



Legal Insights

Cayman Islands – A Limited Partner’s statutory right to information

June 2024

Introduction

Exempted limited partnerships are popular offshore investment vehicles in the Cayman Islands, especially with private equity investors and venture capitalists who have, or may be looking to, set up their investment vehicle by way of the established GP-LP structure.

As provided in the Exempted Limited Partnership Act of the Cayman Islands (as amended) (“**ELP Act**”), a limited partner shall not take part in the conduct of the business of an exempted limited partnership in its capacity as a limited partner¹. All letters, contracts, deeds, instruments or documents whatsoever shall be entered into by or on behalf of the general partner (or any agent or delegate of the general partner) on behalf of the exempted limited partnership². Notwithstanding these arrangements and the lack of legal personality, limited partners are nonetheless guaranteed by statute a right to information on the state and financial performance of the partnership.

Section 22 of the ELP Act indeed provides that “*subject to any express or implied term of the partnership agreement, 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*”.

It follows that the limited partners’ statutory right to information may be limited by the terms of the limited partnership agreement. In this Legal Insight, we examine three cases heard in the Cayman Islands courts which provide some helpful clarification on limited partners’ overriding right to information.

Case 1: Dorsey Ventures Limited v XIO GP Limited³

In this case, the general partner (XIO GP Limited) refused the limited partner’s (Dorsey Ventures Limited) request for information and documents regarding the financial condition of the fund (i.e. the limited partnership) on the basis that the limited partnership agreement contained an express provision which entitled the limited partners to receive the fund’s annual audited accounts and unaudited quarterly accounts by certain dates or in any event as soon as practicable. The general partner argued that, as a matter of construction, this contractual provision meant that the general right to information under section 22 of the ELP Act which would have entitled the limited partners to more information than that expressly provided in

¹ Section 14(1) ELP Act

² Section 14(2) ELP Act

³ FSD 38 of 2018, unreported 22 October 2018

the limited partnership agreement was excluded. In its argument in the case, the general partner also tried to rely on the principle set in the case of Marks & Spencer Plc v BNP Paribas Securities Services Trust Co (Jersey) Ltd⁴ where a term would be implied in a commercial contract where ‘it satisfies the test of business necessity’⁵ or ‘it is so obvious that it goes without saying’⁶.

The Court rebutted the general partner’s arguments in the Dorsey Ventures case and ultimately allowed the limited partner’s request for more information than that stated in the limited partnership agreement. In her decision, the Judge held that the right to receive true and full information regarding the state of the business and financial condition of the exempted limited partnership under section 22 of the ELP Act when read in conjunction with section 21 of the ELP Act, contemplates a broader class of information than merely audited and unaudited accounts as provided in the limited partnership agreement.

Section 21 of the ELP Act provides that:

“a general partner shall keep or cause to be kept proper books of account including, where applicable, material underlying documentation including contracts and invoices, with respect to –

- a) all sums of money received and expended by the exempted limited partnership and matters in respect of which the receipt of expenditure takes place;
- (b) all sales and purchases of goods by the exempted limited partnership; and
- (c) the assets and liabilities of the exempted limited partnership”.

The Judge also held that a reasonable man with background knowledge of the parties could not have understood the parties to have intended to exclude the statutory right to information under section 22 of the ELP Act in the absence of express wording in the limited partnership agreement to that effect.

This judgment clarifies the extent of the statutory right to information under section 22 of the ELP Act; any party wanting to restrict or exclude such statutory right will have to expressly do so in the limited partnership agreement.

Case 2: In the matter of Gulf Investment Corporation et al .v. The Port Fund LP et al⁷

In this case, the limited partners made a request for disclosure of information relating to the limited partnership’s business by the general partner under section 22 of the ELP Act. The general partner raised concerns that without appropriate safeguards the information that was requested may have been misused for other purposes by the limited partners and particulars were provided to the Court. The general partner also objected to the production of proprietary working papers in response to the request and the provision of any papers which would contain privileged material.

The Court found that the motives and bona fides of the limited partners’ request is irrelevant to their right to demand true and full information as such right is expressed in unqualified terms in section 22 of the ELP Act. The Court also dismissed the assertion of privilege and the proprietary nature of the working papers on the basis that there is no condition in the ELP Act or the limited partnership agreement relating to working papers or material that is covered by legal privilege. The Judge in the case noted that as a matter of Cayman Islands law, a general partner cannot assert privilege against a limited partner unless the legal advice itself concerns a dispute with a limited partner.⁸ Where a general partner seeks legal advice for the benefit of the partnership (as opposed to for its own benefit) in litigation against the other partners, the general partner will not be entitled to assert privilege against the limited partner. As to the working papers, the Judge in the case noted that there was nothing in section 22 of the ELP Act (or the limited partnership agreement) that suggests that there is any limitation to be placed on the information that was required to be provided to satisfy the ‘true and full’ requirement.

⁴ [2016] AC 742

⁵ Marks & Spencer Plc v BNP Paribas Securities Services Trust Co (Jersey) Ltd [2016] AC 742 [17]

⁶ Marks & Spencer Plc v BNP Paribas Securities Services Trust Co (Jersey) Ltd [2016] AC 742 [18]

⁷ FSD 235 of 2019 and FSD 13 of 2020, unreported 16 June 2020

⁸ Re Torchlight, unreported McMillan J 26 February 2016

This judgment highlights once again the overarching and unqualified nature of the limited partners' statutory right to information under section 22 of the ELP Act.

Case 3: In the matter of Neoma Manager (Mauritius) Limited et al⁹

In this case, there was a dispute on the accuracy of the calculations of the limited partners' capital account balances in the fund/limited partnership and the limited partners made an application seeking true and full information regarding the state of the business and financial condition of the limited partnership, including, among other things, various categories of information and documents which underpinned the investment manager's calculations. The general partner and investment manager refused to provide the information and documents requested, asserting, among things, that the requests were disproportionate, that the information is not readily available and that the information already provided was sufficient to satisfy the requirement under section 22 of the ELP Act.

The Court decided in favour of the limited partners and the Judge's decision was a welcome reminder of how "true and full" information about a partnership's business state and financial condition is a "very wide target to aim at" and cannot be easily resisted.

In his judgment, Justice Parker made the following observations which provide some helpful guidance on the interpretation of section 22 of the ELP Act by the Cayman Islands courts:

- A limited partner may make a relevant "demand" of a general partner for material under section 22 of the ELP Act. Once that demand is made, the general partner is then under an obligation to provide the requested material provided it falls within the wide ambit of the section.
- The entitlement to "true and full information" regarding "the state of the business and financial condition of the exempted limited partnership" arises from the general partner's position as agent and fiduciary of the partnership and, since the exempted limited partnership has no separate legal personality, as agent of each of the limited partners.
- The limited partners, as the economic owners of the partnership, are entitled to the same information that is available to the general partner concerning the business and financial affairs of the partnership in this regard so that they may be properly informed as to what has been done on their behalf.
- Where the general partner does not have the information requested under section 22 of the ELP Act, it should make all reasonable efforts to obtain it from third parties in order to fulfill its obligation under section 22 of the ELP Act and if such information does not exist, it should explain what searches have been conducted and why it is not possible to retrieve the requested information.

Conclusion

The three judgments reported above all have a common theme which is that limited partners have an overriding general right to information under section 22 of the ELP Act and the only way to limit such right is to modify it by making express reference to it in the limited partnership agreement. Any other attempt to rebut the application of such right is likely to be dismissed by the Cayman Islands courts.

⁹ FSD 322 of 2020; FSD 141 of 2021; FSD 52 of 2022 (RPJ)

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