

Private Equity and Venture Capital

The Extent of a Limited Partner's Right to Inspect the Partnership's Books

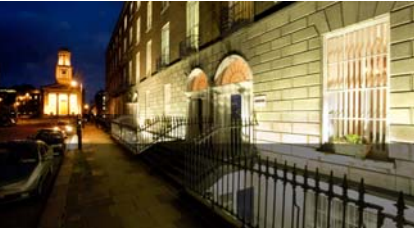
The High Court in England recently considered the extent of a limited partner's right to inspect the partnership's books.

Inversiones Frieira SL, Inversiones Valea SL v Colyzeo Investors II LP, Colyzeo Investment Management Limited. [2012] EWHC 1450 (Ch).

In this case certain limited partners were seeking an order for the general partner to grant them access to a range of documents in relation to investments held by the partnership a number of which were held through special purposes vehicles. A limited partner has a statutory right to inspect the books of the limited partnership and may "advise with" the partners thereon without being considered to take part in the management of the partnership. This case concerned the application of principles set out by the High Court in an earlier judgment in the same case.

Mr. Justice Norris held that the "books" of a limited partnership that the limited partners are entitled to inspect would vary from case to case, depending on the nature of the partnership's business and its mode of conduct, and the terms of the partnership agreement, read in light of current business practice. It was emphasised that the test was essentially a functional one and that the process should be grounded upon what documents actually existed and their function. The judge observed that there was little value examining previously decided cases to see if they established categories of documents, which as a matter of general law every partnership had to maintain. Mr. Justice Norris made a number of other interesting observations which are instructive:

- The exercise by a limited partner of the right to inspect partnership documents does not require the general partner (or its delegate) to create partnership books or constitute partnership papers which are not already in existence.
- If the general partner had not maintained full books and records (as it ought to have pursuant to a separate obligation to maintain proper books and records) then the limited partners could inspect the primary documentation from which the limited partnership's books should have been prepared.
- Where the documents belong to or are in the possession of a special purpose vehicle wholly owned by the partnership then, although the general partner will have the power to exercise the partnership's rights as shareholder, a limited partner cannot compel the general partner to demand production of such documents. If however, in the course of transacting the business of the partnership, the general partner has obtained copies of any such documents, then such documents are capable (if of a nature and significance to make them part of the books and records of the partnership) of becoming partnership "books".



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- The right of a limited partner to inspect partnership books is qualified by the corresponding rights of other partners. The provision of such documents must be appropriate to address real and substantial issues and whatever is provided to one limited partner must be made available to every other limited partner in the partnership.
- The agenda and minutes of the partnership advisory committee were considered to be partnership documents, though presentations or documents referred to in the agenda or minutes did not constitute partnership "books", simply because they are mentioned therein.
- In general, if it is necessary for a general partner (or its delegate) to rely on a document to establish its rights against a third party, or to determine rights as between the members of the partnership, then such a document would be a partnership document.
- In general, if a document was paid for by the partners themselves then it would be a partnership document.

The approach taken by the High Court in England in this case is likely to be considered to be persuasive if a similar dispute was to come before an Irish Court.

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