which the Registrar became aware of the occurrence of the breach.

- (2) For the purpose of subsection (1), the Registrar becomes aware of the breach when information is first received from which the breach could reasonably have been inferred.

Relationship with penalties

47F. If a breach set out in the Schedule is an offence, an administrative fine for the breach shall not preclude a prosecution for the breach or liability for any relevant fees.

Registrar may issue guidance

47G. The Registrar may issue guidance on the enforcement of administrative fines and such guidance shall be published in the Gazette, on official Government websites or any other media as determined by the Registrar.

Registrar's rule-making power

47H. The Registrar may, by rules published in the Gazette, provide for —

- (a) aggravating and mitigating factors for administrative fines; and
- (b) the publishing of administrative fines.”.

Amendment of section 48 - regulations

6. The principal Law is amended in section 48 by inserting after paragraph (a) the following paragraphs —

- “(aa) procedures for imposing administrative fines;



- (ab) appeals against the decision of the Registrar to impose an administrative fine in accordance with section 47A;
- (ac) how administrative fines shall be paid and may be enforced;
- (ad) interest on outstanding administrative fines;
- (ae) evidentiary provisions for proceedings relating to section 47A to 47H;
- (af) such other matters that are necessary or convenient to give effect to the purposes or provisions of section 47A to 47H;”.

Insertion of Schedule - administrative fines

7. The principal Law is amended by inserting after section 50 the following Schedule —

“SCHEDULE

(section 47A)

Administrative Fines

No.	Section	Description of breach
1.	21(3A)	Failure of a general partner of an exempted limited partnership to which section 21(3A) applies, to provide to the registered office, semi-annually, information regarding its books of account.
2.	39(1)	Failure of an exempted limited partnership to — <ul style="list-style-type: none"> (a) before the expiry of the periods for late filing of the return or payment of the prescribed fee, file with the Registrar a return signed by or on behalf of a general partner — <ul style="list-style-type: none"> (i) certifying that the exempted limited partnership has, during the prior calendar year, complied with section 10(1) and that there has been no breach of the declaration given in accordance section 9(1)(f); or (ii) declaring that the exempted limited partnership is maintaining proper books of account; (iii) stating whether the exempted limited partnership is required to file with the

		<p>Authority information regarding its accounts under any regulatory law;</p> <p>(iv) stating the physical address of the place at which it keeps its books of account; and</p> <p>(v) where applicable, confirming that information regarding its books of account have been provided to its registered office semi-annually in accordance with section 21 (3A); or</p> <p>(b) before the expiry of the periods for late payment under section 20(2), pay to the Registrar the prescribed annual fee.”.</p>
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Passed by the Legislative Assembly the day of , 2020.

Speaker

Clerk of the Legislative Assembly

