

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 140 OF 2020 ( )

IN THE MATTER OF SECTION 11 OF THE EXEMPTED LIMITED PARTNERSHIP LAW (2018  
REVISION)

AND IN THE MATTER OF ASEAN INFRASTRUCTURE FUND II, L.P.

PETITION



TO THE GRAND COURT

The humble petition of (a) Daiwa PI Partners Co. Ltd ("**Daiwa PI**") whose registered office is at 1-9-1, Marunouchi, Chiyoda-Ku, Tokyo 100-6730; (b) Tokyo Century Corporation ("**Tokyo Century**") whose registered office is at 3 Kandaneribei-cho, Chiyoda-ku, Tokyo, 101-0022; (c) Mizuho Securities Co., Ltd. ("**Mizuho**") whose registered office is at 1-5-1, Otemachi, Chiyoda, Tokyo 100-0004, Japan; and (d) DAIWA HOUSE INDUSTRY CO., LTD. ("**DAIWA HOUSE**") of 3-13-1, Iidabashi, Chiyoda-ku, Tokyo, Japan 102-8112 (together the "**Petitioners**" or the "**Limited Partners**") shows that:

**Introduction**

1. ASEAN INFRASTRUCTURE FUND II, L.P. (the "**Partnership**") was registered in the Cayman Islands on 27 February 2018 as an exempted limited partnership with registration number 94929. The registered office of the Partnership is at Ocorian Trust (Cayman) Limited, Clifton House, 75 Fort Street, PO Box 1350, Grand Cayman KY1-1108, Cayman Islands.
2. The general partner of the Partnership currently is AEI CO., LTD (the "**General Partner**"), a Cayman Islands exempted limited company whose registered office is at Ocorian Trust (Cayman) Limited, Clifton House, 75 Fort Street, PO Box 1350, Grand Cayman KY1-1108, Cayman Islands.

3. The Petitioners are the only limited partners of the Partnership.
4. The Petitioners and the General Partner are parties to an Amended and Restated Limited Partnership Agreement dated 9 March 2018 (the "**LPA**").

### **The relevant terms of the LPA**

5. The relationship between the Petitioners and the General Partner is governed by the terms of the LPA. The following provisions of the LPA are relevant to this Petition:

(a) Clause 1.1:

- (i) *"Committed Capital" means the total amount in a lawful currency of the Partnership subscribed for and committed by the Limited Partners at any time from the First Closing Date to the Final Closing Date";*
- (ii) *"Limited Partners' Consent" means...in the case of a resolution in writing of the Limited Partners (excluding the General Partner in its capacity as a Limited Partner), a resolution passed by the Limited Partners holding in the aggregate 75% or more of the Committed Capital (excluding the GP Commitment). For the avoidance of doubt, on a poll, each Limited Partner shall have the right to vote of the number corresponding to its Committed Capital";*
- (iii) *"Limited Partners' Request" means a request to the General Partner in writing by the Limited Partners (excluding the General Partner in its capacity as a Limited Partner) holding in the aggregate 75% or more of the Committed Capital (excluding the GP Commitment)";*

(b) Clause 9.8(b) – *"If any of the following events occurs with respect to the General Partner, upon Limited Partners' Request, the General Partner shall withdraw from the Partnership:*

*"(i) the Limited Partners reasonably determine, by the Limited Partners' Consent, that the General Partner has become unable to carry out its*

*functions and duties under this Agreement appropriately on a continuous basis"...*

*"(iv) if the General Partner breaches any material obligation under this Agreement";*

- (c) *Clause 9.8(c) – "...upon the consent of all the Limited Partners, Limited Partners may remove the General Partner from the Partnership by at least 60 days' prior written notice to the General Partner";*
- (d) *Clause 9.8(d) – "In the case where the General Partner has withdrawn from the Partnership pursuant to Clause 9.8(b) or been removed from the Partnership pursuant to Clause 9.8(c), all the Limited Partners shall, upon the consent of all the Limited Partners, (i) appoint a new general partner or (ii) determine to terminate and dissolve the Partnership";*
- (e) *Clause 13.1(a)(iv) – "The Partnership shall terminate upon the service of notice by the General Partner on the Limited Partners, informing the Limited Partners...that all the Limited Partners (excluding the General Partner in its capacity as a Limited Partner) has resolved to terminate the Partnership for any reason whatsoever";*
- (f) *Clause 13.(1)(b)(i) – "Notwithstanding Clause 13.1(a), the Partnership shall terminate upon the earlier of any of the following events occurring, in which case the Partnership shall terminate automatically without any further action of the Partners...(i) the withdrawal or removal of the General Partner pursuant to Clause 9.8 without appointment of a new general partner";*
- (g) *Clause 13.2(a) – "...The General Partner shall act as liquidator; provided, however, that if the Partnership is terminated for a reason set forth in Clause 13.1(b)...the Limited Partners may by a Limited Partners' Consent designate some other party to act as a liquidator and to receive such remuneration for so acting as the Limited Partners shall agree";*
- (h) *Schedule 1 - the Commitments of the Petitioners are as follows:*

- (i) Daiwa PI – US\$100 million;
- (ii) Tokyo Century – US\$50 million;
- (iii) Mizuho – US\$30 million; and
- (iv) DAIWA HOUSE – US\$20 million.

Daiwa PI and Tokyo Century represent in aggregate 75% of the Committed Capital of US\$200 million.

### **Termination of the Partnership**

6. On 6 April 2020, all of the Petitioners (and therefore all of the limited partners (excluding the General Partner in its capacity as a Limited Partner) of the Partnership) signed and effected service, pursuant to Clause 9.8(c) and Clause 13.1(a)(iv) of the LPA, of the following resolutions (the “**Termination Resolutions**”):
- (a) the Partnership be terminated pursuant to Clause 13.1(a)(iv) (see paragraph 5(e) above);
  - (b) in exercise of the right contained in Clause 9.8(c) of the LPA (see paragraph 5(c) above), the Petitioners were removing the General Partner as general partner of the Partnership;
  - (c) that no general partner be appointed, such that the Partnership be terminated forthwith pursuant to Clause 9.8(d) (see paragraph 5(d) above);
  - (d) pursuant to Section 36(1) of the Exempted Limited Partnership Law (2018 Revision) (the “**ELP Law**”) and Clause 13 of the LPA, the Partnership be wound up and dissolved; and
  - (e) the resolutions set out in the Request dated 6 March 2020 (as defined and set out at paragraph 9 below) be ratified and approved by all the Limited Partners.

7. In the cover letter dated 6 April 2020 enclosing the Termination Resolutions, Walkers (the Cayman Islands attorneys for the Petitioners) requested on behalf of the Petitioners that the General Partner:
  - (a) file a statement pursuant to Section 10 of the ELP Law (the "**Section 10 Statement**"); and
  - (b) serve a notice of its withdrawal pursuant to Section 36(7) of the ELP Law (the "**Section 36 Notice**").
8. As at the date of this Petition, the General Partner has failed to file a Section 10 Statement or serve any Section 36 Notice.

#### **The Request for the General Partner's withdrawal**

9. On 6 March 2020, Daiwa PI and Tokyo Century (collectively representing 75% of the Committed Capital) had signed a Limited Partners' Request seeking the withdrawal of the General Partner (the "**Request**"), pursuant to Clauses 9.8(b)(i) and (iv) of the LPA. The terms of the Request were as follows:
  - (a) pursuant to Section 36(1) of the ELP Law and Clause 13 of the LPA, the Partnership shall be wound up and dissolved;
  - (b) the General Partner shall forthwith and without further notice withdraw from the Partnership by reason of the Request, for the purposes of Clauses 9.8(b)(i) and (iv) of the LPA (see paragraph 5(b) above);
  - (c) the Partnership shall terminate automatically pursuant to Clauses 9.8 and 13.1(b)(i) of the LPA (see paragraphs 5(d) and 5(f) above); and
  - (d) the Request also serves as Limited Partners' Consent pursuant to Clause 13.2(a) of the LPA (see paragraph 5(g) above), such that the FTI Liquidators (as defined in the Request) shall, following automatic termination of the Partnership, act as liquidators of the Partnership.

10. The Request was served on the General Partner's registered office on the same day and was accompanied by a letter from Walkers to the General Partner of the same date. The letter stated that in accordance with the Request, the General Partner should forthwith withdraw from the Partnership and also requested on behalf of the Petitioners that the General Partner file a Section 10 Statement and serve a Section 36 Notice.
11. From 7 March to 10 April 2020, the General Partner and Mori Hamada & Matsumoto (the Japanese lawyers for the Petitioners) exchanged correspondence.
12. The General Partner however has refused to withdraw from the Partnership in accordance with the terms of the Request and the Termination Resolutions.

### **The Provisions of the ELP Law**

#### *Section 10 of the ELP Law*

13. Section 10 of the ELP Law is as follows:

*“(1) Without prejudice to subsection (2), if, during the continuance of an exempted limited partnership, any change is made or occurs in any matter specified in paragraphs (a) to (e) of section 9(1), a statement signed, subject to section 11, by a general partner specifying the nature of the change shall, within sixty days of the change, be filed with the [Registrar of Exempted Limited Partnerships (the “**Registrar**”)].*

*(2) A statement signed in accordance with subsection (1) in respect of any arrangement or transaction consequent upon which any person will be removed, replaced or admitted as a general partner in any exempted limited partnership, shall, within fifteen days of the arrangement or transaction, be filed with the Registrar and, until the statement is so filed, the arrangement or transaction shall, for the purposes of [the ELP Law] and the [LPA], not be effective to remove, replace or admit that person as a general partner of the exempt limited partnership...[emphasis added]*

14. The exercise by the Petitioners of their right to remove the General Partner pursuant to the terms of the Termination Resolutions and the Request constitutes an “*arrangement*” as referred to in Section 10(2) of the ELP Law. The Section 10 Statement is the

“*statement*”, in respect of the “*arrangement*” consequent upon which the General Partner is removed, which must be filed with the Registrar pursuant to Section 10(2) of the ELP Law. Accordingly, the signed Section 10 Statement shall be filed with the Registrar within 15 days of the service of the Request and/or the Termination Resolutions and that, until the Section 10 Statement is filed, the removal of the General Partner is not effective.

*Section 36(7) of the ELP Law*

15. Section 36(7) of the ELP Law is as follows:

*"The general partner or its legal representative shall promptly serve notice on all limited partners informing the limited partners of -*

*(a) the death;*

*(b) the commencement of liquidation, bankruptcy or dissolution proceedings; or*

*(c) the withdrawal, removal or making of a winding up or dissolution order,*

*in relation to the sole or last remaining qualifying general partner and in this section each event is referred to an “event of withdrawal”.* (emphasis added)

16. Pursuant to the terms of the Request and the Termination Resolutions, the General Partner accordingly was obliged to serve the Section 36 Notice "*promptly*", informing the Petitioners of the withdrawal and removal of the General Partner. The Section 36 Notice should have been served either:

(a) Immediately after 6 March 2020, which was the date of the Request which all the Petitioners subsequently ratified; or

(b) Alternatively, immediately after 6 April 2020 at the latest, which was the date of the Termination Resolutions.

## **Petition for Section 10 Statement to be signed and filed on behalf of the General Partner**

17. Section 11 of the ELP Law provides as follows:

*“If a person required by section...10(2) ...to execute and file a statement or notice fails to do so, any other partner, and any assignee of a partnership interest who is or may be affected by the failure or refusal may petition the court to direct a person the court sees fit to sign the statement and file the same on behalf of the person in default.”*

18. In breach of its obligations and the ELP Law, the General Partner has failed to sign, file and/or return the Section 10 Statement within the requisite 15 days or at all, such that the removal of the General Partner is presently deemed to be of no effect pursuant to Section 10(2) of the ELP Law. The Section 10 Statement should have been filed:

(a) by 23 March 2020, being the first business day after the elapse of the 15 day period after 6 March 2020 (the date of the Request). The Request, which triggered the obligation for the General Partner to withdraw, was subsequently ratified by all the Petitioners by way of the Termination Resolutions; or

(b) by 21 April 2020, being 15 days after the date of the Termination Resolutions, in respect of its withdrawal pursuant to Clauses 9.8(b)(i) and (iv) of the LPA; or

(c) by 22 June 2020 at the latest, being the first business day after the elapse of the 15 day period after 5 June 2020, which date represents the expiry of the 60 day notice period for the removal of the General Partner pursuant to Clause 9.8(c) of the LPA.

19. The Petitioners are the only limited partners of the Partnership and/or are affected by the failure and/or refusal of the General Partner to execute and file the Section 10 Statement.

20. In the premises, the Petitioners petition this Honourable Court to direct a person to sign the Section 10 Statement and file the same on behalf of the General Partner.

21. The Petitioners nominate Hiroaki Ogino to be directed by this Honourable Court to sign the Section 10 Statement and file the same with the Registrar on behalf of the General Partner.

**YOUR PETITIONERS THEREFORE HUMBLY PRAY THAT:**

1. Hiroaki Ogino be directed to sign the Section 10 Statement and file the same with the Registrar on behalf of the General Partner;
2. The Petitioners' costs of and incidental to the Petition shall be paid by the General Partner; and
3. Such further and/or other relief as this Honourable Court deems appropriate.

AND your Petitioners will ever pray etc.

DATED the 19th day of June 2020.

*Walkers*

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**WALKERS**

Attorneys at Law for the Petitioners

**NOTE:** This petition is intended to be served on:

The Partnership at Ocorian Trust (Cayman) Limited Clifton House, 75 Fort Street, PO Box 1350, Grand Cayman KY1-1108, Cayman Islands.

The General Partner at Ocorian Trust (Cayman) Limited Clifton House, 75 Fort Street, PO Box 1350, Grand Cayman KY1-1108, Cayman Islands.

This Petition is presented by Walkers, Attorneys at Law, 190 Elgin Avenue, George Town, Grand Cayman KY1-9001, for the Petitioners whose address for service is care of their said Attorneys at Law.

## **NOTICE OF HEARING**

TAKE NOTICE THAT the hearing of this petition will take place at the Law Courts, George Town, Grand Cayman, on  
at 10:00am.

Any correspondence or communication with the Court relating to the hearing of this petition should be addressed to the Registrar of the Financial Services Division of the Grand Court at PO Box 495, Grand Cayman KY1-1106, telephone 345 949 4296.