

Claims Involving Cayman Islands Exempted Limited Partnerships

Can legal proceedings be brought by and against the general partner, the exempted limited partnership or either?

There has been some judicial debate in two recent Cayman Islands court decisions as to: (i) which parties can apply to the Court (and on what basis) to place exempted limited partnerships ("ELPs") into liquidation proceedings (either because the ELP is insolvent or on a just and equitable basis); and (ii) whether an ELP can sue and be sued in its own name (or whether the correct party to legal proceedings is the general partner ("GP") of the ELP). While these are somewhat technical issues, commencing proceedings against the correct party in a manner that avoids, as far is possible, arguments that the proceedings have been commenced incorrectly will save time and cost and avoid the risk of the proceedings being dismissed on technical grounds.

In a development which contributes to this debate, the Grand Court in *Re Formation Group (Cayman) Fund I, L.P.* found that: (i) both a creditor and a limited partner are able to present a winding up petition against an ELP on the same basis as if the ELP were a company; and (ii) an ELP can be named as a party to legal proceedings (i.e. it can sue or be sued).

Formation stands in contrast to the October 2021 decision in *Re Padma Fund L.P.* where it was held that: (i) only limited partners had standing to petition for the winding up of an ELP

and had to do so pursuant to the grounds for winding up applicable to ordinary partnerships in the Partnership Act; and (ii) creditors had no standing to present a winding up petition against an ELP at all – creditors had to petition for the winding up of the GP. Further, only the GP and not the ELP itself could sue or be sued.

This leaves conflicting decisions by judges of first instance – it is not a case of *Formation* 'overruling' *Padma*. Until there is judicial certainty (for example a decision from the Cayman Islands Court of Appeal) or amendments to the legislation, questions of: (i) which parties can present a winding up petition against an ELP (and on what basis); and (ii) the correct party to sue or be sued on behalf of the ELP (either the ELP or GP), will remain open to argument on the facts of each case.

There are a number of avenues open to a party that wishes to present a winding up petition or bring legal proceedings against an ELP, which may help to alleviate the risk that the wrong party has been named to the proceedings or that the winding up petition has been presented under the wrong legislative provisions. It is therefore important to take advice on these issues when considering any legal proceedings involving ELPs.

For the avoidance of any doubt none of the issues raised in this bulletin have any impact on the voluntary liquidation of ELPs and GPs.

If you would like further information or wish to discuss the options available to mitigate the risks discussed above, please liaise with your usual Maples Group contact or any of the persons listed below.

Cayman Islands

James Eldridge

+1 345 814 5239

james.eldridge@maples.com

Luke Stockdale

+1 345 814 5108

luke.stockdale@maples.com

Paul Smith

+1 345 814 5635

paul.smith@maples.com

May 2022

© MAPLES GROUP

This update is intended to provide only general information for the clients and professional contacts of the Maples Group. It does not purport to be comprehensive or to render legal advice.