

IGCF General Partner Ltd and The Infrastructure and Growth Capital Fund L.P. v White Crystals Ltd [2025] CIGC (FSD) 98

October 2025

Court: Grand Court (Cayman Islands)

Subject: Appropriate dispute resolution mechanism if both governing law/jurisdiction clause and arbitration agreement, exempted limited partnership, whether claim by limited partner against general partner for breach of duty is derivative claim, whether limited partner can maintain claim against general partner in liquidation, whether approach to staying court proceedings in favour of arbitration differs if partnership is in voluntary liquidation

Judges: Asif J

Summary

The decision concerns whether a dispute between investors in a Cayman Islands exempted limited partnership should proceed by arbitration in London under LCIA Rules or before the Cayman Courts. Asif J found that the Cayman proceedings should be stayed in favour of the arbitration, and refused the general partner's (**GP's**) application for an injunction to restrain the limited partner (**LP**). In so finding, the Judge applied established principles concerning the interaction between governing law/jurisdiction clauses and arbitration agreements, found that claims of a limited partner against the general partner are not derivative claims, and further that the fund being in voluntary liquidation did not displace the arbitration agreement.

This judgment serves to confirm the pro-arbitration stance of the Cayman Courts.

Further details

The limited partnership deed provided: **Clause 11.6 (Governing Law)** – *'This Deed and the rights and obligations of the parties hereto shall be governed by and construed in accordance with the laws of the Cayman Islands and the parties submit to the non-exclusive jurisdiction of the courts in the Cayman Islands'*, and; **Clause 11.8 (Arbitration)** – *'Disputes shall be submitted to a panel of three arbitrators ... The arbitration proceedings shall be held in London, England ... Such arbitration proceedings shall follow the rules of the [LCIA]'*.

The LP argued that the claims advanced in the arbitration were derivative claims, and so fell within clause 11.6, not clause 11.8. This argument did not succeed:

- **Interaction between governing law/jurisdiction clause and arbitration agreement.** First, the non-exclusive jurisdiction provision in clause 11.6 did not detract from the wide scope of 11.8. Jurisdiction clauses, particularly if non-exclusive, are interpreted so as not to impede or otherwise prejudice a mandatory arbitration agreement: *Ace Capital Ltd v CMS Energy Corp* [2008] EWHC 1843 (Comm); *Surrey CC v Suez Recycling and Recovery Surrey Ltd* [2021] EWHC (TCC).

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- **Claims not derivative.** In any event, under s.33(3) of the *Exempted Limited Partnership Act*, a derivative claim may only be brought where the general partner fails to sue a third party, not where the general partner itself is alleged to have committed the wrong. The LP's claims were therefore direct claims against the GP for breach of duty, which vested directly in the limited partner. (However, *if* the claim was correctly characterised as a derivative claim, then the court's approval would have been required to pursue the same. Such approval had not been sought, which would have been a reason to refuse the stay).

A limited partner is not prevented from maintaining a claim once a liquidator of the GP has been appointed. In so finding, Asif J highlighted that if the limited partner were to be required to surrender their claim against a general partner to the general partner's liquidator, that would result in the legally and practically infeasible situation of the general partner, by its liquidator, suing itself.

Relevance of the fund being in voluntary liquidation. Applying s.4 of the FAAEA and the guidance from *FamilyMart China Holding Co Ltd v Ting Chuan (Cayman Islands) Holding Corp* [2023] UKPC 33 concerning whether to stay proceedings in favour of arbitration, the Judge found that the current proceedings should be stayed.

The fact that the fund was in voluntary liquidation did not lead to a different result. A neutral bystander, if asked at the time they entered into the LP Deed whether disputes similar to those advanced by the LP and GP were intended to be covered by clause 11.8 if the Fund was being voluntarily wound up at the expiry of its term, or should be addressed by the court under s.129 of the Companies Act, would have responded that they agreed to arbitration. Further, s.129 is permissive not mandatory, such that the ability of the court to determine a question in the voluntary winding up does not exclude the continuing availability to the parties of recourse to the arbitration agreement.

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