

Article

Limited Partners' Extensive Right To True and Full Information

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Introduction

In the recent judgment of *In the Matter of Gulf Investment Corporation et al v. The Port Fund LP et al* ("Gulf Investment")¹ and the earlier judgment of *Dorsey Ventures Limited v. XIO GP Limited* ("Dorsey Ventures")², the Cayman Islands Grand Court has provided some welcome clarification regarding the extent of a limited partner's statutory right to information in an exempted limited partnership.

Limited Partners' Statutory Right to Information

An exempted limited partnership is a popular offshore investment vehicle used in the Cayman Islands. It consists of a general partner and one or more limited partners. A limited partner does not take part in the conduct of the business of the partnership³; rather it is the general partner that enters into all communication, contracts, deeds and instruments on behalf of the limited partnership⁴. The structure operates so that the general partner carries out the obligations and duties necessary for the business of the partnership on behalf of all limited partners. Notwithstanding this arrangement, a limited partner (as a partner in a business that is managed on its behalf) is prescribed a statutory right to receive information from a general partner regarding the state of the business to include the financial condition of the partnership.

Section 22 of the Exempted Limited Partnership Law (2018 Revision) (the "ELPL") 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."

As set out in section 22 of the ELPL, a limited partner's right to information is subject to the express or implied terms of the partnership agreement. Therefore the statutory right to information may be restricted by the terms of the fund documents. The Cayman Court has helpfully sought to clarify the statutory obligation under section 22 and has provided some comfort to limited partners on their overriding general rights to information.

Dorsey Ventures

The first reported Cayman Islands case on section 22 of the ELPL was the decision of Mangatal J in *Dorsey Ventures*. A limited partner in the *Dorsey Ventures* case demanded information from the general partner which included a detailed breakdown of the nature and justification for various transactions along with supporting documents such as bank statements, contracts and invoices. The general partner in *Dorsey Ventures* argued that the amended limited partnership agreement (LPA) in that case expressly conferred on the limited partner the right to receive audited accounts and unaudited quarterly accounts from the general partner. Therefore it was argued that the parties had impliedly excluded any more general right to information which might otherwise exist under section 22 of the ELPL. Mangatal J rejected this argument and held that there was nothing in the wording of the LPA that is inconsistent with an overriding general right to information under section 22 of the ELPL.

Referring to the decision of *Marks & Spencer Plc v. BNP Paribas Securities Services Trust Co (Jersey) Ltd*⁵, Mangatal J held that the reasonable man with the background knowledge of the parties could not reasonably have understood the parties to have meant by their agreement that the limited partner's right to demand information would be excluded. Mangatal J concluded that upon a proper construction of the LPA, and having regard to commercial common sense, it is plain that the limited partner's right to receive full information was not

¹ FSD 235 of 2019 and FSD 13 of 2020, unreported 16 June 2020

² FSD 38 of 2018, unreported 22 October 2018

³ Section 4(1) ELPL

⁴ Section 14(2) ELPL

⁵ [2016] AC 742

expressly or impliedly excluded in this case. Therefore, the general partner was ordered to provide the information sought.

The Dorsey Ventures decision made it clear that a limited partner had an absolute right to information under section 22 of the ELPL and that if a exempted limited partnership wanted to restrict or exclude such a right to receive true and full information regarding the partnership, that it would have to expressly do so in the fund documents.

Gulf Investment

The Gulf Investment decision has further extended the clarification provided in Dorsey Ventures of the extent of the right of a limited partner's statutory right to information. This case involved a contested application for disclosure of true and full information regarding the business and financial condition of the fund under section 22 of the ELPL. The appointed directors of the general partner raised concerns that without safeguards, the information that was demanded could be misused for collateral purposes and ulterior motives, including being used against service providers to the funds.

The relevance of the limited partner's intention or motive

The Court concluded that the intentions or motives for a limited partner's request for information are irrelevant. The Court referred to the decision of Norris J in *Inversiones*⁶

*"In my judgment the question of motive or purpose is irrelevant to the exercise of a statutory right of access to the partnerships books. I accept the proposition (stated in Lindley & Banks on Partnership para 22.16) that because the statutory right of inspection is expressed in unqualified terms the motives and bona fides of the partner seeking to exercise it will be irrelevant"*⁷

The Court further accepted that the position in Cayman is stronger than that in England by reference to section 19(2) of the ELPL which provides that a limited partner does not owe any fiduciary duty in exercising any of its rights under the LPA to any other partner. The Court accepted that any irregularities in the management of the fund by the general partner are also strictly irrelevant to a limited partner's statutory right to information. Parker J held that there is no requirement for a limited partner to provide reasons for the demand. It is only if there is a proper basis for contending that any of the categories of information demanded fall outside the operation of section 22 of the ELPL that a limited partner's right to information would fail. The Court held that this would only be in cases where it is clear that the information sought did not

relate to the business and financial affairs of the partnership, which is a very wide target to aim at.⁸

Section 22 is a broad right

Parker J helpfully distinguished the rights of a limited partner under section 21 and 22 of the ELPL. Section 21(1) imposes an obligation on the general partner to keep proper books and accounts, including contracts and invoices, concerning money received and expended, sales and purchases and assets and liabilities of the partnership. Section 21(2) provides that proper books of account will not be kept if these are not sufficient to give a true and fair view of the business and financial condition of the partnership and to explain its transactions. Parker J followed the reasoning of Mangatal J in Dorsey Ventures and held that section 22 is a different obligation from section 21. It is in its terms broader and requires provision for a limited partner to have a right to more than accounting information. With reference to section 22 Judge Parker held that;

*"It is a very wide unqualified provision and will include all of the books and records maintained by the general partner pursuant to the statutory obligation imposed on it under section 21. However, it is wider than section 21 as it requires information to be provided not just documents, and the information needs to be "true and full", not "true and fair" as is the case with section 21, which only deals with books and records of account"*⁹

Legal Privilege

The Court further helpfully noted that there is no condition in the ELPL or the LPA in this case relating to working papers or material covered by legal privilege. Referring to the Cayman decision of Judge McMillan in *Re Torchlight*¹⁰, the Court confirmed that a general partner cannot assert privilege against a limited partner unless the legal advice itself concerns a dispute with a limited partner. Where a general partner seeks legal advice for the benefit of the partnership, rather than 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 a basis for refusing to comply with its statutory obligations under section 22 of the ELPL.

Conclusion

The Cayman Islands exempted limited partnership is the most common form of offshore investment structure. Dorsey Ventures and the Gulf Investment judgment helpfully clarify the position that a limited partner has an overriding general right to information. The limited basis for resisting a request for information would be if the general partner could establish that the statutory obligation has been modified by the express

⁶ [2012] Business Law Review 1136 p36

Norris J in *Inversiones* referred to *Trego* [1986] AC 7, that even if a limited partner were to seek to access the documents for an unlawful purpose, this did not entitle the partnership to restrict access to the information.

⁸ Paragraph 88 of Gulf Investments

⁹ Paragraph 86 of Gulf Investments

¹⁰ Unreported, 26 February 2016

terms in the partnership agreement or where it is clear that the information sought did not relate to the business and financial affairs of the partnership. In the words of Parker J “this is a very wide target to aim at”.¹¹

¹¹ Paragraph 88 of Gulf Investments

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