

CAYMAN ISLANDS

GRAND COURT

In the Matter of the Companies Law (2010 Revision) and In the Matter of ICP Strategic Credit Income Funds Ltd (In Liquidation) and In the Matter of ICP Strategic Credit Income Master Fund Ltd. (In Liquidation) Cause No. FSD 82 of 2010 and FSD 269 of 2010, per Jones J (3 February 2012)

COMPANIES - INSOLVENCY - S.103 COMPANIES LAW - ORDER FOR DELIVERY UP OF DOCUMENTS AGAINST AUDITOR

An application was brought by the joint official liquidators of certain hedge fund companies for an order pursuant to Section 103(3) of the Companies Law requiring the funds' auditor to deliver up all property or documents belonging to the funds in their possession, custody or control. For the Liquidators to succeed with an order under Section 103(3) for the production of documents, the Court must be satisfied that the auditor is a "relevant person" within the meaning of Section 103(1) and that it has in its possession documents which can fairly be said to belong to the funds.

The Liquidators argued that the auditor was a relevant person on the basis that it was a "professional service provider" within the meaning of Section 103(1)(c). In its ordinary business usage, this expression has a very wide meaning which probably does include auditors. However, the statutory power to compel persons to co-operate with official liquidators for the ultimate benefit of the creditors and/ or shareholders is intended to apply only to those who were involved in the Company's promotion or management.

The Court is not empowered to make such orders against outsiders whose only relationship with the company is that they have done business with it or contracted to provide it with goods or services. For this reason the expression "professional service provider" is narrowly defined by Section 89 of the Companies Law to mean "a person who contracts to provide general

managerial or administrative services on an annual or continuing basis". Auditors fall outside of that definition because they are not engaged to provide general managerial or administrative services. The auditor could also not be characterised as an "advisor" within the meaning of Sub-Section 103(1)(d). This sub-section in this context relates to persons who are appointed under Section 30(3)(d) of the Mutual Funds Law to advise funds on the proper conduct of their affairs. By definition, an auditor cannot be an advisor within the meaning of Section 103(1)(d).

The Court has no jurisdiction to make the Order sought and the summons was dismissed.

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