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EXEMPTED LIMITED PARTNERSHIP LAW

(2001 Revision)

Revised under the authority of the Law Revision Law (1999 Revision).

Law 11 of 1991 consolidated with Law 7 of 2000 (part).

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Law 11 of 1991-27th June, 1991

Law 7 of 2000- 20th July, 2000.

Consolidated and revised this 31st day of October, 2000.

Note (not forming part of the Law): This revision replaces the 1997 Revision which should now be discarded.

EXEMPTED LIMITED PARTNERSHIP LAW
(2001 Revision)

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EXEMPTED LIMITED PARTNERSHIP LAW

(2001 Revision)

1. This Law may be cited as the Exempted Limited Partnership Law (2001 Revision). Short title
2. In this Law- Definitions
 - “Companies Law” means the Companies Law (2001 Revision); 2001 Revision
 - “contribution” means cash, property or other assets which a partner contributes to the capital of an exempted limited partnership (but shall not include any moneys lent by a partner to an exempted limited partnership);
 - “court” means the Grand Court;
 - “exempted limited partnership” means a limited partnership registered under section 9 (1);
 - “general partner” means a person who is named as such in the statement filed pursuant to section 9, and if more than one shall mean each general partner;
 - “Governor” means Governor in Council;
 - “insolvency of the exempted limited partnership” means that the general partner is unable to pay the debts and obligations of the exempted limited partnership (otherwise than in respect of liabilities to partners on account of their partnership interest) in the ordinary course of business as they fall due out of the assets of the exempted limited partnership (without recourse to the separate assets of the general partner not contributed to the exempted limited partnership) and “solvent” shall be construed accordingly;
 - “limited partner” means a person who has become a limited partner in accordance with section 4(2), and if more than one shall mean each limited partner;
 - “mortgage” means a legal mortgage by way of assignment and an equitable mortgage, charge or other form of security interest;
 - “partner” means a limited partner or a general partner;
 - “partnership agreement” means any agreement of the partners which provides for the establishment of, and regulates the affairs of, an exempted limited partnership, the conduct of its business and the rights and obligations of the partners amongst themselves;
 - “partnership interest” means the interest of a partner in an exempted limited partnership in respect of profit, capital and voting or other rights, benefits or

	obligations to which he is entitled or subject pursuant to the partnership agreement or this Law; “public in the Islands” excludes any exempted or ordinary non-resident company registered under the Companies Law, a foreign company registered pursuant to Part IX of the Companies Law, any such company acting as general partner of a partnership registered under section 9(1) or any director or officer of the same acting in such capacity or the trustee of any trust registered or capable of registration under section 74 of the Trusts Law (2001 Revision) acting in such capacity; and “Registrar” means the Registrar of Exempted Limited Partnerships appointed under section 8.
2001 Revision	
Saving of rules of equity and common law 1995 Revision	3. The rules of equity and of common law applicable to partnerships as modified by the Partnership Law (1995 Revision) (but excluding sections 45 to 56 thereof) shall apply to an exempted limited partnership, except insofar as they are inconsistent with the express provisions of this Law.
Constitution	4. (1) An exempted limited partnership may be formed for any lawful purpose or purposes to be carried out and undertaken either in or from within the Islands or elsewhere upon the terms, with the rights and powers, and subject to the conditions, limitations, restrictions and liabilities herein mentioned: Provided that such exempted limited partnership shall not undertake business with the public in the Islands other than so far as may be necessary for the carrying on of the business of that exempted limited partnership exterior to the Islands. (2) An exempted limited partnership shall consist of one or more persons called general partners who shall, in the event that the assets of the exempted limited partnership are inadequate, be liable for all debts and obligations of the exempted limited partnership, and one or more persons called limited partners who shall not be liable for the debts or obligations of the exempted limited partnership save as provided in the partnership agreement and to the extent specified in sections 7(2) and 14(2), and provided also that a general partner, without derogation from his position as such, may take in such exempted limited partnership, in addition, an interest as a limited partner. (3) A general partner shall act at all times in good faith in the interests of the exempted limited partnership. (4) A body corporate, with or without limited liability, and a partnership (whether in the name of such partnership and whether or not an exempted limited partnership) may be a general or limited partner.

(5) Any one or more of the limited partners and general partners of an exempted limited partnership may be resident, domiciled, established, incorporated or registered under the laws of the Islands or outside of the Islands:

Provided that at least one general partner shall-

- (a) if an individual, be resident in the Islands;
- (b) if a company, be registered under the Companies Law or registered pursuant to Part IX of the Companies Law; or
- (c) if a partnership, be registered pursuant to section 9(1).

5. No partnership, limited or otherwise, shall be an exempted limited partnership unless registered as such under section 9(1). Establishment

6. (1) Every exempted limited partnership shall have a name which shall include the words "Limited Partnership" or the letters "L.P." and which may include the name of any general partner or limited partner or any derivation thereof. Name and registered office

Provided that no exempted limited partnership shall have a name which, because it is identical or similar to the name of any other entity or it falsely suggests the patronage of or a connection with some person or authority or it suggests that the partnership is licensed whether in the Islands or elsewhere to carry on any type or class of business when it is not in fact so licensed or because of any other reason, is calculated or likely to mislead.

(2) Any property of the exempted limited partnership which 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.

(3) 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.

(4) Every exempted limited partnership shall have a registered office situate in the Islands for the service of process and to which all notices and communications may be addressed.

7. (1) A limited partner shall not take part in the conduct of the business of an exempted limited partnership, and all letters, contracts, deeds, instruments or documents whatsoever shall be entered into by the general partner on behalf of the exempted limited partnership. Modification of general law

(2) If a limited partner takes part in the conduct of the business of an exempted limited partnership in its dealings with persons who are not partners, that limited partner shall be liable, in the event of the insolvency of the exempted limited partnership, for all debts and obligations of that exempted limited partnership incurred during the period that he so participates in the conduct of the business as though he were, for such period, a general partner, provided always that he shall be rendered liable pursuant to the foregoing provision only to a person who transacts business with the exempted limited partnership during such period with actual knowledge of such participation and who then reasonably believed such limited partner to be a general partner.

(3) A limited partner does not take part in the conduct of the business of an exempted limited partnership within the meaning of this section by-

- (a) being a contractor for or an agent or employee of the exempted limited partnership or of a general partner or acting as a director, officer or shareholder of a corporate general partner;
- (b) consulting with and advising a general partner with respect to the business of the exempted limited partnership;
- (c) investigating, reviewing, approving or being advised as to the accounts or business affairs of the exempted limited partnership or exercising any right conferred by this Law;
- (d) acting as surety or guarantor for the exempted limited partnership either generally or in respect of specific obligations;
- (e) approving or disapproving an amendment to the partnership agreement; or
- (f) voting as a limited partner on-
 - (i) the dissolution and winding up of the exempted limited partnership;
 - (ii) the purchase, sale, exchange, lease, mortgage, pledge or other acquisition or transfer of any asset or assets by or of the exempted limited partnership;
 - (iii) the incurrence or renewal of indebtedness by the exempted limited partnership;
 - (iv) a change in the nature of the business of the exempted limited partnership;
 - (v) the admission, removal or withdrawal of a general or limited partner and the continuation of business of the exempted limited partnership thereafter; or
 - (vi) transactions in which one or more of the general partners have an actual or potential conflict of interest with one or more of the limited partners.

(4) Subsection (3) shall not import any implication that the possession or exercise of any other power by a limited partner will necessarily constitute the

taking part by such limited partner in the business of the exempted limited partnership.

(5) In the event of the dissolution of an exempted limited partnership its affairs shall be wound up by the general partner unless the court otherwise orders on the application of any partner or creditor of the exempted limited partnership pursuant to 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).

(6) Subject to any express or implied term of the partnership agreement to the contrary and to section 15(3)-

- (a) an exempted limited partnership shall not be terminated or dissolved by-
 - (i) a change in any one or more of the limited partners or general partners;
 - (ii) the assignment of the whole or part of the partnership interest of a limited partner;
 - (iii) the death, bankruptcy, dissolution or winding up of a limited partner;
 - (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; or
 - (vi) the sale, exchange, lease, mortgage, pledge or other transfer of any of the assets of the exempted limited partnership;
 - (b) any difference arising as to matters connected with the business of the exempted limited partnership shall be decided by the general partner, and, if more than one, by a majority in interest of the general partners;
 - (c) a person may, with the consent of the general partner, and if by assignment, in accordance with paragraph (a) of subsection (7), become a limited partner without the consent of the existing limited partners; and
 - (d) a limited partner shall not be entitled to dissolve the partnership by notice.
- (7) (a) No limited partner may, save with the prior written consent of at least one general partner which may be withheld in the sole discretion of such general partner notwithstanding any express or implied term of the partnership agreement to the contrary, assign either absolutely or by way of mortgage the whole or any part of his partnership interest but, subject to such consent, 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 as set forth below, 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:

Provided that such assignee shall not assume any liability of the assignor arising pursuant to subsection (2) or section 14(2), and provided further that, notwithstanding any term of the partnership agreement or any other agreement to the contrary, no such assignment shall relieve the assignor of any liability arising under such subsections.

- (b) Subject to paragraph (a), a limited partner may mortgage the whole or any part of his partnership interest and the mortgagee shall serve written notice at the address of the registered office of the exempted limited partnership of such mortgage together with a copy thereof and signed by the mortgagor and the mortgagee and pay such fee, if any, as may be provided in the partnership agreement. The general partner shall maintain or cause to be maintained at the registered office, in writing on one or more sheets, whether bound or unbound, a register of mortgages indicating the identity of the mortgagor and mortgagee, the date of creation of the mortgage, the partnership interest or part thereof subject thereto and the date of receipt of such notice.
- (c) The register described in paragraph (b) shall be open to inspection by any person during all usual business hours. Any mortgage of the whole or any part of a partnership interest shall have priority according to the date of service of written notice at the registered office described in paragraph (b).
- (d) If default is made by a general partner in the maintenance of the register described in paragraph (b), each general partner in default shall upon summary conviction incur a penalty of twenty-five dollars for each day that such default continues.

Registrar

8. The Registrar of Companies appointed under the Companies Law shall be the Registrar of Exempted Limited Partnerships.

Registration

9. (1) The registration of an exempted limited partnership shall be effected by payment to the Registrar of a registration fee of such amount as the Governor shall, from time to time, by regulation prescribe and by filing with the Registrar a statement signed, subject to subsection (6), by or on behalf of a general partner containing -

- (a) the name of the exempted limited partnership;
- (b) the general nature of the business of the exempted limited partnership;

- (c) the address in the Islands of the registered office of the exempted limited partnership;
- (d) the term, if any, for which the exempted limited partnership is entered into or, if for unlimited duration, a statement to that effect and the date of its commencement;
- (e) the full name and address of the general partner and, if more than one of each of them, specifying each of them as a general partner and, in the case of a corporate general partner, there shall be filed with the statement a certificate of incorporation and a certificate of good standing (or similar documents under the laws of the jurisdiction of incorporation) or a certificate of registration and a certificate of good standing under Part IX of the Companies Law and, in the case of a partnership registered under this section, there shall be filed with the statement a certificate of registration and a certificate of good standing or certified copies thereof; and
- (f) a declaration that the exempted limited partnership shall not undertake business with the public in the Islands other than so far as may be necessary for the carrying on of the business of that exempted limited partnership exterior to the Islands.

(2) The Registrar shall maintain a record of each exempted limited partnership registered under this Law and all the statements filed in relation to such exempted limited partnership, which records and statements shall be kept open to public inspection during all usual business hours.

(3) The Registrar shall issue a certificate of registration under his hand and seal of office as soon as the registration of the statement pursuant to subsection (1) has been effected.

(4) No limited partner of an exempted limited partnership formed after the 15th July, 1991 shall have the benefit of limited liability until the date indicated on the certificate referred to in subsection (3) issued by the Registrar, and a partnership registered in accordance with section 21(1) shall obtain the benefit of limited liability under this Law with effect from such date but subject always to section 21(2).

(5) A certificate issued under subsection (3) shall be conclusive evidence that compliance has been made with all the requirements of this Law in respect of the formation and registration of an exempted limited partnership but subject always to section 21(2).

(6) If a person required by subsection (1) or section 10(1) or (2) to execute and file a statement fails to do so, any other partner, and any assignee of a partnership interest, who is or may be affected by the failure or refusal, may

petition the court to direct such person as the court sees fit to sign the statement and file the same on behalf of the person in default.

(7) Notwithstanding subsections (1) and (3), the Registrar may refuse to accept the registration of an exempted limited partnership and refuse to issue a certificate of such registration in any case where, in his opinion, the name of the proposed exempted limited partnership is in contravention of the proviso to section 6 (1).

Changes in registered
particulars

10. (1) Without prejudice to subsection (2), if, during the continuance of an exempted limited partnership, any change is made or occurs in any matter specified in paragraphs (a) to (e) of the statement filed under section 9(1), a statement signed, subject to section 9(6), by a general partner specifying the nature of the change shall, within sixty days of such change, be filed with the Registrar.

(2) A statement signed in accordance with subsection (1) in respect of any arrangement or transaction consequent upon which any person will cease to be a general partner in any exempted limited partnership, shall, within fifteen days of such arrangement or transaction, be filed with the Registrar and, until such statement is so filed, the arrangement or transaction shall, for the purposes of this Law and the partnership agreement, be deemed to be of no effect.

(3) Save with the written consent of any person thereby affected, no arrangement or transaction shall take effect to the extent that it seeks to relieve or discharge a general partner from the obligations of a general partner with regard to any debt or obligation of the exempted limited partnership to a person incurred before such arrangement or transaction takes effect.

(4) If default is made in compliance with this section, each general partner in default shall incur a penalty of twenty-five dollars for each day that such default continues, which penalty shall be a debt due to the Registrar and such general partner shall indemnify any person who thereby suffers any loss.

(5) The name of an exempted limited partnership shall not be changed so as to contravene the proviso to section 6(1), and the Registrar may refuse to accept a statement under subsection (1) which, in his opinion, seeks to effect such a change.

Register of limited
partnership interests

11. (1) The general partner shall maintain or cause to be maintained at the registered office of the exempted limited partnership a register, in writing on one or more sheets, whether bound or unbound, and there shall be set forth therein the name and address, amount and date of the contribution or contributions of each partner and the amount and date of any payment representing a return of any part

of the contribution of any partner, which register shall be updated within twenty-one business days of any change in the particulars therein.

(2) The register described in subsection (1) shall be open to inspection by any person during all usual business hours.

(3) The register described in subsection (1) shall be prima facie evidence of the matters which are, by subsection (1), directed to be inserted therein.

(4) Whoever, being a general partner, defaults in complying with subsection (1), is guilty of an offence and liable on summary conviction to a fine of twenty-five dollars for each day that such default continues and shall indemnify any person who thereby suffers any loss.

12. Subject to any express or implied term of the partnership agreement to the contrary, each limited partner may demand and shall receive from a general partner true and full information regarding the state of the business and financial condition of the exempted limited partnership. Right to account

13. (1) Subject to subsection (2), legal proceedings by or against an exempted limited partnership may be instituted by or against any one or more of the general partners only, and no limited partner shall be a party to or named in such proceedings: Proceedings

Provided that if the court deems it just and equitable any person or a general partner shall have the right to join in or otherwise institute proceedings against any one or more of the limited partners who may be liable under section 7(2) or to enforce the return of the contribution, if any, required by section 14(2).

(2) A limited partner may bring an action on behalf of an exempted limited partnership if any one or more of the general partners with authority to do so have, without good cause, refused to institute such proceedings.

14. (1) A limited partner shall not, on dissolution or otherwise, receive out of the capital of the exempted limited partnership a payment representing a return of any part of his contribution to the partnership unless, at the time of and immediately following such payment, the exempted limited partnership is solvent. Return of contributions

(2) For a period of six months from the date of receipt by a limited partner of any payment representing a return of contribution or part thereof received by such limited partner in circumstances where the requirements of subsection (1) have not been met such payment shall, in the event of the insolvency of the exempted limited partnership within that six month period, be repayable by such limited partner with simple interest at the rate of ten per cent per annum (calculated on a daily basis) 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.

(3) In this section-

“receive” includes the release of any obligation forming part of the capital contribution and, in this context, liabilities to make repayments pursuant to subsection (2) shall be read to refer to due performance of such obligations.

Dissolution

15. (1) An exempted limited partnership shall not be dissolved by an act of the partners until a notice of dissolution signed by a general partner has been filed with the Registrar.

(2) On application by a partner or a creditor, the court may decree dissolution of an exempted limited partnership, and may make such orders and give such directions for the winding up of its affairs as may be just and equitable.

(3) Notwithstanding subsection (1) and notwithstanding any express or implied term of the partnership agreement to the contrary, the death, insanity, retirement, bankruptcy, commencement of liquidation proceedings, resignation, insolvency or dissolution of the sole or last remaining general partner shall cause the immediate dissolution of the exempted limited partnership which shall forthwith be wound up in accordance with the partnership agreement or such orders as the court may decree pursuant to subsection (2):

Provided that if, within ninety days of such date of dissolution, the limited partners unanimously elect one or more new general partners, the business of the exempted limited partnership is not hereby required to be wound up but may be assumed and continued as provided for in the partnership agreement or any subsequent agreement.

Inspection

16. (1) Any person may require a certified copy of the certificate of registration, a certificate of good standing or a copy of or extract from any registered statement filed in relation to the exempted limited partnership to be certified as a true copy by the Registrar on payment of such fees as the Governor may, from time to time, by regulation prescribe.

(2) A certificate of registration, a certificate of good standing or a copy of or extract from a registered statement filed with the Registrar issued under this Law, if certified by the Registrar to be a true copy, shall be received in evidence in all legal proceedings.

Tax undertaking

17. (1) The Governor may, on application by a general partner, give an undertaking in respect of any exempted limited partnership that no law which is

hereafter enacted in the Islands imposing any tax to be levied on profits or income or gains or appreciations shall apply to such exempted limited partnership or to any partner thereof in respect of the operations or assets of such exempted limited partnership or the partnership interest of a partner therein.

(2) Any undertaking given under subsection (1) may provide, in addition, that the aforesaid taxes and any tax in the nature of estate duty or inheritance tax shall not be payable in respect of the obligations of the exempted limited partnership or the interests of the partners therein.

(3) Any such undertaking as aforesaid may be for a period not exceeding fifty years from the date of the approval of the application and may be in such form as the Governor shall determine.

18. The Governor may, from time to time, make regulations in respect of exempted limited partnerships prescribing- Regulations

- (a) the duties to be performed by the Registrar for the purposes of this Law;
- (b) the forms to be used for the purposes of this Law;
- (c) the fees payable to the Registrar in respect of filings or certifications or otherwise pursuant to this Law; and
- (d) generally, the conduct and regulation of registration under this Law and any matters incidental thereto.

19. (1) An exempted limited partnership shall, on or before the 31st day of January in every year, file with the Registrar a return signed by or on behalf of a general partner certifying that the exempted 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 with paragraph (f) of section 9(1) and pay to the Registrar an annual fee of such amount as the Governor shall, from time to time, by regulation prescribe. Annual return

(2) If default is made in compliance with subsection (1), each general partner shall incur a penalty of ten dollars for each day that such default continues which penalty shall be a debt due to the Registrar save to the extent that the Registrar may, in his discretion, waive such penalty.

20. Subject to any express or implied term of the partnership agreement to the contrary and to the duty imposed upon a general partner by section 4(3), a partner may lend money to, borrow from and transact other business with the exempted limited partnership (so that an asset, debt or obligation of the exempted limited partnership shall thereby be created) and with or without interest or security as the general partner shall determine, and shall have the same rights and obligations with respect thereto as a person who is not a partner, provided that the obligations Transactions with the exempted limited partnership

of the exempted limited partnership to repay a debt to a general partner shall, at all times, be subordinated to the claims of secured and unsecured creditors of the exempted limited partnership.

Re-registration
1995 Revision

21. (1) Any partnership registered under the repealed Limited Partnership Law (Revised) or sections 45 to 56 of the Partnership Law (1995 Revision) or any law amending or re-enacting the same shall not be affected by this Law but shall continue to be governed by such law, as the case may be. Any such partnership and any partnership established under the laws of a jurisdiction other than the Islands may, at any time, upon effecting such amendments to the partnership agreement as shall be necessary to comply with this Law, if any, and upon paying a fee of such amount as the Governor may, from time to time, by regulation prescribe and upon filing the statement required by section 9(1), be registered under this Law and, with effect from the date indicated on the certificate of registration issued by the Registrar pursuant to section 9(3), shall be governed exclusively thereafter as an exempted limited partnership in accordance with this Law.

(2) With effect from the date indicated on the certificate of registration described in subsection (1), the exempted limited partnership and the partnership interests of the parties therein and their rights and liabilities, as against any person who is not a partner, shall cease to be governed by the repealed Limited Partnership Law (Revised), or sections 45 to 56 of the Partnership Law (1995 Revision) or the laws of such other jurisdiction, as the case may be, save in respect of any act or omission occurring before such date which shall continue to be governed by such law or the laws of such other jurisdiction, and provided always without prejudice to the foregoing generality that such registration shall not operate to-

- (a) create a new legal entity;
- (b) affect the property previously acquired by or on behalf of the exempted limited partnership;
- (c) affect any act or thing done prior to such registration or the rights, powers, authorities, functions or obligations of the exempted limited partnership, any partner or any other person prior thereto;
- (d) render defective any legal proceedings by or against the exempted limited partnership or any partner or any other person, and any legal proceedings that could have been continued or commenced by or against the exempted limited partnership or any partner or any other person before its registration hereunder may, notwithstanding such registration, be continued or commenced after such registration and in respect of which such law or the laws of such other jurisdiction shall be of application.

22. A person who acts as a general partner of an exempted limited partnership shall not, by virtue solely of so acting, require to be licensed under the Local Companies (Control) Law (1999 Revision) and shall not require a trust company licence under the Banks and Trust Companies Law (2000 Second Revision). When licence not required
1999 Revision
2000 Second Revision
23. Nothing in this Law shall prohibit an exempted limited partnership from offering, by electronic means, and subsequently supplying, real or personal property, services or information from a place of business in the Islands or through an internet service provider or other electronic service provider located in the Islands. Electronic Business

Publication in consolidated and revised form authorised by the Governor in Council this 31st day of October, 2000.

Carmena Watler
Clerk of Executive Council