

International Corporate Rescue

Published by

Chase Cambria Company (Publishing) Ltd



www.chasecambria.com



Published by:

Chase Cambria Company (Publishing) Ltd
4 Winifred Close
Barnet, Arkley
Hertfordshire EN5 3LR
United Kingdom
www.chasecambria.com

Annual Subscriptions:

Subscription prices 2024 (6 issues)

Print or electronic access:

EUR 730.00 / USD 890.00 / GBP 560.00

VAT will be charged on online subscriptions.

For 'electronic and print' prices or prices for single issues, please contact our sales department at:
+ 44 (0) 207 014 3061 / +44 (0) 7977 003627 or sales@chasecambria.com

International Corporate Rescue is published bimonthly.

ISSN: 1572-4638

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Exempted Limited Partnerships in the Cayman Islands: Wind Down, Removing the General Partner and the Grand Court's Flexibility

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Synopsis

- Section 36(13) of the Exempted Limited Partnership Act (2021 Revision) ('ELPA') gives the Grand Court of the Cayman Islands the power to override a limited partnership agreement and replace the general partner ('GP') of an exempted limited partnership ('ELP') during its winding up, if necessary for a proper dissolution.
- Recent cases, notably *In the matter of One Thousand & One Voices Africa Fund I, LP (In Voluntary Liquidation)* FSD 22 of 2024 (IKJ) ('1K1V') and *In the matter of Sensegain Vorak Investment L.P. (in voluntary liquidation)* FSD 62 of 2025 (DDJ) ('Sensegain') confirm the primacy of the commercial will of the limited partners ('LPs'), while highlighting the readiness of the Court to intervene where trust and cooperation with the GP have broken down.
- The ongoing case of *Kuwait Ports Authority v Port Link GP Ltd* FSD 236 of 2020 (RPJ) ('Port Fund') litigation illustrates how the Court handles deadlock and conflicts, sometimes promoting hybrid governance solutions such as receivership and ongoing case management to protect investor value.
- Each case points to a general rule: robust consensus by LPs, fully documented processes and prompt engagement with statutory remedies are all essential to overcome obstructive GPs and bring Cayman funds to an orderly close.
- Drafting best practice now includes explicit recognition of statutory rights, including section 36(13) of the ELPA, in all Limited Partnership Agreements ('LPAs'); effective winding down depends more on commercial alignment and process discipline rather than the words of the partnership agreement.

Introduction: statutory safeguards and partnership autonomy

Cayman ELPs have become the private fund vehicle of choice for global private equity and alternative investment sponsors. These statutory trust structures promise contractual flexibility with tax neutrality, managed by a single GP holding legal title to underlying assets. In practice, the ability of LPs to hold the GP to account is often not tested during the investment period, but at the moment of dissolution and winding up. This is where the true strength of the LPA is put to the test, often influenced by the practical interests of investors and, if necessary, the oversight of the Court.

Section 36(13) of the ELPA allows any partner, creditor or liquidator to ask the Court to override the winding up process provided for by the LPA and appoint an independent party to complete the task. The rationale is straightforward: even the best drafting cannot exclude the need to protect the economic interests of investors when confidence in the GP is lost, or a deadlock or dispute threatens the value of what remains.¹

Section 36(13) ELPA: the court's discretionary safety net

Section 36(13) of the ELPA provides:

'Following the commencement of the winding up of an exempted limited partnership 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 exempted limited partnership pursuant to subsection (3)(g).'

Section 36(3)(g) of the ELPA confirms that Part V of the Companies Act (2025 Revision) and the Companies Winding Up Rules (2023 Consolidation) shall apply to the winding up of an ELP and that 'on application by a partner, creditor or liquidator, the court may make orders and give directions for the winding up and

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¹ 1K1V, [2024] (1) CILR 371 at [32] to [34].

dissolution of an exempted limited partnership as may be just and equitable.’

The statutory mechanism in section 36(13) is often repeated in modern LPAs, but nothing in this section, or elsewhere in the ELPA, permits an LPA to ‘opt out’ of the Court’s ultimate authority. Section 36(13) is therefore a deliberate and robust safety net that can be relied upon when the Court considers it necessary.

The power under section 36(13) goes beyond filling a gap in a LPA or avoiding practical impossibility: the Court will not treat the terms of a LPA as an absolute bar,² nor will it limit itself to situations in which the LPA is silent or has failed.³ The Court may intervene wherever allowing the GP to remain would be unjust or commercially unrealistic.

Practical consequences of this power include:

- The wishes of the economic majority carry great weight provided there is *bona fide* process and evidence.
- Misconduct is not required, although it will justify Court action.⁴ The threshold is, on an objective basis, the loss of confidence of the LPs.
- Any attempt by a GP to thwart the proper winding up (especially where value may be dissipated) exposes it to adverse costs and outright removal.⁵

1K1V: commercial reality over technicalities

The facts in this case reflect a familiar pattern: LPs seek changes to fund management, the GP exercises its rights to respond, and litigation ensues as the parties seek to resolve their differing views.

In this case, when 97% of LPs called for the removal of the GP and for independent liquidators to be appointed, the GP refused and proceedings were commenced. Justice Kawaley ruled that the Court’s jurisdiction was clear: overwhelming LP support for change cannot be defeated by technical arguments, nor can the incumbent GP further delay by commencing parallel proceedings.

In his judgment, Justice Kawaley stated in terms that ‘the likelihood that this Court can find a rational basis for declining to grant the relief sought by the Petitioner seems quite fanciful in all the circumstances’.⁶ Persistent and procedural challenge by the GP, where the commercial consensus is clear, will be taken as further

evidence of a GP’s unfitness to wind down a partnership, not a basis for deference to the LPA.

Key judicial findings

Justice Kawaley delivered a clear summary, evidencing three themes to be taken from the Court’s approach:

- Statutory primacy: section 36(13) grants an ‘unfettered discretion’ to the Court. It is not limited to situations where the contract fails, nor is it defeated by the terms of a LPA.⁷
- Majority LP will: the test, derived from the notion of the sanctity of property rights, is whether there is a *bona fide* majority wish for removal, evidenced by notice and process, not whether there has been GP fraud or malfeasance.⁸
- Collateral proceedings: the GP’s decision to initiate proceedings in the United States was a ‘flagrant collateral attack’ and an abuse of process. The Court stated in direct terms that there was no rational basis for the GP to insist on remaining in office.⁹

Kawaley J found the GP’s strategy – one of delaying on technical grounds and reaching for foreign courts – made the reasons for removal even more plain and costs were awarded against the GP.

The Court’s approach in *1K1V* provides a blueprint for disgruntled LPs: maintain a clear, contemporaneous record of LP votes and notices, adhere to the procedural requirements of the LPA as far as possible, and act promptly where the GP’s conduct endangers value or delays closure.

Sensegain: early concession, early resolution

Sensegain involved a very similar wind down scenario. The majority of LPs (being around 82% by value and representing all unconnected partnership interests) called for removal of the GP as voluntary liquidator and appointment of independent professionals.

The GP accepted (properly so) that the wishes of the majority of the LPs could not be considered irrational and, on that basis, did not oppose this outcome or make any attempt to contest the action. Having considered Kawaley J’s reasoning in *1K1V* and similar decisions of

Notes

² *Ibid.*, at [14] to [17]

³ *Ibid.*, at [24] to [28]

⁴ *Malaysia Venture Capital Management Berhad v ECM Straits Fund I LP*, FSD 230 of 2022 (RPJ), judgment, 20 December 2022 at [36].

⁵ *1K1V*, [2024] (1) CILR 371; unreported, 9 May 2024; Costs Ruling, unreported 23 July 2024.

⁶ *1K1V*, [2024] (1) CILR 371 at [34]

⁷ *1K1V*, [2024] (1) CILR 371 at [31]

⁸ *1K1V*, unreported, 9 May 2024 at [24] and [25]

⁹ *1K1V*, unreported, 23 July 2024 at [24]

the Court,¹⁰ Justice Doyle followed the prevailing logic: where the LP majority's wishes are objectively reasonable and substantively unimpeachable, technical resistance from a GP only causes cost and delay, for which the Court will have no patience. The order removing the GP was therefore made by consent and there was no need to investigate the facts further, resulting in the saving of costs for all parties.

As for key takeaways, if the GP cannot demonstrate good cause or a factual dispute, conceding early should not be seen as a weakness, rather it is sensible risk management. The Court is not impressed by procedural holdouts and does not require underlying misconduct as a predicate for removal.

The *Port Fund* litigation: receivers, hybrid orders and judicial flexibility

The ongoing *Port Fund* saga offers further helpful guidance and highlights the tools available when deadlock is reached and governance fails. The facts are challenging on multiple fronts, and the resulting judgments demonstrate the Cayman Court's procedural and remedial creativity in contentious ELP dissolutions:

- Misconduct at the GP level, factional battles, and competing claims required the Court to sanction joint receivership, at times over both the GP and the fund.
- Facing the potential for dissipation and the paralysis of value recovery, the Court's decision not to force the GP into full supervised liquidation, but to accept sequenced, hybrid orders, demonstrates a capacity for practical supervision tailored to the reality of multi-jurisdictional claims and asset recoveries.
- Litigation and receivership were (and have been) managed simultaneously, with the Court declining to allow procedural complexity or party infighting to dissipate value or prevent asset recovery.

Thus the Court has set out that there is no single template, but rather a solution adapted to the shifting risks in the ongoing proceedings.

Notably, the Court in several related decisions rejected any strict sequencing or forced conversion to official liquidation, prioritising a pragmatic, value-protective regime that gave Court officers power but did not disrupt pending claims. Each remedial step was tailored to the needs of the fund and its investors at that point.

Statutory purpose and company law analogies

Kawaley J's analysis in *1K1V* expressly rejects the proposition that the ELPA's endorsement of LPA autonomy defeats the supervisory jurisdiction of the Court. Importantly:

- Section 36(13) is deliberately broad and there is no ability to contract out of it.
- The statutory override is intended as a deliberate safety net, with analogies to (but less burdensome than) just and equitable winding up for companies or trusts. It therefore does not require the demonstration of a deadlock or breakdown of substratum.¹⁴
- The commercial will of the majority, provided it is *bona fide* and evidenced with process, is treated as decisive absent credible, countervailing reasons. This includes circumstances in which collective investor interests are at risk.

On the above bases, while the Cayman Courts are clearly alive to the nuances of fund structures as compared to companies, there is little tolerance for technical points being used to defeat the real substance of the investment bargain.

Current themes and strategic takeaways

- Keep processes and records beyond reproach. The GP's refusal of the majority will, alongside attempts to exclude petitioning LPs through last-minute procedural 'removal', has proven pivotal in the Court's willingness to act.
- A GP should act promptly. Slow action, or failed engagement on the part of a GP, creates a vacuum where the Court will step in, sometimes summarily.
- Parallel proceedings are a risk for GPs. As in *1K1V*, using foreign actions to frustrate the Cayman process can result in indemnity costs and reputational damage.
- Custom drafting of an LPA is key, but never absolute. Attempted restrictions on Court intervention through the provisions of a LPA are likely to be of little persuasive force.
- Complex disputes invite the Court to adopt creative supervisory approaches. As in *Port Fund*, the Court may stitch together receivership and partial liquidation or make hybrid orders to protect value, maintain litigation, and manage competing interests.

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¹⁰ *Sensegain*, unreported, 2 May 2025 at [13] to [23].

Practice and drafting – key lessons

- Do not rely on the terms of a LPA to protect against section 36(13). No exclusion is effective against the statutory override. LPs should anticipate breakdown risks by insisting on clear LPA provisions for removal and replacement, in both going concern and winding down situations.
- Consult the Court early if a deadlock looms. The Grand Court's approach in both *1K1V* and *Port Fund* affirms that prompt intervention on a clear record is rewarded. Conversely, GPs should be mindful that attempts to forum shop, delay, or resist where the commercial consensus is overwhelming will simply lead to cost sanctions and reputation damage.
- Similarly, GPs should make no assumption that delay or technical resistance will 'wear down' LPs or slow their petition. That time has passed, as both case law and the Court's approach to costs consequences now make clear.
- Anticipate bespoke remedy needs, as cross-border assets, litigation, or value-protection may require creative combinations of receivership, hybrid liquidators, or split mandates.
- Take early professional advice and, if necessary, offer an orderly handover to an independent officeholder.

Broader themes and judicial trends

Recent authorities confirm a decisive shift in the Cayman Islands towards an investor friendly, equitable and functional approach to the supervision and winding up of ELPs. The Court has made clear that process should not be allowed to defeat substance: where there is genuine investor consensus, it will take priority over technical or procedural formalities. Judicial tolerance for GPs who try to cling to their position, frustrate wind-downs, or resist investor direction for personal or defensive reasons is at an all-time low.

As complex fund structures continue to give rise to increasingly multi-jurisdictional disputes, the Cayman Courts have shown not only flexibility, but a clear determination to close loopholes, align oversight with the realities of post-investment fund management, and reassert confidence in ELPs as the global industry standard. Where LPs coalesce around a restructuring or exit solution, the Court will need compelling commercial reasons not to adhere to those wishes. Where a GP is dysfunctional, conflicted or uncooperative, the expectation should be Court facilitated transition on the basis that value preservation will be prioritised over any argument of procedural purity.

The decisions in *1K1V* and *Sensegain* have reinforced the primacy of investor consensus and confirmed the Court's role as a backstop to support fair and efficient outcomes, as opposed to a referee for GP intransigence. In the *Port Fund* litigation, the Court has demonstrated its willingness to adopt creative, hybrid mechanisms for contentious or high-value wind downs, including managing live litigation and reconciling competing claims within a flexible supervisory framework.

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