

Cayman Court says Limited Partners are entitled to “true and full information” about a partnership

1. In a landmark ruling delivered on 16 June 2020, the Grand Court of the Cayman Islands has strictly enforced an investor’s statutory right to disclosure of “true and full information” about a Cayman Islands exempted limited partnership and its affairs.
2. The background to the case was somewhat colorful. Substantial sums were invested in a limited partnership structure, with a general partner at the helm. Proceeds of investment sales were frozen by authorities in the Middle East. Associates of the general partner were convicted of serious offences and then imprisoned. The Partnership’s money was spent on lobbying for their release. Other allegations of potential impropriety were levelled at the general partner, which was said to have failed with its disclosure obligations to the limited partners.
3. The investors sought disclosure of a number of documents within the general partner’s control. Many of these related to the allegations of impropriety concerning the general partner’s associates. The investors relied on Section 22 of the Exempted Limited Partnership Law 2018 which provides as follows :

“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”

4. The general partner, in resisting the investors’ request, argued that the statutory entitlement under S.22 had been qualified by wording in the Limited Partnership Agreement which entitled the general partner to impose reasonable restrictions on investors’ access to the records and books of account of the partnership.
5. This argument was rejected by Justice Parker, who found that the statutory entitlement to “true and full information” and the contractual entitlement to access books and records were two different things. The language in the agreement was only concerned with keeping and providing books and records. This could be done subject to reasonable conditions but this did not in any way interfere with or qualify the “very wide and unqualified” entitlement of an investor to “true and full information”.
6. The Judge also stressed that the investors had in effect paid for information that they were seeking, though their subscription to the fund. In other words, it was their information that they were seeking and the general partner could not withhold it from them. This extended to legal advice obtained by the general partner and paid for by the investors. The general partner was not entitled to assert privilege over the investors where the legal advice sought was for the benefit of the partnerships.
7. This is an important decision and consistent with a general trend towards transparency in partnership dealings. It does however open up something of a divide between the rights of investors in limited partnerships as compared to companies.

8. In the Cayman Islands both companies and limited partnerships are commonly used in fund structures, but under Cayman Islands company law a shareholder does not have an automatic statutory right to “true and full information” enjoyed by investors in limited partnerships. With companies, there is no enforceable obligation to prepare and disclose accounts to shareholders or even to answer routine requests for information. The Cayman Companies Law also has no equivalent provision to s.22.
9. In principle, there is no reason why an investor in a fund that chooses to structure itself as a limited partnership rather than a company should have such greater rights to information than it would if the fund structured itself as a company. In any event, well advised investors in limited partnerships will want to make use of their extensive information rights where appropriate and well advised fund managers may want to consider excluding or limiting these rights in their constitutional documents.

26 June 2020

Travers Thorp Alberga represented the successful investors in this case.