

CAYMAN ISLANDS

GRAND COURT

In the Matter of the Companies Law (2013 Revision) and in the Matter of the Exempted Limited Partnerships Law 2014 and in the Matter of Rhone Holdings, L.P. (12-13 August 2015)

**PETITION STRUCK OUT AS ABUSE OF PROCESS -
SECTION 95(3) COMPANIES LAW - AGREEMENT
NOT TO PRESENT WINDING UP PETITION**

Rhone Holdings, L.P. was a Cayman Islands exempted limited partnership (the "Partnership"). The Petitioners, who were all limited partners in the Partnership, filed a winding up petition on the just and equitable ground, seeking to have the Partnership wound up in accordance with the Companies Law (2013 Revision) (the "Law") and the Exempted Limited Partnership Law (2014 Revision) (the "ELPL"). The Partnership had two general partners: Rhone Capital (GP) Ltd. ("Capital GP") which was controlled by the Petitioners, and Rhone Holdings SLP, L.L.C. ("Holdings GP") which, along with the Director of Holdings GP, was one of the Respondents.

On the hearing of an, *ex parte*, application filed with the winding up petition, the Court made, amongst other orders, an order appointing joint provisional liquidators ("JPLs") of the Partnership.

Following this, the Respondents filed a Summons seeking orders and directions that the petition be struck out as an abuse of process; that the Petitioners pay the Respondents costs occasioned by the Petition on the indemnity basis; and that the costs of the JPLs be paid by the Petitioners. The Honorable Justice Ingrid Mangatal delivered the Judgment and made the orders sought by the Respondents in substantially the same terms.

In reaching the decision, Mangatal J considered a number of clauses in the Amended & Restated Limited Partnership Agreement. Clause 5.12, which was particularly relevant to the issue in the case, read as follows:

5.12 Bankruptcy. The parties agree not to cause...the appointment of a receiver, trustee, custodian, sequestrator, liquidator, administrator, conservator, or similar official for the Partnership or Rhone II, or (b) the Partnership or Rhone II to (1) voluntarily commence any proceeding or file any petition seeking winding up, liquidation, dissolution, reorganization or other relief under any bankruptcy, insolvency, receivership or similar law of any jurisdiction now or hereafter in effect...

After considering the relevant sections of the Law and the ELPL, Mangatal J determined that if partners can agree that a partnership can only be determinable by mutual agreement, they can also agree not to present a winding up petition and, specifically in the case, not to do any of the other matters set out in Clause 5.12 of the LPA.

Furthermore, there was no principle of public policy that was offended by Clause 5.12; indeed Mangatal J discussed a number of reasons why it is, in keeping with public policy, that limited partners are allowed to enter into agreements regarding the duration of the limited partnership as they think fit.

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