



**IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION**

**CAUSE NOS. FSD 379 AND 380 OF 2023 (IKJ)**

**IN THE MATTER OF SECTION 11 OF THE EXEMPTED LIMITED PARTNERSHIP  
ACT (2021 REVISION)**

**AND IN THE MATTER OF ROTHENBERG VENTURES 2016 FEEDER FUND, L.P.**

**AND IN THE MATTER OF ROTHENBERG VENTURES 2016 FUND-A, L.P.**

**IN COURT**

**Before:** The Hon. Justice Kawaley (in Chambers)

**Appearances:** Mr Erik Bodden, Dr Alecia Johns and Mr Romane Duncan of Conyers, Dill & Pearman LLP for CY Capital Limited, Korea Investment Partners Co. Ltd, ARCHina Capital Fund I L.P., Jiangfeng Lu and SMBC Trust Bank Ltd (the “Petitioners”)

The Respondents did not appear

(Mr Michael Rothenberg, the controller of the Respondents’ General Partner, attended remotely)

**Heard:** 31 January 2024

**Date of Decision:** 31 January 2024

**Draft Reasons circulated:** 27 March 2024

**Reasons Delivered:** 15 April 2024

## HEADNOTE

*Dissolution of general partner of exempted limited partnerships -failure of general partner's controller to apply to restore general partner to the register of companies or to appoint a replacement general partner-petitions on behalf of the limited partners seeking an order authorising the signing and filing of a statutory statement on behalf of the general partner appointing a replacement general partner-effect of non-compliance with time limit for filing statutory statement-construction of limited partnership agreement-Exempted Limited Partnership Act (2021 Revision) sections 10, 11, 36*

## REASONS FOR DECISION

### Background

1. The Petitions presented by the Limited Partners of two exempted limited partnerships (Rothenberg Ventures 2016 Feeder Fund LP (“Feeder Fund”) and Rothenberg Ventures 2016 Fund-A LP (“Fund A”), together the “ELPs”) primarily raised a novel question about the consequences of failing to file a statement designating a replacement general partner within the prescribed time period. The ELPs were feeder funds with non-US investors which invested in Rothenberg Ventures 2016 Fund LP of Delaware (the “Main Fund”), founded by Michael Rothenberg (“Mr Rothenberg”). Mr Rothenberg was also the sole director and shareholder of the ELPs’ General Partner, Rothenberg Ventures 2016 Feeder Fund GP, Ltd. (“GP Ltd”). GP Ltd was struck-off the register on 30 April 2021 and the ELPs were struck off on 31 October 2022.
2. As a result of proceedings brought by the US Securities and Exchange Commission (“SEC”), a civil judgment was obtained against Mr Rothenberg on 17 October 2018. Shortly before this occurred, he transferred control over the Main Fund to a Mr Burke Robinson and Jefferson Eppler. Messrs Robinson and Eppler sought to assume control of the ELPs, but Mr Rothenberg remained sole director and shareholder. The Limited Partners became aware that the ELPs had been struck-off in December 2022, as a result of their status coming to the attention of the Main Fund’s new managers. On or about 5 May 2023, the Limited Partners instructed Conyers to investigate the status of GP Ltd as well, and discovered that it had also been struck-off. Mr Rothenberg was

requested to restore the ELPs, which the Limited Partners wished to continue, and to regularise the position of GP Ltd.

3. When these requests were not complied with, Messrs Robinson and Eppler incorporated a replacement General Partner which the Limited Partners formally confirmed they wished to appoint in place of GP Ltd. By a letter dated 18 October 2023, Mr Rothenberg was asked to execute a Statement under section 10 of the Exempted Limited Partnership Act (2021 Revision) (“ELP Act”). He responded that he was preoccupied with a criminal trial which had commenced against him in Oakland, California that month. On 16 November 2023 Mr Rothenberg was convicted of 23 counts of fraud and money laundering in the United States District Court of Northern California. The Petitions herein were presented on 13 December 2023, each seeking an Order authorising Mr Eppler to sign and file a section 10 Statement with a view to replacing GP Ltd with the new General Partner approved by the Petitioners in their capacities as Limited Partners of the two ELPs.
4. Approximately 20 minutes into the unopposed hearing, with Mr Bodden in full flow, Mr Rothenberg communicated his desire to attend the hearing remotely. I decided to allow him to attend remotely, fully accepting that his right to formally participate in the hearing was extremely unclear. Having heard the Petitioners’ counsel’s full oral presentation, which made it clear that the relief sought should be granted, Mr Rothenberg made what appeared to me to be a largely symbolic plea for an adjournment. The purpose was to enable him to seek legal advice about the present proceedings. He had no standing to oppose the petitions in his personal capacity. And the registered GP had legally ceased to exist. I stated in material part as follows:

*“May I say that I understand how difficult it is for somebody that creates a business structure to be forced, against their will, for whatever reason, to relinquish control of the structure. You are not by any means the only founder of a commercial vehicle who has found it difficult to accept the time has come to let go. But unfortunately the evidence that has been placed before me demonstrates very clearly that I should grant the Order that the petitioners seek in respect of each of these Petitions for fuller reasons which I will give later.*

*And it is impossible for me to identify any proper basis for adjourning these proceedings to allow you to get counsel to appear before this Court. Because the length of the period*

*of paralysis is so long and the alternative options available are so vague and intangible, that it is impossible to identify any tangible benefit which would accrue to the ELPs (which you accept need to be restored) from granting any adjournment. So the Orders sought in each of these cases are granted.”*

5. The substance of the application was entirely straightforward. It was obvious that, in light of all the circumstances, the Petitioners should be permitted to cause an appointment of a new General Partner for the ELPs they had invested in. The only legal wrinkle was that the application was being made long after the expiry of the prescribed time limit. Mr Bodden persuaded me, despite this being a novel point, that the Petitioners’ failure to comply with the statutory time limit and/or the time limit prescribed in the Limited Partnership Agreements for seeking the present relief was not fatal to their ability to obtain it.
6. I now give reasons for this decision.

### **The statutory jurisdiction**

7. Section 9 (1) (e) of the ELP Act mandates filing particulars of, *inter alia*, the general partner with the Registrar of Exempted Limited Partnerships when an exempted limited partnership is initially registered. Section 10 of the ELP Act pertinently provides:

*“(1) Without prejudice to subsection (2), if, during the continuance of an exempted limited partnership, any change is made or occurs in any matter specified in paragraphs (a) to (e) of section 9(1), a statement signed, subject to section 11, by a general partner specifying the nature of the change shall, within sixty days of the change, be filed with the Registrar.*

*(2)A statement signed in accordance with subsection (1) in respect of any arrangement or transaction consequent upon which any person will be removed, replaced or admitted as a general partner in any exempted limited partnership, shall, within fifteen days of the arrangement or transaction, be filed with the Registrar and, until the statement is so filed, the arrangement or transaction shall, for the purposes of this Act and the partnership agreement, not be effective to remove, replace or admit that person as a general partner*

*of the exempt limited partnership and with respect to a replacement or admitted general partner the documentation required by subsection 9(1)(e)(i), (ii) or (iii) of this Act shall be provided as the case may require.*

...

*(4) If default is made in compliance with this section, each general partner in default shall incur a penalty of two hundred dollars for each day that the default continues which penalty shall be a debt due to the Registrar and the general partner shall indemnify any person who thereby suffers any loss.” [Emphasis added]*

8. Section 11 provides the following remedy for non-compliance with the section 10 filing obligations, which are primarily imposed on general partners:

***“Failure to file statement***

*11. If a person required by section 9(1), section 10(1) or (2) or section 36, or by the partnership agreement to execute and file a statement or notice fails to do so, any other partner, and any assignee of a partnership interest who is or may be affected by the failure or refusal may petition the court to direct a person the court sees fit to sign the statement and file the same on behalf of the person in default.”*

9. Section 36 (“Dissolution”) deals with the winding-up and dissolution of exempted limited partnerships. Of potential relevance to the present case was the following subsections:

*“(7) The general partner or its legal representative shall promptly serve notice on all limited partners informing the limited partners of—*

- (a) the death;*
- (b) the commencement of liquidation, bankruptcy or dissolution proceedings; or*
- (c) the withdrawal, removal or making of a winding up or dissolution order, in relation to the sole or last remaining qualifying general partner and in this section each event is referred to an ‘event of withdrawal’.*

*(8) If default is made in compliance with this section, each general partner or its legal representative, in default shall incur a penalty of twenty-five dollars for each day that the default continues, which penalty shall be a debt due to the Registrar.*

(9) *Unless the partnership agreement provides otherwise, if a new qualifying general partner is not elected within ninety days after the service of notice of an event of withdrawal in accordance with subsection (7), in this section referred to as ‘the automatic wind up date’, the exempted limited partnership shall be wound up in accordance with the partnership agreement or the orders or directions the court may make or give in accordance with subsection (3) (g).*

(10) *The winding up of an exempted limited partnership shall be deemed to commence upon the earlier to occur of any of the following —*

(a) *the passing of a resolution for winding up;*

(b) *subject to subsection (9), the automatic wind up date;*

(c) *the expiry of the period fixed for the duration of the exempted limited partnership by the partnership agreement;*

(d) *the occurrence of an event provided by the partnership agreement upon which the exempted limited partnership is to be wound up; or*

(e) *where a winding up order has been made, the presentation of the petition for winding up.” [Emphasis added]*

10. Section 36 does not prescribe any statutory consequences for the general partner or its attorney failing to file a section 36 (7) notice save for a financial penalty on the responsible general partner. Winding-up only flows from failing to appoint a replacement general partner within 90 days of the service of a notice of, *inter alia*, dissolution. However even where this time period is triggered by the service of a notice of dissolution and expires, this automatic winding-up requirement may be overridden by the terms of the partnership agreement.
11. The only potentially relevant provision in section 36 for present purposes accordingly appeared to be subsection 10 (d), which provides for a deemed commencement of a winding-up on “*the occurrence of an event provided by the partnership agreement upon which the exempted limited partnership is to be wound up*”. The Exempted Limited Partnership Agreements in respect of each of the ELPs (the “LPAs”) will be considered below.
12. In terms of case law on this Court’s jurisdiction under section 11 of the ELP Act, Mr Bodden referred to this Court’s decision in *Re Asean Infrastructure Fund II LP* [2020 (2) CILR 803], in relation which the Court of Appeal refused leave to appeal [2021 (1) CILR 100]. Smellie CJ (as he then was) identified two matters which required analysis:

- (a) whether an event constituting an “*arrangement or transaction consequent upon which any person will be removed*” for the purposes of section 10 of the ELP Act had occurred (at paragraphs 25-27); and
- (b) (assuming a section 10 event had occurred) whether the relevant circumstances justified the Court exercising the remedial jurisdiction created by section 11 of the ELP Act (at paragraphs 52-54).

## The LPAs

### Fund A LPA

13. Article 2.4 (“*Events Affecting the General Partner*”) provides as follows:

*“Except as specifically provided in paragraph 10.2, the bankruptcy, expulsion, resignation, removal, liquidation, reorganization, merger, sale of all or substantially all the stock or assets of, or other change in the ownership or nature of the General Partner shall not constitute an ‘event of withdrawal’ of the General Partner under the [Act], and upon the happening of any such event, the affairs of the Partnership shall be continued without termination by the General Partner or any successor entity thereto.”* [Emphasis added]

14. Article 10.2 (“*Early Termination of the Partnership*”) provides:

*“(a) The Partnership shall commence winding up prior to the Termination Date (or such subsequent dates to which the Partnership term has previously been extended pursuant to paragraph 10.1) ninety (90) days after the withdrawal, bankruptcy, or dissolution of the General Partner, unless a Majority in Interest of the Fund Limited Partners elect to continue the Partnership within such ninety (90) day period.*

*(b)In the event that the Partnership commences winding up pursuant to the provisions of this paragraph 10.2, a Majority in Interest of the Limited Partners shall elect one or more liquidators to manage the liquidation of the Partnership... Solely for the purpose of the [Act], the commencement of the winding up of the Partnership shall not commence until all filings required by the Law in connection therewith have been made.”* [Emphasis added]

**Feeder Fund LPA**

15. Articles 2.4 and 10.2 were in the same or substantially the same terms for the Feeder Fund as they were for Fund A.

**The issue arising under the LPAs**

16. Article 10.2 of the LPAs required the ELPs to commence winding up within 90 days of, *inter alia*, the dissolution of the General Partner unless the majority of the Limited Partners elected to continue. Here the majority of the Limited Partners had elected to continue, but long after the 90 day period had expired. Had their right to make this election lapsed so that a deemed winding-up had commenced under section 36 (1) (d)? According to the evidence:

- (a) Messrs Eppler and Robinson learned from the former registered office that the ELPs had been struck-off the register with effect from 31 October 2022 in early December 2022;
- (b) on or about 5 May 2023, Conyers was instructed to carry out searches in relation to the ELPs and the GP and (1) discovered that GP Ltd had been struck-off on 30 April 2021 and (2) confirmed that the ELPs had been struck-off with effect from 31 October 2022;
- (c) on 1 June 2023 the Limited Partners wrote Mr Rothenberg as sole director of GP Ltd indicating that they “*intend to elect to continue the LPs and appoint a new General Partner*” and seeking his consent to these steps;
- (d) the three Petitioners in FSD 379/2023 believe that they are the only Limited Partners of the Feeder Fund, and the Petitioner in FSD 380/2023 believes it is the only Limited Partner in Fund A;
- (e) on 12 June 2023, Mr Rothenberg requested the Limited Partners to take no action before discussing the matter further. Attempts to secure Mr Rothenberg’s cooperation to avoid a Court application were initiated in July without success;
- (f) on 6 October 2023, the Limited Partners executed a Deed Poll formally resolving to appoint a new General Partner. On 18 and 27 October 2023, Conyers wrote Mr



Rothenberg indicating that unless GP Ltd was reinstated and filed the section 10 statement confirming its replacement as GP, an application would be made to Court to appoint someone else to make the requisite filing;

- (g) on 30 October 2023, Mr Rothenberg replied querying the urgency of these demands and indicating he was about to enter trial;
- (h) on 27 November 2023, the Limited Partners applied to this Court for Feeder Fund and Fund A to be restored to the register; and
- (i) on 13 December 2023, the Petitions seeking Orders under section 11 of the ELP Act were filed.

17. Mr Bodden argued that reading Article 10.2 of the LPAs in accordance with commercial common sense and in light of the service of notice of dissolution requirements of section 36 (7) of the ELP Act, the 90 day period under the Articles could only sensibly be viewed as starting to run once the Limited Partners had notice of the relevant event (here the General Partner's dissolution).

## Findings

### When time starts running under Article 10.2 of the LPAs

18. I found the submission that the importance placed by the ELP Act in requiring a General Partner to file notice of any event which potentially triggers an automatic winding-up should inform the construction of Article 10. 2 (a) to be compelling. The importance of the notice requirement falls to be considered in light of the overall structure of the ELP regime. Limited partners are investors; general partners are managers. It is counterintuitive to construe the LPAs as imposing time limits which operate against investors so as to bring their investments, without their knowledge, to an end. The key characteristics of ELPs have been cogently explained by Parker J in his oft-cited decision in *Kuwait Ports Authority et al v Port Link GP Limited et al* [2022 (1) CILR 12]:

*“49 Another important characteristic is that the limited partners have no active involvement in the business, which is carried out by the GP. In particular, all contracts are entered into by the GP for and on behalf of the ELP: ELPA s.41 (2). The fact that a limited*

*partner is prohibited from taking part in the conduct of the business of the limited partnership can be said to be the quid pro quo for having the benefit of limited liability: ELPA s.14 (1).*

*50 By s.19 (1) of the ELPA, the GP of an ELP is subject to an express (statutory) duty of good faith requiring the GP to act in the interests of the ELP. That is unsurprising given the GP's key role in the limited partnership's business dealings.*

*51 Importantly, unless the partnership agreement provides to the contrary, a limited partner owes no fiduciary duty either to the ELP or to other partners: ELPA, s.19 (2). This is of course different from an ordinary partnership where mutual and reciprocal rights and obligations are owed to each other by partners.*

*52 As can be seen from this analysis, the existence of the GP in an ELP introduces an important difference to ordinary partnerships with regard to the management of the partnership business and the specific duties owed.*

...

*55 The fact that the partnership has no separate legal personality means that the GP of an ELP holds its rights and property of every description, including choses in action, on trust for each of the partners which make up the limited partnership as a whole. There is no ability however to enforce the GP's obligations as trustee by the partnership as a whole, because it has no legal personality.” [Emphasis added]*

*56 Moreover the GP of an ELP owes its duties to all of the individual limited partners...” [Emphasis added]*

19. The Cayman Islands Court of Appeal approved Justice Parker's exegesis on the legal characteristics of ELPs in *Kuwait Ports Authority et al v Port Link GP Limited et al*, CICA (Civil) Appeals Nos 002 and 003 of 2022, Judgment dated 20 January 2023 (unreported), (Sir Richard Field, JA, at paragraphs 24-26). Limited partners are investors; general partners are managers. It is counterintuitive to construe the LPAs as imposing time limits which operate against investors so as to bring their investments, without their knowledge, to an end. That would encourage, rather

than discourage, general partners to breach the fiduciary duties they owe to individual limited partners.

20. In another case to which Mr Bodden aptly referred, *The Antaios* [1985] AC 191 at 201, Lord Diplock observed (in a frequently cited passage):

*“... if detailed semantic and syntactical analysis of words in a commercial contract is going to lead to a conclusion that flouts business commonsense, it must yield to business commonsense.”*

21. I accordingly was satisfied that time did not start running under the prescribed 90 day time limit for the Limited Partners to elect to continue the business of the ELPs until they had notice on or about 5 May 2023 that the General Partner had been dissolved. They unambiguously manifested their election on 1 June 2023. Thereafter, consistently with the legal prohibition on their participating in the management of the ELPs, the Limited Partners sought to encourage the controller of the dissolved General Partner to rectify the situation and only resorted to direct remedial action of their own as a last resort.

#### **The merits of the application under section 11 of the Act**

22. The conclusions recorded above explaining the basis on which I concluded that the Limited Partners' Petitions for relief under section 11 was not time-barred apply with equal force to demonstrate the merits of the substantive application. It was obvious that the General Partner was either unable or unwilling to file the requisite notice which was needed to facilitate the continuation of the business of the ELPs that all known economic stakeholders support.
23. Not only had GP Ltd been dissolved, the Limited Partners had resolved to appoint a new General Partner. There had been a change in the matters specified in section 9(1) (e) of the Act, which triggered the need for a statement to be signed to that effect under section 10 (1) by the General Partner, subject to section 11. Section 11 provided that where the responsible person failed to file the requisite notice, any other partner could *“petition the court to direct a person the court sees fit to sign the statement and file the same on behalf of the person in default.”* The jurisdiction to grant relief under section 11 of the Act was clearly engaged.

24. The Petitions were supported by Affidavits sworn by Mr Jefferson Eppler of Eppler Legal Inc, San Francisco, California. He was a Manager of the Main Fund, appointed alongside a Mr Burke Robinson, shortly after the onset of Mr Rothenberg’s legal travails. He was demonstrably acting on behalf of the ELPs’ main economic stakeholders in seeking to revive the business operations of the languishing vehicles the Limited Partners had invested in. The Limited Partners sought an Order under section 11 of the ELP Act authorizing Mr Eppler to sign the requisite section 10 Statement and file it with the Registrar with a view to ensuring compliance with the relevant statutory obligations.
25. It was difficult to imagine a clearer case for such relief being promptly granted. In *Re Asean Infrastructure Fund II LP* [2020 (2) CILR 803], Anthony Smellie CJ stated as follows:

*“52 It appears from the evidence presented in support of the petition that the general partner has shown a disregard for its obligations in relation to the partnership such as would ground reasonable concerns that the relationships of trust have broken down and still yet appears determined to cling to control in the face of the unanimous opposition of all the limited partners.*

*53 Section 11 of the ELP Law is specifically designed to ensure that a recalcitrant general partner cannot retain power in this manner. It does so by empowering the court to appoint another person to sign and file the s.10 statement on behalf of the general partner.*

*54 I am convinced that this is a paradigm case for the exercise of the court’s power in this regard...”*

26. Mr Bodden rightly asserted that the present case was also a “paradigm case” for the Court to exercise its powers under section 11. I accordingly granted an Order in relation to each Petition that:

*“1. Mr Jefferson Robert Eppler be directed to sign the Section 10 Statement required by the Act and file same with the Registrar of Exempted Limited Partnerships on behalf of GP Ltd.”*

### Summary

27. For the above reasons, on 31 January 2024 I granted the Petitioners the relief they sought pursuant to section 11 of the ELP Act.



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**THE HONOURABLE MR JUSTICE IAN RC KAWALEY**  
**JUDGE OF THE GRAND COURT**