IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

NEUTRAL CITATION NUMBER: [2025] CIGC (FSD) 35

CAUSE NO. FSD 62 OF 2025 (DDJ)

IN THE MATTER OF THE EXEMPTED LIMITED PARTNERSHIP ACT (2025 REVISION)

AND IN THE MATTER OF SENSEGAIN VORAK INVESTMENT L.P. (IN VOLUNTARY LIQUIDATION)

BETWEEN:

KRAVIS CAPITAL LIMITED

Petitioner

and

SENSEGAIN GLORY LIMITED AS GENERAL PARTNER FOR AND ON BEHALF OF SENSEGAIN VORAK INVESTMENT L.P. (IN VOLUNTARY LIQUIDATION)

Respondent

Before:	The Hon. Justice David Doyle
Appearances:	Corey Byrne of Ogier (Cayman) LLP for Kravis Capital Limited Ben Hobden and Kelsey Sabine of Harneys Westwood & Riegels (Cayman) LLP for Sensegain Glory Limited
Heard:	25 April 2025
***Ex tempore* judgment delivered:**	25 April 2025

Draft transcript of
***Ex tempore* judgment circulated:** 29 April 2025

Draft transcript of
***Ex tempore* judgment approved:** 2 May 2025

Determination of a summons for directions in respect of a petition to remove a liquidator and appoint others in its place pursuant to section 36(3)(g) and 36 (13) of the Exempted Limited Partnership Act (2025 Revision) – directions for the hearing of a subsequently filed application for a stay pursuant to section 4 of the Foreign Arbitral Awards Enforcement Act 1997 – the need for parties and their attorneys to promptly and constructively cooperate in respect of directions progressing a case to hearing

JUDGMENT

Introduction

1. By petition dated 17 March 2025 (the "Petition") Kravis Capital Limited (the "Petitioner") seeks an order removing the present liquidator and appointing what it describes as independent third-party liquidators namely Robert Shifman of Kroll (Cayman) Ltd and Chi Lai Man Jocelyn of Kroll (HK) Limited in its place to wind up the affairs of Sensegain Vorak Investment L.P. (the "Partnership"). The respondent is Sensegain Glory Limited the general partner of the Partnership (the "GP") and the present liquidator. The Petition is stated to be pursuant to section 36(3)(g) and section 36 (13) of the Exempted Limited Partnership Act (as revised) (the "ELP").

2. Section 36 (3) (g) of the ELP provides:

> "Except to the extent that the provisions are not consistent with this Act, and in the event of any inconsistencies, this Act shall prevail, and subject to any express provisions of this Act to the contrary, the provisions of Part 5 of the *Companies Act (2025 Revision*) and the *Companies Winding Up Rules (2023 Consolidation)* shall apply to the winding up of an exempted limited partnership and for this purpose … on application by a partner, creditor or liquidator, the court may make orders and give directions for the winding up and dissolution of an exempted limited partnership as may be just and equitable."

3. Section 36 (13) of the ELP 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)."

4. The Petitioner says that it holds a substantial economic interest in the Partnership. The Petitioner adds that its petition is supported by other limited partners of the Partnership (the "Majority LPs"). The Petitioner says that together, based on their paid in capital, the Majority LPs hold:

5.

(a) 100% of the unconnected limited partnership interest in the Partnership;

(b) approximately 82% of the limited partnership interest in the Partnership; and

(c) approximately 77.45% of the economic interest in the Partnership.

6. In the first affirmation of Cao Ling affirmed on 17 March 2025 in support of the Petition at paragraph 9 it is stated that the Petitioner holds 19.2% of the economic interest in the Partnership.

7. It appears common ground that the Respondent's economic interest in the Partnership is 22.5%.

8. The Petition refers to information rights pursuant to section 14.2 of the Amended and Restated Limited Partnership Agreement dated 20 December 2018 (the "LPA"). The Petition also refers to section 10.1 and 10.4 of the LPA under the heading "Loss of confidence in the GP" and at paragraph 18 complains that the GP has failed to wind up the affairs of the Partnership within a reasonable time and that the required filings or notices have not been made or published. At paragraph 20 of the Petition, it is stated that the GP has failed to provide requested documents and has refused to distribute the Partnership's assets. At paragraph 21 of the Petition it is stated:

> "In light of the above, the Petitioner and the Majority LPs have lost confidence in the GP's ability to properly effect a winding up of the Partnership's affairs."

9. At paragraph 22 (a) of the Petition under the heading "relief sought" it is stated that the Petitioner has standing to present the Petition as a limited partner for an order appointing independent third-party liquidators in place of the GP, and at paragraph 22 (b) it is stated that it is "just and equitable" that the specified individuals from Kroll are appointed liquidators.

10. Unfortunately, the parties have not agreed the directions in respect of the hearing of the Petition which was set down for 10am on 10 June 2025 some time ago now. The Respondent has recently (22 April 2025) filed a summons to stay the proceedings (the "Stay Application") pursuant to section 4 of the Foreign Arbitral Awards Enforcement Act (1997 Revision) ("FAAEA").

11. I have considered the hearing bundle and the additions to the hearing bundle, the skeleton arguments and the oral submissions of Corey Byrne for the Petitioner and Ben Hobden for the Respondent. I am most grateful to counsel for their assistance to the court.

12. The Petition and the Stay Application are before the court this morning for directions.

Petitioner's submissions

13. The Petitioner says that the Petition and the Stay Application should be heard together on 10 June 2025 and refers to the time sensitivity in view of the eToro shares.

14. The Petitioner says that the Stay Application and the Petition are not complex and refers to *FamilyMart China Holding Co Ltd v Ting Chuan (Cayman) Holding Corporation* [2023] UKPC 33 ("*FamilyMart*") and two judgments of Kawaley J in *Re One Thousand & One Voices Africa Fund 1 L.P* one on 24 April 2024 ("*Re Africa Fund 1"*) and another on 9 May 2024 ("*Re Africa Fund 2"*).

15. In *Re Africa Fund 1* Kawaley J held that the court had jurisdiction to appoint alternative liquidators contrary to the express terms of the applicable limited partnership agreement. In that case limited partners with a 97% stake in the partnership wished the general partner to be removed as liquidator and for independent liquidators to be appointed. Kawaley J was concerned that the respondent in that case which had raised the jurisdictional issue was "engaging in time-wasting tactics" ([29] of Kawaley J's judgment).

16. Kawaley J set out some provisional views on the merits from [29] to [34]. At [30] stating:

> "The Petitioner's case, in a nutshell, amounts to this. It would be inconsistent with elementary principles of winding-up law for the Court not to replace the General Partner when it has unarguably lost the trust and confidence of 97% of the economic stakeholders of the ELP, no matter what the reasons may be. There is no need for the Court to consider the merits of the original complaints laid against the GP. That position appears to be an unassailable one".

17. Kawaley J at [31] referred to section 36(13) of the ELP as conferring upon court an "unfettered discretion" and there were "no statutory conditions to satisfy …" and added:

> "The need to evaluate whether the jurisdictional requirements for appointing Official Liquidators have been met do not arise in relation to an application to give effect to the majority stakeholders' wishes as to whom the voluntary liquidators of the ELP should be. The very fact that the GP does not apparently accept the fundamental principle that in a liquidation the wishes of the majority stakeholders prevail (assuming the opposition of the Petition is maintained) appears to demonstrate the need for a fresh appointment."

18. With his considerable experience of matters of this nature Kawaley J stated:

> "32. Unfortunately, the opposition to the present Petition has an all too familiar ring. The best way for a manager who has lost the confidence of the investors to demonstrate their probity is to step aside, demonstrating confidence that their impugned management of the fund will be vindicated by independent scrutiny. Instead, the importance of their continuing at the helm is apparently given priority over the wishes of the investors, and the recalcitrant manager claims to know better than the investors where their best commercial interests lie. Regrettably, whatever unique expertise the scorned manager truly possesses, the distinct impression is created that the determination to cling to office is motivated by self-interest at best or the desire to forestall independent investigation into suspect dealings at worst …

> 34. In summary, at this juncture, 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 of the present case."

19. In *Re Africa Fund 2* Kawaley J at [2] stated:

> "Once a voluntary liquidation commences on a solvent basis, the liquidation process must be conducted having regard to the interests of the limited partners as economic stakeholders. Their reasonable wishes ought ordinarily to be accommodated."

20. At [3] Kawaley J stated:

> "It was impossible to understand why the GP could legitimately insist on remaining in office [as liquidator] over the wishes of 97% of the stakeholders."

21. At [33] Kawaley J stated:

> "The very fact that the GP wished to remain in office over the wishes of the overwhelming majority of the investors was a powerful indicator that he did not apprehend the fundamental characteristics and requirements of a liquidator's representative role. It thus seemed fanciful to anticipate that the Court could ultimately be persuaded to decline to appoint the professional liquidators that 97% of the investors sought to have appointed."

22. In the *Re Africa Fund* case Kawaley J was not dealing with any arguments in respect of arbitration agreements, or a request for a stay pending arbitration.

23. I have noted all the points raised in the skeleton argument and the oral submissions on behalf of the Petitioner and I have considered the directions which the Petitioner has suggested in respect of the hearing of the Stay Application and the Petition.

Respondent's submissions

24. The Respondent says that there is no way that both the Stay Application and the Petition can realistically be heard within one day on 10 June 2025.

25. The Respondent says that the Stay Application must be determined before the Petition.

26. The Respondent adds that there is no need to hear the Petition on an urgent basis.

27. The Respondent says that the hearing of the Stay Application (as opposed to the Petition) on 10 June 2025 would not give rise to any undue delay.

28. The Respondent refers to section 4 of the FAAEA which provides:

> "If any party to an arbitration agreement … commences any legal proceedings in any court against any other party to the agreement … in respect of any matter agreed to be referred, any party to the proceedings may at any time after appearance, and before delivering any pleading or taking any other steps in the proceedings, apply to the court to stay the proceedings; and the court, unless satisfied that the arbitration agreement is null and void, inoperative or incapable of being performed or that there is not in fact any dispute between the parties with regard to the matter to be referred, shall make an order staying the proceedings."

29. Section 4 was considered in the context of winding up proceedings in *FamilyMart*.

30. In the case presently before the court section 14 of the LPA is entitled "Administrative Provisions" and 14.8 is under the heading "Geneal Provisions". 14.8.5 is entitled "Dispute Resolution" and provides:

> "14.8.5 Dispute Resolution
>
> (1) Form and Venue. Any controversy, claim or other dispute arising out of or relating to this Agreement shall be resolved exclusively through binding arbitration in accordance with the rules of the Hong Kong International Arbitration Centre, and judgment upon an award arising in connection therewith may be entered in any court of competent jurisdiction. The arbitration shall be conducted in the English language. The Partners expressly acknowledge that, under the preceding sentence, they are waiving their right to a jury trial with regard to all matters for which arbitration is required. Any arbitration, mediation, court action, or other adjudicative proceeding arising

out of or relation to this Agreement shall be held in Hong Kong or, if such proceeding cannot be lawfully held in such location, as near thereto as applicable law permits. To the maximum extent permitted by applicable law, in any dispute relating to the obligation of a party to make indemnification payments, the burden of proof shall be upon the party seeking to avoid making such payments.

(2) Fees and Costs. The prevailing party or parties in any arbitration, mediation, court action, or other adjudicative proceeding arising out of or relating to this Agreement shall be reimbursed by the party or parties who do not prevail for their reasonable attorneys, accountants and experts fees and related expenses (including reasonable charges for in-house legal counsel and related personnel) and for the costs of such proceeding. If different parties prevail on different issues, the rule set forth in the preceding sentence shall be adjusted to, as closely as reasonably possible, give equitable effect to the underlying intent that a party prevailing on a particular issue shall recover costs for advancing its position on that issue."

31. The Petitioner refers to the judgment of Kawaley J in *China CVS (Cayman Islands) Holding Corp* (FSD unreported judgment 25 February 2019), and says the judge therein describes the purpose of section 4 of the FAAEA at paragraph 68 as follows "…to give effect to the strong legal policy that where parties to a contract have agreed to exclusively refer a suite of disputes to arbitration, they should be held to their contractual bargain". The Petitioner submits that it is consistent with scheme of section 4 and its underlying legal policy that not only must stay applications be brought before the taking of any other steps in the proceedings, but they should also be determined before the taking of any other steps in the proceedings.

32. The Respondent says:

(a) directions should be given for the determination of the Stay Application;

(b) the Respondent should not be required to take any further step in connection with the Petition (save in respect of the Stay Application) until further order of the court;

(c) the Stay Application should be heard on 10 June 2025 (or on such earlier date as may be agreed).

33. The Respondent adds that if the court is not minded to make these directions then it seeks, in the alternative, directions for the determination of the Stay Application on an expedited basis, to be listed at the earliest convenient date for the court and in any event before the hearing of the Petition in accordance with the following timetable:

(1) the Petitioner to file evidence in answer (if any) to the Stay Application within 7 days after the filing of the Stay Application;

(2) the Respondent to file evidence (if any) in reply within 3 days thereafter;

(3) the parties exchange and file written submissions and joint bundle of authorities within 7 days thereafter; and

(4) the stay application be listed for hearing on the earliest convenient date for the court after 19 May 2025.

34. The Respondent says that to the extent the court adopts what it describes as "this hybrid approach" it has no comments on the directions proposed by the Petitioner in respect of the Petition.

35. I have noted all the points raised in the skeleton argument and the oral submissions on behalf of the Respondent and I have considered the approach and the directions which the Respondent has suggested.

The background

36. I have also considered the background to this matter and in particular insofar as it relates to the failure to agree directions for the hearing of the Petition. A consideration of the background is helpful in respect of determining what directions should be made in respect of the Petition and the Stay Application and what order for costs should be made.

37. On 26 March 2025 the Petition was set down for hearing at 10am on 10 June 2025 with a maximum of 1 day allocated.

38. The Petitioner says that it has been trying since 28 March 2025 to agree with the Respondent directions for the filing of evidence and skeleton arguments.

39. This should have been a relatively straightforward process in respect of the timing of the filling of evidence and skeleton arguments.

40. I have taken time out of a busy court calendar to consider the correspondence in detail. It does not show the Respondent in a good light. On the face of it the Respondent appeared to be stalling and playing for time. Its approach was not in accordance with the overriding objective. The court reasonably requires and expects more from litigants and their attorneys as officers of the court. Parties and their attorneys should promptly and constructively cooperate in respect of directions progressing matters to hearing. I have considered the undated affirmation of Ning Xinjiang of the Respondent added to the bundle on 23 April 2025. It is provided in support of the Respondent's Stay Application and not in opposition to the Petition. I note also the apologies for the delay on the part of the Respondent in filing the Stay Application. The excuse is that apparently English is not the first language of the management of the Respondent. I note that the signed 20 page affirmation is in the English language and is not a translation.

41. By letter dated 28 March 2025, Ogier (for the Petitioner) wrote to Harneys (for the Respondent) seeking to agree directions for the filing of evidence, written submissions and an agreed hearing bundle and requesting a response before close of business on 31 March 2025 (Hong Kong time).

42. A chaser was sent on Tuesday, 1 April 2025 and Harneys responded on that day indicating that they were consulting with leading counsel and expect to respond by no later than Wednesday morning, 2 April 2025 (Cayman time). No reference to time being required because English was not the first language of the management of the Respondent. Ogier send another chaser on 3 April 2025 and Harneys respond on that day indicating that its client is "currently considering all its options" and they will endeavour to respond "as soon as possible" and they expect that will be after Monday, 7 April 2025 due to a festival. Having heard nothing further Ogier chase again on 8 April 2025 stating: "There is no reason why reasonable directions cannot be agreed between the parties, nor why it should take this long for you to consult with leading counsel on proposed directions". Ogier

request a substantive response to its letter of 28 March 2025 within "the next 24 hours" failing which Ogier says it is intended to file a summons and seek indemnity costs.

43. Finally, Harneys respond to the Ogier letter dated 28 March 2025 by letter dated 9 April 2025 stating that a directions hearing will be required unless Ogier's client withdraws the Petition and an arbitration is initiated pursuant to clause 14.8.5 of the LPA. In the previous paragraph Harneys say that there is no justification for the Petitioner's "alleged loss of trust and confidence in our client. Rather, there has simply been a difference of opinion in respect of commercial matters that are for our client to determine in its role as liquidator." Harneys say that there is a requirement for the court to make directions regarding the "service of a defence" and various other matters required by Order 3 rule 12 of the Companies Winding Up Rules (2023 Consolidation).

44. Ogier promptly respond by letter dated 10 April 2025 stating that the replacement of liquidators is not an arbitrable dispute under the LPA and a tribunal constituted under the LPA would have no power to make the orders sought in the Petition and the underpinning facts demonstrating that the limited partners have lost trust and confidence are clear and do not give rise to any arbitrable "controversy, claim or other dispute". Ogier added "Your client does not have grounds to dispute the simple timetable that we have proposed in our letter dated 3 April 2025" and indicated that they would be filing the summons. If the directions had been agreed and a consent order presented much time and costs would have been avoided. It is unfortunate that the Respondent insisted on the filing of a summons and did not agree sensible suggestions in respect of directions to progress the Petition.

45. On 10 April 2025 the Petitioner, true to its word, filed the summons for directions (the "Petitioner's Summons") and on 14 April 2025 it was listed for 10am today, Friday 25 April 2025.

46. Just to compete the review of the correspondence, I should add that Harneys in their letter to Ogier dated 11 April 2025 referred to the need for a summons for directions to be issued and rejected the assertion that the dispute was not arbitrable.

47. Harneys closed its letter with the following words:

> "We expect directions for the hearing of our client's summons for a stay can be addressed at the same time as your client's summons for directions."

48. Ogier respond by detailed letter dated 16 April 2025 stressing that the only question is the identity of the liquidators which is within the sole jurisdiction of the court. Ogier, with some considerable force, say that the Respondent's agreement to the proposed directions was "unreasonably withheld". Ogier say:

> "Your suggestion to the Court that there be directions for pleadings is yet another attempt at creating further delay to the Petition. There is no need for such directions in this case which is a relatively simple application under section 36 of the ELP Act."

49. Harneys appear now to have abandoned their point about filing a defence. It does not even appear in the belated directions it suggests in its letter dated 17 April 2025.

50. Harneys respond to Ogier's letter of 16 April 2025 by letter dated 17 April 2025 indicating that its client did not agree that the Petition should be head on the same day of the Stay Application.

The Stay Application

51. Under the recently filed Stay Application the Respondent at paragraph 1 seeks an order "Pursuant to section 4 of the Foreign Arbitral Awards Enforcement Act 1997, that these proceedings be stayed" and at paragraph 2 "No Defence or any other step in these proceedings shall be required to be filed or undertaken by the Respondent until further order of the Court."

52. I have considered all that is written and said on behalf of the Respondent in respect of the timing of the Stay Application and the legal principles under the arbitration legislation and case law.

53. I have, on a preliminary basis, considered the issues and matters raised in this case, clause 14.8.5 of the LPA, *FamilyMart* and section 4 of the FAAEA. I have the Stay Application but I do not have the notice referring the matter to arbitration. In the signed but undated affirmation of Ning Xinjiang at paragraph 44 it is stated that "The notice of arbitration is in preparation by the GP and will be filed with the HKIAC shortly." I am told this morning by Mr Hobden that it has now been filed and a copy has been provided to the Petitioner. I have not seen it.

54. I should also add that I have considered the second affidavit of Raedean Simpson sworn on 24 April 2025 and the exhibited communications brought to my attention late yesterday.

Determination

55. There are two main issues before the court. Firstly, what directions should be made in respect of the Petition and the Stay Application. Secondly, what order for costs should be made in respect of the Petitioner's Summons.

The hearing of the Stay Application and the Petition

56. The first point I must determine is whether the Stay Application should be dealt with on a date prior to 10 June 2025 or on 10 June 2025 alone or whether it can be dealt with on 10 June 2025 alongside the Petition.

57. In my judgment, in accordance with the overriding objective and noting the limited availability of counsel and the court the most appropriate way of proceeding with these matters will be for the Petition to remain listed for hearing on 10 June 2025 and for the Stay Application also to be listed for hearing on 10 June 2025. The court can first hear the Stay Application, if it is successful that will mean that the court will not go on to hear and determine the Petition. If the Stay Application is unsuccessful then the court can proceed to hear and determine the Petition on 10 June 2025.

58. I do not think it appropriate (or indeed possible in view of the lack of court and counsel availability) to have a separate hearing to determine the Stay Application in advance of 10 June 2025. I do not think it appropriate to order today that no further steps should be taken in respect of the Petition unless and until the Stay Application has been heard and determined against the Respondent. The proceedings should not be stayed pending the determination of the Stay Application. I do not think it appropriate to vacate the 10 June 2025 hearing insofar as it concerns the Petition and to deal only with the Stay Application that day.

59. If having heard the Stay Application I grant it, then obviously I will not go on to determine the Petition on 10 June 2025. However, if I do not grant the Stay Application, I think it important and in accordance with the overriding objective for the court to be in a position to proceed forthwith to hear and determine the Petition.

Directions

60. Having considered the facts, the relevant law and the submissions and all the particular circumstances of this case I make the following directions noting that the Respondent has already filed evidence in support of the Stay Application:

    1. The Respondent to file any evidence in answer to the Petition, by 3pm on 2 May 2025;

    2. The Petitioner to file evidence: (a) in answer to the Stay Application (if any); and (b) in reply to the evidence in answer to the Petition (if any), by 3pm on 20 May 2025;

    3. The Respondent to file evidence in reply to the Petitioner's evidence in respect of the Stay Application (if any) by 3pm on 26 May 2025;

    4. The parties to exchange written submissions and joint bundle of authorities by 3pm on 3 June 2025;

    5. The parties to file written submissions and joint bundle of authorities by 2pm on 4 June 2025;

    6. The Stay Application and the Petition be listed and heard together, commencing at 10am on 10 June 2025. It will be seen that I have made directions substantially in line with the approach and directions suggested by the Petitioner.

    It will be seen that I have made directions substantially in line with the approach and directions suggested by the Petitioner.

61. I add for the benefit of counsel that I will before the hearing consider closely the skeleton arguments and other material filed, so I will have largely read into the matter before 10 June 2025 and this should save some time at the hearing. Counsel will have presented their written arguments and should exercise discipline and focus on the best points they wish to rely on by way of oral submissions on 10 June 2025. The present direction is that the Stay Application and the Petition be heard together on 10 June 2025 which is my preference especially as there may be some overlapping issues but if both counsel would prefer them to be dealt with sequentially then I would suggest that the time on 10 June 2025 is best used as follows: In respect of the Stay Application

the Respondent may have 1 hour oral submissions; Petitioner 1 hour, 15 minutes; Respondent 15 minutes in reply; break for lunch. If the Stay Application is unsuccessful or if the court reserves its decision but otherwise wishes to hear argument on the Petition then in respect of the Petition the Petitioner may have 1 hour oral submissions; Respondent 1 hour 15 minutes; Petitioner 15 minutes in reply. I am content to consider any other sensible agreed suggestions from counsel as to the best use of time on 10 June 2025.

Costs

62. I now turn to the second main issue namely costs. I am no longer asked to make an order today that any costs order made against the Respondent should not be payable from the assets of the Partnership but I note that the Petitioner reserves its position in that respect.

63. Mr Hobden sensibly agreed that if the court was with the Petitioner's suggested directions that the Respondent would not oppose an order that it pay the costs of and incidental to the Petitioner's Summons and I make such order. It is unfortunate that the Respondent did not promptly and constructively cooperate in respect of directions for the hearing of the Petition. The Petitioner has been successful in respect of the Petitioner's Summons and the Respondent should pay the costs incurred in respect of it.

David Doyle

THE HON. JUSTICE DAVID DOYLE
JUDGE OF THE GRAND COURT