

Cayman court revisits winding up petitions against general partners

Insights - 20/05/2022

In the recent decision of *Re Formation (Cayman) Fund I, L.P.* (unreported, 21 April 2022), Justice Kawaley held (notwithstanding the earlier decision of Justice Parker in *Re Padma Fund L.P.* (unreported, 8 October 2021) in respect of a creditor's petition) that a limited partner may petition to wind up an exempted limited partnership (ELP) on the just and equitable ground by presenting a petition against the ELP directly (rather than against the general partner), and that an ELP may be wound-up in the same manner as a company pursuant to Part V of the Companies Act.

This decision will be welcomed by the private equity industry in particular, as it restores the previously understood legal position and thereby preserves the historic dynamic among the general partner, the limited partners and the ELP. It also relieves some anxiety for sponsors using a single general partner for multiple ELPs.

Background

The Petitioners presented a winding up petition against Formation Group (Cayman) Fund I, L.P. (the **Partnership**) seeking an order that the Partnership be dissolved or wound up in accordance with section 35(e) of the Partnership Act (2013 Revision) [1] or, in the alternative, section 92(e) of the Companies Act on the ground that it was just and equitable to do so.

Formation Group GP I, LLC, in its capacity as the general partner of the Partnership (the **GP**), applied to have the Petition struck out on the basis that it was presented directly against the Partnership and not the GP, relying upon the earlier decision in *Re Padma*.

Re Padma

A detailed analysis of the decision in *Re Padma* can be found [here](#). In short, Justice Parker found that legal proceedings, including winding up proceedings, could not be issued against an ELP in

the name of the partnership. [2] Instead, Justice Parker held that on a proper construction of the ELP Act, a creditor of an ELP must present its petition against the GP and not the ELP itself.

Whilst the case concerned a creditor's petition presented on insolvency grounds against an ELP, Justice Parker made wider observations on the source of the Court's jurisdiction to wind up an ELP which cast doubt on the ability of the Court to exercise its winding up jurisdiction over ELPs, including on just and equitable grounds.

As noted in our earlier briefing on *Re Padma*, Justice Parker's decision appeared to be, not only contrary to previous authority, but also to the apparent legislative intent behind section 36(3) of the ELP Act which is to ensure that the same statutory scheme for winding up was to be applied to both companies and ELPs.

Decision

In *Re Formation*, Justice Kawaley took a similar view. In dismissing the GP's strike out application, he held that section 36(3) of the ELP Act expressly permits a winding up petition to be presented **against the ELP**, and that an ELP may be wound up in the same manner as a company, under Part V of the Companies Act. In so doing, Justice Kawaley formed the view that: [3]

- the wording of section 36(3) is clear and unambiguous: it provides in explicit terms that an ELP may be wound-up under Part V of the Companies Act and the Companies Winding Up Rules and that, minor modifications apart, references in Part V to “company” apply to an ELP and references to a “contributory” apply to a limited partner; and
- The effect of section 33(1) of the ELP Act was to create a general rule immunizing limited partners from being sued in respect of an ELP's affairs and conferring the primary right to sue and be sued in respect of an ELP's affairs on the general partner(s). However, section 33 does not prevent a limited partner from presenting a petition against an ELP.

Conclusion

The recent Cayman decision of *Re Formation (Cayman) Fund I, L.P* confirms the legal position as it had been previously understood in the Cayman Islands that Cayman exempted limited partnerships can be wound-up by the Cayman court on the just and equitable basis in the same manner as a company, such that limited partners may apply to wind up the partnership directly.

Whilst there remains some uncertainty as to whether the Cayman Court may now adopt conflicting approaches in the Cayman Islands depending on whether a petition is presented by a limited partner on the just and equitable basis (as in *Re Formation*) or by a creditor on insolvency grounds (as in *Re Padma*), the reasoning in *Re Formation* would appear to be broad enough so as to have a wider application to the winding up of ELPs in general (whether on the just and equitable ground or otherwise).

[1] Section 35(e) applies to ELPs through the operation of section 3 of the Exempted Limited Partnership Act

[2] Relying heavily on the wording of section 33(1) of the ELP Act which provides that "...legal proceedings by or against an exempted limited partnership may be instituted by or against any one or more of the general partners only".

[3] This view was also supported by legislative materials which evidenced that the legislative intention behind section 36(3) was to apply the winding up mechanisms applicable to companies to ELPs.

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