

Fund Formation

Funds and the Investors' Right to Know



Court decisions concerning funds are quite rare in Israel. In a recent decision, the Tel Aviv District Court determined the Investors' right to review all documents of the fund in order to monitor its management by the general partner, placing an emphasis on the contractual language used by the parties in the limited partnership agreement.

An investor in an Israeli fund, incorporated as an Israeli Limited Partnership, asked to review all fund books, records and documents, including documents "evidencing transactions in the fund's assets", basing its request on the language of the limited partnership agreement as well as on the Israeli Partnership Ordinance and on general principles of fiduciary law.

The general partner responded with three main arguments based on the language of the limited partnership agreement: (i) it provides that all fund documents are owned by the general partner and not by the limited partners; (ii) it provides exactly which information will be delivered by the general partner to the limited partners – annual financial statements and information required for tax filings; and (iii) a contractual clause providing that a limited partner may review the books and records of the partnership "applicable to such Limited Partner" and may do so "for any proper purpose" and subject to confidentiality, should be narrowly construed so as to apply to specific information required for a specific proper purpose (such as information required for tax filing purpose) and not as allowing a review of all fund documents in order to monitor its management by the general partner.

While Israeli courts construing contracts often tend to prefer the intent of the parties over the specific language used, in this case the Tel Aviv District Court ruled that the contract was negotiated by sophisticated parties with business experience, and accordingly the specific contractual language chosen by them should have priority when interpreting their contract.

The court accepted that the general partner owns the information requested but ruled that this does not preclude the investors' right to receive and review information. **The court interpreted broadly the contractual language relating to the investors' right to ask to review information. The court ruled that inspection of the general manager's management of the fund and its activities is a proper purpose justifying a general request for documents and information of the partnership by each investor, and that such documents are "applicable" to all investors due to their financial interest as investors in the fund entitled to receive distributions from the fund.**

The court further determined that the information will be provided subject to confidentiality and may be used for the specific purpose of monitoring the fund's management and a potential claim against the general partner. In light of this ruling, the court did not analyze the possible implications of the Israeli Partnership Ordinance and of general principles of fiduciary law.

This District Court decision emphasizes the importance of the specific language used in fund documents under Israeli law, and in relation to information rights – also in side letters executed with certain investors.

Please feel free to contact us with any questions that you have on this matter.



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