



COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

NEUTRAL CITATION NUMBER: [2026] CIGC (FSD) 32

FSD CAUSE NO. 253 OF 2025 (MRHCJ)

IN THE MATTER OF THE EXEMPTED LIMITED PARTNERSHIP ACT (2025 REVISION)
AND IN THE MATTER OF THALASSA INVESTMENTS LP

IN CHAMBERS

BEFORE: Chief Justice Margaret Ramsay-Hale

Appearances: Mr Tom Lowe KC instructed by Mr James Eggleton and Ms Kelsey Sabine of Harneys Westwood & Riegels for the Applicant/Petitioners

Mr Jonathan Milne and Ms Liberty Wells of Conyers for the Respondent/GP

Heard: 20 April 2026

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*Application for specific discovery pursuant to O.3, r.12 of the **Companies Winding Up Rules** - whether documents held by affiliated entities are within the general partner's "possession, custody or power" - meaning of power - whether practical access or overlapping roles sufficient - application of Peruvian Guano principles subject to necessity and proportionality*

RULING

Introduction

1. This is the decision on the Petitioners' Discovery Summons seeking specific discovery from the general partner of Thalassa Investments LP (the "Partnership"). The general partner of the Partnership is Thalassa Investments GP Ltd (the "GP").
2. On 11 September 2025 the Petitioners presented their petition to wind up the Partnership. The Petition seeks a winding up on the just and equitable basis, on the grounds, *inter alia*, that the GP has demonstrated a lack of probity by reason of:
 - (a) the GP has conducted the business and affairs of the Partnership in breach of the LPA and in breach of its duties while abusing and misusing its powers and authority;

- (b) the GP has engaged in a transaction for the sale of Thalassa's assets in which sale the GP has a conflict of interest, and which involves the GP self-dealing. This has resulted in a sale at a massive undervalue;
- (c) A majority of the unaffiliated and independent LPs wish the GP to be replaced with an officer of the Court, and the Partnership is presently in a state of run-off.
3. The Petitioners cumulatively own 25.24% of the LP interests in the Partnership. The Petitioners also have the support from LPs and/or beneficial owners of not less than 22.75% of the interest in the Partnership, which together constitute 95% of the unaffiliated interest in the Partnership.
4. The GP is a 100% subsidiary of Shuaa Capital. A 100% subsidiary of Shuaa Capital is Shuaa GMC, the investment manager ("IM") engaged by the GP for the Partnership. The GP has common management personnel with Shuaa GMC including Mr Alexander Markarov, Senior Executive Officer and Mr Umar Mirza.
5. The Petitioners assert that the GP's only support is from Thalassa's largest LP, Goldilocks Investment Company Limited ("Goldilocks"), which is managed by Shuaa GMC and is 99.49% owned by Eshraq Investments PJSC ("Eshraq"), the buyer in the proposed related party sale (the "Proposed Sale"). Goldilocks has no staff of its own. They contend that Goldilocks' support of the GP's proposed sale to Eshraq is inferentially at the bidding of Shuaa Capital and Eshraq.
6. At the centre of the Petitioners' case is the assertion that an inherent conflict arises from the GP managing the Partnership while entities within the same group have a significant interest in Eshraq. It is said that the GP's ultimate holding company has a greater financial interest in the success of Eshraq than in the Partnership, and that the proposed sale is therefore not merely affected by conflict, but constitutes self-dealing.

Issues Arising on the Petition

7. The present application concerns specific discovery sought in advance of the trial of the Petition. The scope of discovery must therefore be determined by reference to the issues which the Court will ultimately be required to decide.
8. Although the Petition has been amended on a number of occasions, the central issues in the proceedings may be summarised as follows.
9. First, the Petitioners allege that the GP has caused or is pursuing a sale of the Partnership's assets to a related party at an undervalue. This "Undervalue Allegation" lies at the core of the Petition. It gives rise to issues as to the valuation of the Partnership's assets, the process by which any sale has been conducted, the adequacy of the information available to decision-makers, and whether the transaction was conducted in good faith and in the interests of the Partnership.

10. Secondly, the Petitioners allege that the GP is subject to conflicts of interest and has engaged in self-dealing. In particular, reliance is placed on the relationship between the GP, the IM, and entities connected with the proposed purchaser. This gives rise to issues as to the existence and management of conflicts, the independence of decision-making, and whether the GP has exercised its powers for proper purposes.
11. Thirdly, the Petitioners contend that the GP has acted in breach of its duties under the limited partnership agreement and at general law, including by mismanaging the affairs of the Partnership and failing to act in good faith in the interests of the Partnership as a whole. This raises issues concerning the governance of the Partnership, the manner in which key decisions were taken, and the extent to which relevant information was considered by those responsible for management.
12. Fourthly, the Petitioners rely on what is said to be a breakdown in the relationship of trust and confidence between the GP and a substantial body of limited partners, said to justify a winding up on the just and equitable ground. That issue is to be assessed by reference to all relevant circumstances as they exist at the date of the hearing, including the conduct of the GP in relation to the matters identified above.
13. It is by reference to these issues that the relevance, necessity and proportionality of the categories of documents sought in this application must be assessed.

Jurisdiction

14. The application is for specific discovery in the context of a winding-up petition. The Court's jurisdiction to order discovery in winding-up proceedings arises under Order 3, rule 12(1)(i) of the **Companies Winding Up Rules (2023 Consolidation)** (the "CWR") and is exercised in accordance with established principles governing discovery, adapted to the winding-up context.
15. Although the Petitioners also characterise some of the material sought as information said to be required under section 22 of the **Exempted Limited Partnership Act**, this application is brought and argued as one for specific discovery in ongoing proceedings. As Parker J confirmed in *In re Neoma Manager (Mauritius) Ltd* (Unrep. 10 March 2023) at [41], discovery in litigation is concerned with the disclosure of documents which are or have been within a party's possession, custody or power and is restricted to matters in issue. The statutory obligation to provide "true and full" information is not the equivalent of a discovery process. Section 22 confers a substantive right to information, but it does not convert litigation discovery into a general informational entitlement, nor does it give a limited partner access to all information available to the general partner: see *Abraaj General Partner VIII Ltd v Abraaj ABOF IV SPV Ltd* CICA (Civ) 8 (Unrep 8 April 2025).

General principles governing discovery

16. Discovery in litigation is directed to documents which are relevant to the matters in issue, and which are necessary for the fair disposal of the proceedings or for saving costs. The test of relevance is not unlimited. It is informed by proportionality, and the Court is required to guard against discovery which is unnecessarily wide, burdensome, or which would expand the proceedings into collateral or historical matters.
17. In the Cayman Islands, the principles commonly traced to *Peruvian Guano*¹ continue to apply, but are tempered by considerations of necessity and proportionality, particularly in interlocutory applications for specific discovery. The burden lies on the applicant to demonstrate that the documents sought are required for the fair determination of the issues raised by the pleadings.

Possession, Custody or Power

18. An order for discovery may only be made in respect of documents which are or have been within the responding party's possession, custody or power. The meaning of 'power', which was a central issue in this application, is well established. It denotes a presently enforceable legal right to obtain the document from the person who holds it, without the need to obtain the consent of any third party. As Lord Diplock explained in *Lonrho Ltd v Shell Petroleum Co Ltd* [1980] 1 WLR 627 at 635 - 636, in the absence of such a presently enforceable right, there is nothing in the discovery rules which entitles the Court to compel a party to take steps to acquire one.
19. Cayman authority recognises that, in appropriate cases, "power" may also be established where there exists a subsisting arrangement or understanding pursuant to which a party has, in practice, free access to documents held by a third party. However, as Kawaley J made clear in *In re Investar General Partner Ltd* (unrep., 27 July 2022), a mere expectation that a subsidiary or affiliate will comply with a request, or the fact of common ownership or group membership, is insufficient. What is required is cogent evidence of an arrangement or understanding amounting to practical control, and the burden of establishing such control rests on the party seeking discovery.
20. These principles were reaffirmed by Segal J in *Jafar v Abraaj Holdings* [2022] 2 CILR 117, where the Court emphasised that documents held by non-parties do not fall within a party's power simply because of corporate relationships or overlapping management, absent evidence of a legal right of access or a qualifying arrangement or understanding. The question whether documents held by third parties are within a litigant's power is therefore a fact-sensitive inquiry, to be resolved by reference to the precise legal and practical relationships shown on the evidence.
21. It is for the Petitioners to establish, by reference to the evidence, that the documents said to be held by subsidiaries, the IM or other related entities are nevertheless within the GP's power

¹ *The Compagnie Financiere et Commerciale Du Pacifique v The Peruvian Guano Company* [1882] 11 QBD 55

for the purposes of discovery. That requires more than assertion, inference or reliance on corporate association or shared management. The Court must be satisfied, on the evidence before it, that there existed at the relevant time either a presently enforceable right of access, or a subsisting arrangement or understanding amounting to practical control.

22. It is with that burden in mind that I turn to consider the evidence relied upon by the Petitioners in support of their application.

Request 16: KPMG valuation

23. The KPMG valuation was treated as a paradigmatic example of a document said to lie outside the GP's immediate possession but within its control.
24. The Petitioners' case is that the GP must be treated as having "power" over the KPMG Valuation Report and any related material because of the practical reality of the relationships within the Group. In particular, they rely on the proposition that Goldilocks, which is said to have commissioned the report, is managed through Shuaa GMC, has no employees, and that senior individuals overlap across the GP, the IM and relevant entities, such that the GP could in practice obtain the document.
25. They also rely on the fact that the valuation was used in the context of the Partnership's affairs, that information from Partnership subsidiaries was provided to KPMG, and that senior personnel involved in the management of the GP and the IM were aware of and involved in the valuation process.
26. Mr Joshi goes further in his affidavit, asserting that the GP "*plainly ... saw the KPMG valuation when it was in draft form*" and "*provided the material to enable that valuation to be given*" and, on that basis, contends that the GP has, or has had, copies of drafts and the final version.
27. More generally, in support of their case on "power", the Petitioners rely on the ownership and management structure of the Partnership and its subsidiaries, emphasising that the relevant entities are wholly owned within the Partnership structure and that the GP has sole responsibility for the management and conduct of the Partnership's business. They also rely on the role of the IM as agent for the GP, and on the fact that senior personnel occupy overlapping roles across the GP, the IM and affiliated entities, said to reflect an integrated management structure through which information and documents are obtained and shared. Further reliance is placed on the GP's conduct during the discovery process, in that it has agreed to request documents from subsidiaries or third parties in respect of some categories, while resisting disclosure in respect of others said to be held by the same entities. It is said that this demonstrates a practical ability to obtain documents held outside the GP's immediate possession. The Petitioners also point to the absence of evidence of information barriers between the GP, the IM and the relevant entities, and to the GP's statutory duties, as supporting the conclusion that documents relating to the Partnership's affairs fall within its power.

28. In his submissions, Mr Lowe KC relied on *Schlumberger Holdings Ltd v Electromagnetic Geoservices AS* and *Berkeley Square Holdings Ltd v Lancer Property Asset Management Ltd* for the proposition that “power” turns on practical arrangements and understandings. He submitted that, by reason of overlapping roles and the absence of information barriers, there were arrangements under which the GP had access to documents held by affiliated entities, including the KPMG valuation.
29. The GP’s position is that the KPMG valuation belongs to a non-party and is not within its possession, custody or power. It says that it does not have a copy of the report, whether in draft or final form, and resists any order requiring it to obtain one. It also maintains that reasonable searches have been undertaken and that no further responsive documents exist.
30. The Petitioners place weight on the proposition that the GP must have seen, used, or contributed to the KPMG valuation, including by providing information for its preparation and by reason of the involvement of overlapping personnel. In my judgment, even if those matters are accepted at their highest, they do not establish that the valuation, or drafts of it, are within the GP’s possession, custody or power for the purposes of discovery.
31. Participation in the preparation of a document, or the provision of information to a third party for that purpose, does not without more establish that the resulting document is or remains in the possession of the party providing the information. Nor does it establish that copies of drafts or final versions were retained.
32. Further, the fact that individuals involved in the management of the GP may also have been involved, in other capacities, in relation to the entity which commissioned the report does not establish that documents held in those other capacities are documents within the GP’s possession or control. The question is not what those individuals may have seen, but whether the GP, as a matter of legal right or established arrangement, is entitled to obtain the document.
33. As to “power”, the Petitioners’ case rests on inference drawn from corporate relationships and overlapping roles. However, as the authorities make clear, more is required than the practical ability to request a document or the likelihood that such a request might be complied with. There must be cogent evidence of a presently enforceable right of access, or a subsisting arrangement or understanding amounting to control. That has not been established on the evidence before me.
34. I consider that the Petitioners’ case, even taken at its highest, is insufficient to establish either possession or the requisite degree of control. The evidence relied upon is, in substance, inferential and does not identify any legal right of access or qualifying arrangement sufficient to satisfy the test for “power”.
35. It follows that I am not satisfied that the Petitioners have discharged the burden of showing that the KPMG valuation, or any drafts thereof, are within the GP’s possession, custody or power. Request 16 is therefore refused insofar as it seeks production of the valuation itself.

36. For completeness, Request 16 also seeks correspondence between the GP and/or its agent, the IM, and KPMG relating to the information supplied to and relied on in preparing the valuation. The Petitioners rely on such material as bearing on the inputs to the valuation and, in turn, on the allegation of undervalue. The GP says it has carried out reasonable searches and that no further responsive documents exist. In the absence of any basis to go behind that evidence, and having regard to proportionality, no further order will be made in respect of such correspondence.

Agreed Disclosure

37. The reasoning set out above in relation to Request 16 applies equally to those categories said to be within the GP's power despite being held by third parties. The GP has agreed to request documents from non-parties in respect of Requests 2, 3, 14, 17, 21 and 34. I reject the Petitioners' submission that the GP's "selective approach" to requesting documents from non-parties supports an inference of practical access.
38. The GP has further undertaken to conduct reasonable searches in respect of Requests 1, 7, 8, 9, 11, 20, 29 and 30, providing any responsive documents that exist and are discoverable.
39. The Petitioners, through Mr Lowe, submitted that this undertaking is insufficient, and that the Court should instead order disclosure of the categories without such qualification. I do not accept that distinction. A party's obligation in discovery is to carry out a reasonable search for documents within its possession, custody or power. An order for disclosure does not require a party to produce documents which do not exist or cannot be located after such a search. In substance, the difference is immaterial. In circumstances where the GP has undertaken to conduct reasonable searches and provide discovery of responsive documents, no further order is required.

Remaining Categories

40. With respect to Requests 15, 18, 23, 26, 27, 35, 36 and 37, the GP has given sworn evidence that reasonable searches have been conducted, and that no further responsive documents exist. In the absence of any basis on which the Court could properly go behind that evidence, I am not satisfied that an order for specific discovery would serve any purpose. No order is therefore made in respect of those categories.
41. The GP resists the remaining categories on the basis of relevance and proportionality. In considering these categories, I have had regard to Mr Lowe's submission that, in the ELP context, the Court may accept a limited partner's statement, "*however widely expressed*", of the documents it requires in order to understand the relevant business decisions and their financial consequences, and that this applied with particular force here such that Mr Joshi could reasonably be expected to identify documents relevant to the fair disposal of the complaints. However, that submission does not alter the applicable principles governing discovery in these proceedings, which require the Court to assess relevance, necessity and proportionality by reference to the issues for determination.

42. **Request 4** seeks disclosure of general ledgers and trial balances of the Partnership and a number of subsidiaries. The Petitioners rely on this category as bearing on the financial position of the Partnership and, in particular, on the allegation that the proposed transaction is at an undervalue.
43. I accept that such accounting records may, in principle, provide information as to the financial condition and performance of the Partnership and its subsidiaries. However, the request, as framed, would require production of the full accounting records of the Partnership and its subsidiaries over the relevant period, thereby extending discovery into a general investigation of the Partnership's affairs.
44. The Petitioners have not demonstrated that such wholesale production is necessary. The issues concern valuation, the conduct of the proposed sale and the existence and management of conflicts, which are more directly addressed by transaction-specific documents, valuation materials and decision-making records. In circumstances where substantial financial material has already been disclosed, the request would encompass a large body of material of only indirect relevance and is disproportionate. I therefore decline to order discovery in respect of Request 4.
45. **Request 5** seeks all loan agreements, extensions, repayment materials and correspondence relating to various financing arrangements, including draft term sheets. The Petitioners rely on this category as bearing on the financial position of the Partnership and, in turn, on the value of its assets and the proposed transaction. The Respondent submits that the lending arrangements to which this request relates do not form part of the pleaded case.
46. I accept that financing arrangements may, in principle, bear on the financial position of the Partnership. However, while I do not approach relevance on a strictly "pleaded issue" basis, the fact that these arrangements are not themselves part of the pleaded case reinforces that the request is not closely directed to the issues which arise for determination. These issues concern the valuation of the Partnership's assets, the conduct of the proposed sale and the existence and management of conflicts. Those matters are more directly addressed by transaction-specific documents, valuation evidence. The request would encompass a substantial body of material of only indirect relevance and is therefore disproportionate. I decline to order production in respect of Request 5.
47. **Request 6** seeks compliance certificates, utilisation requests, fee letters and comfort letters in relation to financing facilities. This category is said to relate to the financial position of the Partnership and, in turn, to the value of its assets and the proposed transaction.
48. I accept that such materials may provide some contextual information as to the Partnership's financing arrangements. However, for the reasons given in relation to Request 5, the Petitioners have not demonstrated that the disclosure of the entirety of these materials is necessary for the fair determination of the issues raised by the Petition. The request is framed in broad terms and would encompass a substantial body of documentation of only indirect

relevance, extending beyond what is required to determine the issues concerning valuation, the sale process and alleged conflicts of interest. In those circumstances, and having regard to proportionality, I decline to order production in respect of Request 6.

49. **Request 10** seeks identification of the owner of a particular email address said to have been provided access to information in connection with the Eshraq bid. The Petitioners rely on this request as relevant to their allegation of an undervalue sale to a related party, and to concerns regarding LetterOne's involvement in the bidding process. It is said that identifying the individual concerned is necessary to understand who from the LetterOne team was given access to the Partnership's confidential information and the basis on which such access was granted.
50. As the Respondent points out, this is not, in substance, a request for the disclosure of documents, but a request for information. In any event, the Petitioners have not demonstrated that the information sought is necessary for the fair determination of the issues raised by the Petition. In my view, the request is insufficiently connected to the issues for determination and does not meet the threshold for compulsory discovery. I therefore decline to make any order in respect of Request 10.
51. **Requests 12 and 13** seek emails, correspondence, board minutes, resolutions and shareholder records concerning appointments to the board of Shine and changes in board composition since January 2025. The Petitioners rely on these categories as bearing on their allegations of conflict and governance concerns in relation to the proposed transaction.
52. I accept that documents concerning board appointments and composition may, in principle, bear on issues of governance and potential conflicts. However, only one such appointment is referred to in the pleaded case, and the requests are not confined to that or to any identified decision said to give rise to the alleged concerns. They would require disclosure of a substantial body of governance material over the relevant period, much of which would be of only indirect relevance. I am not satisfied that such disclosure is necessary for the fair determination of the issues raised by the Petition, and I therefore decline to order discovery in respect of Requests 12 and 13.
53. **Request 19** concerns discussions and correspondence relating to proposed amendments to the limited partnership agreement, including draft or abandoned amendments. This category is said to relate to the governance of the Partnership and the manner in which the GP has exercised its powers.
54. I accept that, in principle, documents relating to proposed amendments to the Partnership's constitutional documents may provide some context as to governance. However, the request, as framed, extends to draft or unimplemented proposals without any clear identification of how such materials bear on the issues raised by the Petition.

55. In my judgment, the Petitioners have not demonstrated that disclosure of such material is necessary for the fair determination of the issues, and I decline to order production in respect of Request 19.
56. **Request 22** seeks correspondence between the GP or the IM and the boards or committees of Shuaa Capital containing updates about the Partnership's affairs or approvals sought or given. The Petitioners rely on this category as relevant to their pleaded complaints of self-dealing and breach of fiduciary duty, and to alleged lack of transparency and governance concerns.
57. I accept that correspondence may, in principle, be capable of bearing on the issues raised by the Petition where it is directed to specific transactions or matters in issue. However, the request, as framed, is expressed in broad and general terms, referring to "ongoing updates" and "the Partnership's affairs" without identifying any particular matters said to be material. The Respondent submits that the request lacks sufficient particularity and does not identify with clarity the documents sought. In my judgment, that submission is well-founded. In my view, the request does not warrant an order for discovery and no order is made.
58. **Requests 24 and 25** seek, respectively, documents relating to an investigation by the FSRA of Abu Dhabi Global Markets and documents concerning Shuaa GMC's governance and control framework and its regulatory approval. As set out in Mr Joshi's affidavit at paragraphs 22.24 and 22.25, the Petitioners rely on these categories as relevant to their pleaded complaints of lack of probity and breach of fiduciary duty, and to their contention that there should be an independent investigation into the affairs of the Partnership. It is said that a regulatory investigation may shed light on the GP's conduct and governance, and that the governance framework is relevant to concerns regarding conflicts arising from the relationships between the relevant entities.
59. I accept that, in principle, such material could bear on issues of conduct and governance. However, the Petitioners have not identified with any specificity how the particular materials sought are necessary for the determination of the issues raised by the Petition. The requests are framed at a high level of generality and extend to regulatory and governance material without being tied to any identified issue, finding or aspect of the investigation said to be material.
60. In those circumstances, the requests would in effect permit a broad inquiry into the GP's conduct, rather than being confined to documents necessary for the fair determination of the pleaded issues, which concern the valuation of the Partnership's assets, the conduct of the proposed sale and the existence and management of conflicts of interest. I am not satisfied that such disclosure is necessary or proportionate, and I therefore decline to order production in respect of Requests 24 and 25.
61. **Request 28** seeks disclosure of the mezzanine loan agreement. The Petitioners rely on this document as relevant to the financial position of the Partnership and the assessment of its net asset value, which is said to bear on the allegation that the proposed transaction is at an undervalue.

62. I accept that the terms of the Partnership's financing arrangements may, in principle, be capable of bearing on its financial position. However, in circumstances where financial information concerning the Partnership, including accounts and valuation materials, has already been disclosed, I am not satisfied that production of the mezzanine loan agreement itself is necessary for the fair determination of the issues raised by the Petition.
63. In my judgment, the marginal utility of this document, viewed in the context of the material already available, does not justify an order for further disclosure. I therefore decline to order production in respect of Request 28.
64. **Requests 31 and 32 seek**, respectively, (i) copies of "Transaction Documents" and related materials, and (ii) documents setting out any condition precedent checklists. In his affidavit, Mr Joshi characterises these requests as directed to understanding the execution of the SPA extension, the approvals obtained, and the status of conditions to completion.
65. The Respondent submits that these requests are not directed to any issue arising on the pleadings. In particular, it is said that there is no pleaded issue as to the validity of the SPA, the authority of Eshraq to enter into it, or the satisfaction or waiver of conditions precedent, and that the Petitioners already have a copy of the executed SPA together with documents evidencing the approvals obtained.
66. In my judgment, the Respondent's submission is well-founded. The issues raised by the Petition concern the alleged undervalue of the proposed transaction, the process by which it has been conducted, and the existence and management of conflicts of interest. They do not include any challenge to the validity of the SPA, the authority of the parties to enter into it, or the satisfaction of conditions precedent.
67. In those circumstances, I am not satisfied that the documents sought by these requests are necessary for the fair determination of the issues in the proceedings. Rather, the requests are directed to matters which are not presently in issue and would extend discovery beyond its proper scope. I therefore decline to order production in respect of Requests 31 and 32.
68. I will hear the parties on costs.

DATED THIS 5TH DAY OF MAY 2026



**THE HON. JUSTICE MARGARET RAMSAY-HALE
CHIEF JUSTICE OF THE GRAND COURT**