

UPDATE

# Limited Partnerships: Cayman Court confirms jurisdiction to appoint an alternative voluntary liquidator

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The Grand Court confirms that the Court has the jurisdiction to appoint an alternative voluntary liquidator in place of a Liquidating Agent under a limited partnership agreement.

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## Background

In the case of *In the Matter of One Thousand and One Voices Africa Fund I, L.P. (In Voluntary Liquidation)*,<sup>1</sup> the Petitioner, supported by 97% of the stakeholders, made an application to appoint an alternative liquidator in place of the Liquidating Agent mandated under the limited partnership agreement (the **LPA**). The application was opposed by the General Partner (the **GP**).

The Court was asked to address three issues: (i) first, whether amendments to the Exempted Limited Partnership Act (2021 Revision) (the **Act**), which were made in 2014, elevate the commercial bargain and trump the Act; (ii) second, whether section 36(1) of the Act mandated that the liquidation could only be conducted pursuant to the LPA and (iii) third, whether section 36(13) applied to voluntary liquidations at all, and if so, whether only to fill gaps where the identity of the Liquidating Agent was silent under the LPA, or where there was no contractual mechanism for a winding up.

## The Relevant Provisions

Section 36 of the Act deals with the dissolution of an exempted limited partnership (**ELP**).

Section 36(1) provides that an ELP:

*'shall be voluntarily wound up in accordance with the provisions of the partnership agreement -*

- (a) at the time or upon the occurrence of any event specified in the partnership agreement; or*
- (b) unless otherwise specified in the partnership agreement, upon the passing of a resolution of all the general partners and a two-thirds majority of limited partners.'*

Section 36(3)(g) provides:

*'on application by a partner, creditor or liquidator, the court may make orders and give directions for the winding up and dissolution of an [ELP] as may be just and equitable.'*

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<sup>1</sup> (Unreported, 24 April 2024)

Section 36(13) provides:

*'Following the commencement of the winding up of an [ELP] its affairs shall be wound up by the general partner or other person appointed pursuant to the partnership agreement unless the court otherwise orders on the application of any partner, creditor or liquidator of the [ELP] pursuant to subsection 3(g).'*

### Issue 1 – Is the LPA King?

The GP argued that the amendments to the Act introduced in 2014 were intended to elevate the status of the LPA to make the parties' commercial bargain 'King' and superior to the legislation.<sup>2</sup> A review of Hansard provided little to no support for this argument. The Court found that the interaction between the LPA and the legislation can only be assessed by reference to the Act, which spells out which legislative provisions are or are not trumped by the commercial bargain.<sup>3</sup>

### Issue 2 – Does section 36(1) of the Act mandate that the liquidation could only be conducted pursuant to the LPA?

The GP took the position that a natural reading of section 36(1) makes it clear that an ELP can only be wound up on a voluntary basis in accordance with the LPA.<sup>4</sup> The Court disagreed and found that section 36(1) of the Act must be read in the context of section 36 as a whole. There is no limiting provision in section 36(1), such as *'notwithstanding any other provision in this section'*. Therefore, section 36(1) should be read to mean:

- (a) where a limited partnership agreement provides for a voluntary winding-up, it shall commence upon the happening of events prescribed by agreement, or by the subsection (in default of agreement); and
- (b) subject to the rest of section 36, a voluntary liquidation shall be conducted in the contractually agreed manner.

### Issue 3, Part 1 – Does section 36(13) apply to voluntary liquidations at all?

The argument with respect to section 36(13) of the Act was slightly more convoluted. The GP suggested that section 36(13), (which provides that an ELP shall be wound up by the GP or other person appointed pursuant to the LPA *'unless the Court orders otherwise'*), can only be invoked in an official liquidation. The basis for this was that an application under section 36(13) must be made pursuant to section 36(3)(g), and that section 36(3) applies only to official liquidations under Part V of the Companies Act (2023 Revision).<sup>5</sup>

The Court found that this was a hopeless proposition. The Court pointed to section 36(9) which sets out the procedure where the GP is not replaced after an event of withdrawal. Section 36(9) provides that the ELP is either wound up in accordance with the LPA, or pursuant to *'orders or directions the Court may give in accordance with subsection (3)(g)'*. This section clearly refers to a voluntary liquidation and clearly delineates section 36(3)(g) as being the gateway for applications in respect of a voluntary liquidation. This was, in the Court's view, the *'clearest possible manifestation'* of a legislative intent that section 36(3)(g) confers on the Court the power to supervise voluntary liquidations.<sup>6</sup> Accordingly, the Court found that section 36(3)(g), far from precluding applications to the Court in respect of a voluntary liquidation, was in fact a freestanding subsection allowing such applications.

### Issue 3, Part 2 – Does section 36(13) only apply to fill gaps in the LPA where the LPA is silent on the identity of the Liquidating Agent or the mechanism for winding up?

Given the dismissal of the previous arguments, this argument was bound to fail. The Court found there was no justification for such a narrow interpretation, that it was inconsistent with the legislative history and such an interpretation flew in the face of a general move towards increased legislative regulatory oversight.

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<sup>2</sup> Ibid. at [9]

<sup>3</sup> Ibid. at [13]

<sup>4</sup> There was no suggestion that anything in section 36 fettered the Court's powers to appoint official liquidators.

<sup>5</sup> *In the Matter of One Thousand and One Voices Africa Fund I, L.P. (In Voluntary Liquidation)* at [9]

<sup>6</sup> Ibid. at [23]

## Conclusion

This a robust and clear decision by the Court that section 36 applies to voluntary liquidations, and that the Court has an unfettered discretion pursuant to section 36(13) of the Act to appoint an independent liquidator in place of the Liquidating Agent under the LPA.

Whilst the Court relished the intellectual challenge of the arguments, the Court recognised they were ultimately built on sand. In a warning to others looking to make such applications, the Court raised the spectre of time wasting by bringing fruitless jurisdictional claims preventing the appointment of an independent office holder. The Court warned that time-wasting gave the impression of self-interested management clinging on to avoid independent scrutiny and that this is to be avoided.

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