Chancery Division

Inversiones Frieira SL and another *v* Colyzeo Investors II LP and another

[2011] EWHC 1762 (Ch)

[2012] EWHC 1450 (Ch)

2011 April 19;
July 14

2012 Jan 12–13;
May 29

Norris J

Partnership — Limited partnership — Inspection of documents — Limited partnership established as collective investment scheme — Limited partners also investors in partnership — Claimant limited partners seeking inspection of documents relating to partnership's investments — Whether statutory and contractual right to inspect firm's books limited to books of account — Limited Partnerships Act 1907 (7 Edw 7 c 24), s 6(1)

The first defendant was a limited partnership established as a collective investment scheme. The claimants were two of the partnership's limited partners and investors. The sole general partner appointed the second defendant as investment manager to act as its agent and take investment decisions on the first defendant's behalf. Under the management agreement, the second defendant agreed to act in accordance with the terms of the partnership deed. Following a significant decline in the value of their investments, the claimants sought from the second defendant disclosure of certain classes of document concerning the investments made on the partnership's behalf. They said they were entitled to such disclosure, first pursuant to section 6(1) of the Limited Partnerships Act 1907[1], which provided that a limited partner could inspect the books of the firm and examine into the state and prospect of its business; and secondly, pursuant to the partnership deed, which obliged the partnership to afford full and complete access to all records and books of account of the partnership for a purpose related to the partner's interest as partner. The defendant manager maintained that the claimants' right of inspection was limited to books of account and therefore refused to comply in full with the claimants' request. The claimants brought proceedings for an order requiring the defendant partnership, acting through the general partner and the defendant manager, to permit them to inspect and copy the documents sought.

On the claim—

Held, allowing the claim, that although the partnership's economic purpose was to be a collective investment scheme and the claimants were investors, the legal structure of the scheme was that of a partnership and the claimants should be viewed as partners who had put their capital at risk in a business; that every partner, whether limited or ordinary, had a right of disclosure of all matters relating to the partnership dealings and transactions sufficient to enable him to examine into the state and prospects of the business; that the restriction contained in section 6 of the Limited Partnerships Act 1907 prohibiting a limited partner from taking part in the management of the partnership did not imply a more restricted right to information; that by merely seeking information about the partnership's affairs, a limited partner did not become involved in the management of the partnership; that

[1] Limited Partnerships Act 1907, s 6(1): see post, first judgment, para 12.

A the extent of the duty of disclosure varied from case to case depending on the nature of the partnership business and its mode of conduct and the terms of the governing documents read in the light of current business practice; that if it would be advantageous for the general partner or manager to rely on the document or record in order to establish the rights of the partnership as against a third party, or in order to determine or adjust the rights of the partners inter se, then it was a document which related to the affairs of the company and a limited partner was
B entitled to see it; that if the partnership had paid for the document, that would also establish that it related to the affairs of the partnership; that, at least in so far as the statutory right of inspection was concerned, the partner's motive or purpose for exercising the right was irrelevant; that the partnership deed did not exclude the statutory rights, therefore the statutory and contractual rights were cumulative; and that since they were necessary to understand the state of the business, the limited partners were entitled, inter alia, to discovery of the partnership's books,
C documents evidencing its assets and rights of action, and minutes of meetings between the general partner and the manager (post, first judgment, paras 23, 26, second judgment, paras 4, 6, 15).

Dicta of Collins LJ in *Bevan v Webb* [1901] 2 Ch 59, 68, CA considered.

Per curiam. The court will not assist a partner to exercise their right to access books, records and other documentary information of a partnership where it is plain that the partner is exercising a contractual or non-statutory right to obtain the
D partnership documents for a manifestly improper purpose rather than the express or implied purpose regarding his interests as a partner. But that principle can only apply in very plain cases, otherwise a right of inspection could be rendered more or less nugatory by specious allegations that it is being exercised with intent to injure or for some other improper motive (post, first judgment, para 27).

Further observations on what books the partnership had to show a limited partner to enable them to examine into the state and prospects of the partnership
E business (post, second judgment, paras 11–17).

The following cases are referred to in the judgments:

BBGP Managing General Partner Ltd v Babcock & Brown Global Partners [2010] EWHC 2176 (Ch); [2011] Bus LR 466; [2011] Ch 296; [2011] 2 WLR 496; [2011] 2 All ER 297

F *Bevan v Webb* [1901] 2 Ch 59, CA

Conway v Petronius Clothing Co Ltd [1978] 1 WLR 72; [1978] 1 All ER 185

Oxford Legal Group Ltd v Sibbasbridge Services Ltd [2008] EWCA Civ 387; [2008] Bus LR 1244; [2008] 2 BCLC 381, CA

Pickering, In re (1883) 25 Ch D 247, CA

Trego v Hunt [1896] AC 7, HL(E)

Wan v General Comrs for Division of Doncaster (2004) 76 TC 211

G No additional cases were cited in argument.

The following additional cases, although not cited, were referred to in the skeleton arguments:

Burn v The London and South Wales Coal Co (1890) 7 TLR 118

Dockrill v Coopers & Lybrand Chartered Accountants (1994) 111 DLR (4th) 62

H *Grey v Pearson* (1857) 6 HL Cas 61, HL(E)

Louisana Municipal Police Employees Retirement System v Morgan Stanley & Co Inc (unreported) 4 March 2011; Delaware Court of Chancery

Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd [1997] AC 749; [1997] 2 WLR 945; [1997] 3 All ER 352, HL(E)

Rowe v Wood (1822) 2 Jac & W 553

CLAIM

By a Part 8 claim form issued on 10 August 2010 the claimants, Inversiones Frieira SL and Inversiones Valea SL, sought a declaration ordering delivery up or inspection and copying of 60 categories of documents concerning the books and records of the first defendant, Colyzeo Investors II LP, that related to investments made for and on its behalf by the second defendant, Colyzeo Investment Management Ltd, acting in its capacity as manager to the first defendant.

The facts are stated in the first judgment.

Peter de Verneuil Smith (instructed by *SC Andrew LLP*) for the claimants.
Andrew Hunter (instructed by *Clifford Chance*) for the defendants.

The court took time for consideration.

14 July 2011. **NORRIS J** handed down the following judgment.

1 The question in the present case is the extent to which an investor in a co-investment vehicle owned and managed by connected companies can discover what has actually happened to his money, and to what extent he must simply rely on what is reported to him by way of explanation as to why his investment has halved in value.

2 Colyzeo Investors II LP ("the partnership") is a limited partnership established in February 2007. It was established to enable investors to co-invest with Colony Capital LLC and its affiliates ("Colony Funds") in real estate related investments located in Europe. The documents inviting participation describe the areas of proposed activity as including direct investments in real estate, purchases of distressed assets, investments in development opportunities and "investments in complex operating companies that utilise or have significant dependence on real estate". Some of this investment activity would result in physical assets in the ownership of the partnership: but other investment activity might result in the partnership acquiring rights of action arising under joint ventures or in special purpose vehicles in which Colony Funds or third parties may be participants.

3 The partnership was a limited partnership under English law. The investors were to be limited partners. The sole general partner of the partnership was Colyzeo Capital II LLP ("Capital"), itself a limited liability partnership under English law. As a limited liability partnership Capital in turn had managing partners (and they in turn were another Colony company ("ColonyCo") and its chief executive). So the structure was that the board of ColonyCo and its chief executive officer would act as the agents of Capital who would in turn act as the sole agent of the partnership.

4 The documents inviting participation disclosed that the partnership would delegate its investment management and operating services functions to yet another Colony company called Colyzeo Investment Management Ltd ("CIM") which would act as manager to the partnership providing discretionary management services.

5 As is explained in the evidence of Serge Platonow, a collective investment scheme in which investors commit funds to a limited partnership is the predominant private equity model. That is because (a) the investor's liability is limited; (b) the partnership structure means that it is tax transparent (profit, should there be any, being taxed in the hands of the

A investor and not in the hands of the partnership); and (c) it permits the specific requirements of individual investors to be accommodated. Mr Platonow further explains that adopting this structure means that it must be managed by a general partner, who accepts unlimited liability for all debts and liabilities of the partnership, and invariably such a general partner appoints an investment manager to conduct the affairs of the
B partnership. This case, therefore, does not involve any arrangements which are exceptional or unusual.

6 The direct rights of the individual investor will be found in the document constituting the limited partnership.

7 The partnership was constituted by a deed dated 23 February 2007 made between Capital (as general partner) and two affiliated Colony companies as initial limited partners. Clause 2.1 of the deed said: "The
C rights and liabilities of the limited partners shall be as provided herein, except as otherwise expressly provided in [the Limited Partnerships Act 1907]." By clause 2.3.2 of the deed it was provided: "While any manager has been appointed, [Capital] shall execute all documents on behalf of the partnership where so directed by the manager and shall represent the partnership in its dealings with the manager."

D **8** The responsibility of CIM as manager was set out in clause 3.3 of the deed in these terms:

> "[CIM] shall undertake and shall have exclusive responsibility for the management, operation and administration of the business and affairs of the partnership and, subject as provided herein, shall have the power and authority to do all things necessary to carry out the purposes of the
E partnership . . ."

Clause 3.2 of the deed provided that the partnership would be bound by the terms of the management agreement.

9 The business and affairs of the partnership were identified in clause 3.1.1 of the deed. This identified (at slightly greater length) the primary purpose of the partnership in the terms which I have outlined above,
F specifically providing that:

> "[CIM], on behalf of the partnership, may engage in open market purchases, privately negotiated transactions or other means of pursuing investments and may . . . engage in investments directly or indirectly, through subsidiaries, partnership interests, joint ventures or otherwise."

10 By clause 3.5 of the deed the members of the partnership agreed that
G CIM be authorised to act in particular ways to achieve those purposes by means of such transactions. They agreed that CIM should have "full power and authority to act on behalf of the partnership and with the power to bind the partnership thereby and without prior consultation with any of the limited partners". CIM was not a party to the deed: so rather than conferring direct authority that provision probably had the effect of
H authorising Capital to contract with CIM on those terms. The specific powers to be conferred (material to the present application) were the following:

(a) By clause 3.5.1 "to formulate the investment policy of the partnership" provided that CIM had due regard to the purpose of the partnership as set out above.

(b) By clause 3.5.2 "to acquire . . . or otherwise deal in or with the Investments . . . whether directly or indirectly, through subsidiaries, partnership interests, securities, joint venture or otherwise".

(c) By clause 3.5.7 "to open and maintain bank accounts in the name of the partnership".

(d) By clause 3.5.19 "to arrange for the assets of the partnership to be held in the name of [Capital] or to procure that the assets of the partnership are held by a custodian and to maintain the partnership's records and books of account at the partnership's principle place of business and to allow any limited partner or its representative access thereto at any time during normal business hours by prior arrangement for the purpose of copying the same . . ."

(e) By clause 3.5.22 "to engage . . . investment and financial advisors and consultants as it may be necessary or advisable in relation to the affairs of the partnership".

(f) By clause 3.5.29 "in connection with its Investments [to] purchase typical hedging instruments . . . designed to protect the partnership against adverse movements in currency, stock price and/or interest rates but not intended to speculate on an uncovered basis . . . or to trade in the foregoing".

11 There were some specific restrictions on the activities of CIM. These were set out in clause 3.6 in the form of a direct covenant between CIM and the limited partners (even though CIM was not a party to the deed). Those material to the present application are: (a) clause 3.6.1 imposed a limit on the size of any investment CIM could make in an individual project; (b) by clause 3.6.5 CIM agreed not to borrow money or enter into credit facilities or to purchase derivatives which were speculative in nature and not used as hedging instruments relating to an investment or the financing thereof; and (c) not to make any investment without having been advised by Colyzeo Investment Advisors Ltd (another Colony company) to do so. The deed also contains (in clause 14) provision for an advisory committee composed of persons not associated with Investments. But clause 14.4 provided that CIM should not be required to follow any advice or recommendation of an advisory committee but had authority to exercise its powers as set out in the deed and in the management agreement at its own discretion.

12 Within this context what were the rights of the investors in relation to Capital as general partner? They are to be found in various places in the deed as follows:

(a) By clause 3.4 of the deed it was provided:

> "The limited partner shall take no part in the management, operation and administration of the business and affairs of the partnership, and shall have no right or authority to act for the partnership or to take any part in or in any way to interfere in the management, operation and administration of the partnership . . . otherwise than as provided in [the Limited Partnerships Act 1907] or as set forth in this . . . deed."

(b) Clause 3.4 continued expressly to provide that the limited partners and their duly authorised agents "shall at all reasonable times have access to and the right to inspect the books and accounts of the partnership".

A (c) The Limited Partnerships Act 1907 (to which clause 3.4 referred) provided for a limited partner's access to information in slightly different terms. Section 6(1) says:

> "A limited partner shall not take part in the management of the partnership business, and shall not have power to bind the firm: Provided that a limited partner may by himself or his agent at any time inspect
B the books of the firm and examine into the state and prospects of the partnership business, and may advise with the partners thereon."

It is clear from the terms of clause 15.10 of the deed that the terms of clause 3.4 are cumulative and not exclusive of rights provided by section 6 of the 1907 Act.

(d) Clause 8.1 of the deed declares that no investor can take part in the
C management or control of the business of the partnership, but that the exercise of any rights and powers pursuant to the 1907 Act or the terms of the deed "shall not be deemed taking part in the day to day management of the partnership or the exercise of control over the partnership affairs".

13 It appears also to have been intended that the limited partners should have some direct rights as against CIM as manager in regard to the prohibitions imposed by clause 3.6 of the deed.

D **14** So much for the direct rights enforceable by an investor arising under the deed. But there are also indirect rights (i e rights which the investors can call upon Capital as general partner to enforce for the benefit of the partnership). These arise under the management agreement dated 23 February 2007 made between Capital (as general partner) and CIM (as manager). Under this management agreement the partnership appointed
E CIM to be the manager of the partnership investments and to take decisions on behalf of the partnership as a discretionary investment manager. As such a discretionary investment manager CIM could direct the partnership to (or alternatively could itself on behalf of the partnership) enter into agreements or transactions in respect of any investment. CIM thereby became the agent of the partnership. By clause 2.3 of the management agreement CIM agreed to exercise its powers and to perform its duties at all times having regard to
F the best interests of the partners and in compliance with the terms and conditions set out in the deed. (In this way clause 3.6 of the deed would become enforceable even if it did not operate as a direct covenant). In so doing it was obliged to use its commercially reasonable efforts to operate the partnership (including managing its assets and maintaining the books and records of the partnership) in compliance with the relevant rules. As was
G acknowledged in para 11 of the schedule to the management agreement this imposed on CIM an obligation to: "Account to the partners for transactions entered into on behalf of the partnership by means of such statements, reports and accounts as are required to be prepared and sent under the partnership deed."

15 The provisions which are referred to in clause 2.3 of the management agreement and para 11 of the schedule thereto are found in
H clause 11 of the deed. Clause 11 of the deed constituted an agreement between Capital and the investors as to what CIM should do by way of accounting as manager and clause 2.3 and the schedule constituted a promise by CIM to the partnership (acting by Capital as its general partner) to do so. The obligations were:

(a) Under clause 11.1 of the deed to maintain "full and accurate books of the partnership . . . in the name of and separate and apart from the books of [CIM] and [Capital] . . . showing all receipts and expenditure, assets and liabilities, profits and losses, and all other books, records and information required by [the 1907 Act] or necessary for recording the partnership's business and affairs". A

(b) Also under clause 11.1 of the deed to maintain these "books and records" in accordance with Generally Accepted Accounting Principles ("GAAP"). B

(c) Under clause 11.2 to afford "full and complete access" to "all records and books of account of the partnership for a purpose reasonably related to the partner's interest as a partner" each partner having "the right of inspection and copying such records and books of account" at its own expense. C

(d) Also under clause 11.2 of the deed to reasonably co-operate with any partner or the agent of a partner in connection with any "authorised review or audit of the partnership or its records and books".

(e) Under clause 11.3 to cause to be furnished to each partner with respect to each accounting period of the partnership an audited balance sheet, income statement, cash flow statement and statement of capital account prepared in accordance with GAAP which (unless CIM in its absolute discretion otherwise determined) needed to relate only to the partnership (and would not include a consolidation of entities in which the partnership had invested). D

(f) Under clause 14.6.5 of the deed CIM was bound to supply "the advisory committee" of the partnership with all information and data which it reasonably requested to enable it to be, on a continuing basis, fully informed about the partnership's activities. E

16 Inversiones Frieira SL ("IFS"), a Spanish company, is the largest investor in the partnership. Inversiones Valea SL ("IVS"), an affiliate of IFS, is the smallest investor in the partnership. They have together committed €101m (out of total commitments to the partnership of €854m). The partnership has made eight investments. One of those is in an entity called "Blue Partners". This is a joint venture company owned by the partnership and another limited partnership promoted by the Colony Group. Blue Partners in turn invested in Blue Capital, a special purpose vehicle ("SPV") in which it held a 50% share. Blue Capital was established to hold a tranche of shares in Carrefour SA and to obtain margin loans to purchase those shares. The share price was approximately €50 and the debt per share approximately €27·50. But within the year the Carrefour share price had declined to €30 which triggered obligations to put up further cash collateral to support the margin loan. Blue Capital reduced the demand for cash collateral by entering into some hedging transactions, but the partnership was unable to contribute to Blue Partners its appropriate share of the remaining demand for cash collateral, so its co-venturer in Blue Partners itself undertook some counterparty trades and committed additional funds (leaving the consequences to be sorted out later in discussions to determine an appropriate level of compensation for the risk which the co-venturer was taking on; discussions which quite possibly would involve Capital being on both sides of the negotiating table as general partner of each participant). This is neither a full nor (probably) entirely accurate account of some F G H

A complex financial manoeuvring but it is the sort of thing that would have to be explained if an investor were to ask "What happened to the money I invested in the business? Why have the business's investments halved in value?".

17 Another of the investments made was in an entity called "ColDay" which was established to undertake a leveraged share purchase of a large tranche of Accor shares at a cost of €275m. By 31 March 2010 this B investment was worth only €131m.

18 In July 2009 IFS and IVS wrote to CIM as manager explaining that they were trying to get a better understanding of the Carrefour and Accor investments and were, in particular, interested in gathering more information concerning the financial structures underlying them. First, in relation to Carrefour there was a request for a detailed description of the C hedging structure (including such things as the number of shares, the option strike levels, the hedge break-even levels and so forth). In relation to Accor they requested a description of the derivative that replicated the performance of the underlying Accor shares, a detailed description of the hedging structure and details of the partnership's investment breakdown as between shares, hedging and costs and fees. Over the ensuing months these questions were, to some degree, answered and access afforded to some 15 files of D documents. But on 10 March 2010 CIM wrote to IFS in these terms:

> "We are prepared to allow your representative to inspect the books and records of the partnership. However the list of documents that you have requested to be made available for inspection goes well beyond the scope of what you are entitled to review. What we will make available to review, consistent with the terms of the partnership deed, are the financial E books and records of the partnership."

19 That letter led to the Part 8 claim now before me in which IFS and IVS seek an order requiring the partnership, acting through Capital (as general partner) and CIM (as manager) to permit the claimants to inspect and copy "all books and records of [the partnership] that concern the investments made by [CIM]", lists of such documents being attached in two F schedules to the claim form. These lists cover 60 categories of documents (although some of the categories overlap). They range from copies of documents relating to the partnership's participation in Blue Capital and Blue Partners, through documents relating to credit agreements and loan facilities, to presentations made to the partnership's advisory committee, (including documents relating to the hedging of investments in Carrefour G and Accor); from a complete breakdown of all investments (including full details of the investments made, the amounts invested and when the partnership committed thereto) to counsels' opinions obtained on behalf of the partnership, details of the appointment of any custodian to minutes of meetings and advice sought for and on behalf of the partnership. The primary contention of CIM (set out in para 46 of the witness statement of Mr Platonow, who is a director of CIM) is "that the claimants have no right H to any of the documents requested in schedules 1 and 2 of the claim form", and that the claimants are entitled to see only "books of account".

20 At the hearing I was invited not to consider or to rule upon each claimed document in each of the 60 categories, but rather to address the question as one of principle (so far as could be done), ruling which of the

respective extreme positions was correct, and if neither, then to give guidance to where the line should be drawn. That I will seek to do.

21 The points made in favour of the widest interpretation of the rights to the provision and inspection of documents were these.

(a) The irreducible right of a limited partner is that conferred by section 6 of the 1907 Act "at any time [to] inspect the books of the firm and examine into the state and prospects of the partnership business".

(b) The commentary in *Blackett-Ord*, *Partnership Law*, 3rd ed (2007), para 24.10 says that a limited partner "is entitled to all information about the firm" (citing a Canadian case).

(c) In *Lindley & Banks on Partnership*, 19th ed (2010) there the observation of Lord Lindley, at para 23-96, that "the right of every partner to a discovery from his co-partner of all matters relating to the partnership dealings and transactions is as incontestable as his right to an account".

(d) In section 6 of the 1907 Act the reference to "the books of the firm" is a reference to any written document in the possession of the firm because the dictionary definition of "book" includes "a written document".

(e) The purpose of the statutory right of inspection is to enable a limited partner "[to] examine into the state and prospects of the partnership business" and "[to] advise with the partners thereon". So the statutory right of inspection must be read as conferring a right to see whatever is necessary for that purpose. It is said that this approach is confirmed by authority. In *Wan v General Comrs for Division of Doncaster* (2004) 76 TC 211, I held (in the context of an ordinary partnership) that each partner had access to the partnership books (which in that context meant the payroll records and returns, the amount of the salary paid to an individual, that individual's national insurance number, any profit shares paid to that individual, and the partnership accounts and income tax computations). In *In re Pickering* (1883) 25 Ch D 247 the beneficiary of a deceased partner applied for an order that the surviving partner should file an affidavit "of all the books and documents relating to the affairs of the partnership". The court (which included Lindley LJ) ordered him to disclose the whole of "the letters entered in the letter books of the partnership" unless he stated on affidavit the nature of the transactions to which those letters related and demonstrated that they did not pertain to the partnership business. But the surviving partner was obliged to produce letters to his private friends, to his solicitors and to his bankers (simply because they were found in the letters book of the partnership) because they might relate to partnership matters and because it was not right that the surviving partner should be trusted to decide whether they did or not. It was submitted that these cases underlined the freedom of access which a partner should enjoy to documents relating to the partnership affairs.

(f) There was no true analogy between the right of access of a partner to partnership documents and the right of access of a shareholder or a director to accounting records and company documents. But if such an analogy is to be drawn then *Conway v Petronius Clothing Co Ltd* [1978] 1 WLR 72 shows that the court will, at the suit of a director, order the company to produce all books of account, management accounts, working papers, bank statements, cheque stubs, contracts, invoices and instruments of transfer (provided the right of inspection is being exercised for the benefit of the company).

A (g) The statutory right of inspection under the 1907 Act and the contractual rights of inspection under the deed are cumulative. Clause 3.4 of the deed confers a right to inspect "the books and accounts of the partnership" and the separate reference shows that the "books" must be something different from the "accounts".

(h) The deed also confers a contractual right upon IFS as limited partner enforceable against Capital as general partner and CIM as manager to be B afforded full and complete access to all "records and books of account of the partnership for a purpose reasonably related to the partner's interest as a partner", the terms in which the right is conferred demonstrating that "records" are something different from "books of account" with no limitation that the "records" be financial in nature. The absence of any limitation is reinforced by the fact that it is one of the terms of the C partnership that the manager shall maintain (under clause 11.1) "full" books of the partnership.

22 The following points were urged in favour of a narrow reading of the right of inspection.

(a) Taking section 6 of the 1907 Act as the starting point, it is submitted on behalf of Capital as general partner of the partnership and CIM that this to be read as conferring two discrete rights, a right to "inspect the books D of the firm" and a right to "examine into the state and prospects of the partnership business".

(b) That in so far as there is a right to inspect "the books" this is a right to inspect the summary financial records (and not a right to inspect the underlying primary documents) because inspecting the operational documents would be inconsistent with not exercising a management role E (which restriction lies at the core of a limited partnership).

(c) This is supported by *Blackett-Ord*, *Partnership Law*, which, at p 203, comments that "the partnership books" means: "the firm's financial records and the papers relating to the partnership relationship rather than all papers to do with every aspect of the business or its customers or clients, some of which will be confidential."

F (d) So far as the firm's "financial records" are concerned, an analogy may properly be drawn with the "accounting records" of a company for which provision is made in section 386 of the Companies Act 2006, namely records that are sufficient to show and explain the company's transactions (in particular day-to-day entries of all sums received and expended and the matters in respect of which the receipt and expenditure takes place) and which disclose with reasonable accuracy at any time the financial position of G the company at that time. The reference to "accounting records" (and also, it is submitted, to "partnership books") is accordingly a reference to the summary accounting records and not to the primary material from which the entries in those records are derived.

(e) So far as "papers relating to the partnership relationship" are concerned, these will be the partnership deed and the schedules showing the capital commitment of the parties, together with legal opinions paid for by H the partnership in relation to partnership relationship matters: see *BBGP Managing General Partner Ltd v Babcock & Brown Global Partners* [2011] Bus LR 466; [2011] Ch 296.

(f) In so far as assistance can be gleaned from the authorities they support this analysis. In *Wan v General Comrs for Division of Doncaster* 76 TC 211

the documents in question were the payroll records (which are summary financial records). In *In re Pickering* 25 Ch D 247 a clear distinction was drawn between "books" and "documents". In *Bevan v Webb* [1901] 2 Ch 59 the partnership deed itself drew a distinction between "proper books of account" and "all bills, letters, and other writings which shall from time to time concern the said partnership business". A

(g) As to contractual rights, a distinction must be drawn between the right which a limited partner has to inspect partnership documents and the right which a limited partner has to inspect the discretionary investment manager's documents. Both are to be read restrictively having regard to the fact that the clear economic structure is that the limited partner invests money but that the actual investment of that money is delegated by Capital (as general partner) to CIM (as manager) and it is CIM which chooses and oversees the investments. So where clause 3.4 of the deed confers a right to inspect "the books and accounts" this is a right simply to inspect (not examine) the "books of account". Where by clause 3.5 CIM is authorised on behalf of the partnership "to maintain the partnership's records and books of account" this is a clear reference to "books of account" and to the documents which pertain to the partnership relationship. Where clause 11.1 of the deed imposes on the manager an obligation to maintain "full and accurate books of the partnership . . . and all other books, records and information . . . necessary for recording the partnership's business and affairs" the requirement that such books and records "shall be maintained in accordance with GAAP" shows that the principle reference is to summary documents of account to be prepared according to proper accounting principles (and cannot be a reference to operational or transactional documents, advice or records of meetings). Where clause 11.2 of the deed gives a partner access "to all records and books of account of the partnership" the following sentence which gives the right to a partner "to audit such records and books of account by an accountant of its choice" demonstrates that the records and books of account there referred to are in nature summary financial records capable of audit by an accountant. B C D E

23 In the light of these competing arguments my conclusions are as follows: F

(a) Although the economic purpose of Colyzeo Investors II LP is that it is a collective investment scheme, the legal structure of the scheme is that it is a partnership. The legal rights of the investors are determined by that legal structure and not by the economic purpose. Although the claimants are in one sense "investors", they are in law and in reality partners who have put capital at risk in a business. G

(b) Every partner has a right to disclosure by his co-partner of all matters relating to the partnership dealings and transactions: this was the principle stated by Lord Lindley and it finds its current expression in section 28 of the Partnership Act 1890 (53 & 54 Vict c 39) which provides that "partners are bound to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives." H

(c) This is as much the right of a limited partner as it is the right of an ordinary partner. Section 7 of the 1907 Act says that the provisions of the 1890 Act and the rules of equity and of common law applicable to partnerships (except in so far as they themselves are inconsistent with the 1890 Act) apply to limited partnerships.

A (d) Section 7 of the 1907 Act is expressed to be "subject to the provisions of this Act". Section 6 of the 1907 Act restricts the right of a limited partner to take part in the management of the partnership business and says that he does not have the power to bind the firm: but it is not implicit in either of those restrictions that the limited partner's right to information about the partnership business is restricted. His capital remains at risk in the partnership business, the entire conduct of which he has entrusted to the general partner. There is every reason why the general partner should be obliged to render a true account and provide full information. It is simply an aspect of the central duty of good faith which the general partner owes to the limited partners as the party having the sole power to bind the partnership. The fact that the general partner has delegated the exercise of some of his powers as general partner (and the performance of some of his duties) makes no difference.

(e) The 1907 Act recognises this right. The proviso to section 6(1) of the 1907 Act is not conferring some peculiar right on limited partners. It is recognising the right which every partner has ("at any time [to] inspect the books of the firm and examine into the state and prospects of the partnership business") and is making clear that the exercise of that right will not constitute "[taking] part in the management of the partnership business". That is why it takes the form of a proviso.

(f) These general common law and statutory rights are subject to modification by special agreement. Clause 2.1 of the deed addressed the rights of the limited partners and said that they should be as provided in the deed unless otherwise expressly provided in the 1907 Act. In fact clauses 3.4 and 8.1 (read in the light of clause 15.10) mean that a limited partner has the statutory rights referred to in the 1907 Act plus any additional rights conferred by the deed.

(g) By clause 3.3 of the deed Capital was authorised to delegate to CIM the exclusive responsibility for the management, operation and administration of the business and affairs of the partnership. But the authority to delegate does not mean that Capital was relieved of its obligation to supervise CIM, to hold CIM to account or to obtain from CIM any information relevant to the partnership business (save in so far as the management agreement either provided that CIM should not be supervised or restricted CIM's duty to account or provide information). CIM was the agent of the partnership and bound to behave as such and Capital (as the only member of the partnership authorised to deal with the outside world on behalf of the limited and general partners) was bound to hold CIM to the management agreement and seek any information that the members of the partnership could properly ask for.

(h) Under the management agreement CIM was bound to maintain "full and accurate books of the partnership . . . in the name of and separate and apart from the books of [CIM] and [Capital] . . . and all other books records and information . . . necessary for recording the partnership's business and affairs". Under the deed each partner has the right to be afforded by CIM full and complete access to all those records and books of account for any purpose reasonably related to that partner's interest as partner (and in that regard the rights of a limited partner are identical to those of Capital as general partner): and in clause 2.3 of the management agreement CIM has promised to perform its duties in compliance with the deed.

(i) In deciding what is the content of this obligation fine distinctions are not to be drawn between "the books and accounts of the partnership", "the books of the firm", "the books and records of the partnership", "statements reports and accounts", "books of the partnership", "records and books of account of the partnership" and "partnership records and books" because the draftsman of the deed and of the management agreement does not appear to have used language with such precision that one can say he was consciously departing from the statutory language or was consciously creating different categories of information to be recorded and accessed and different rights of inspection, examination and copying.

(j) That which CIM had to maintain (and that which Capital would otherwise have had itself to maintain but for the delegation to CIM) was a record (either by processing raw data and creating an account or other document, or by organising raw data so as to make key data accessible) of the partnership's business and affairs sufficient to enable a partner, whether general or limited, with access to it to examine into the state and prospects of the partnership business. I use language derived from the 1907 Act. But I also have in mind the words of Collins LJ in *Bevan v Webb* [1901] 2 Ch 59, 68 (expressed in relation to section 24(9) of the 1890 Act):

> "What is the object with which this right, or permission, or privilege is given to each of the partners in a partnership? What is the common sense meaning of it? Surely the object is to enable the partners to ascertain the position of the partnership business. The partnership business is their own business, the books are their own books, and each of them has a right in them. Of course, their rights are qualified and regulated by the corresponding rights of the other partners; but the books which they desire to inspect, and which they have a right to inspect, are their own books. For what purpose is this provision made? It must be that the partners may be able to inform themselves of the position of the partnership."

(k) What is required to fulfil such a general obligation will vary from case to case depending on the nature of the partnership business and its mode of conduct and the terms of the governing documents read in the light of current business practice. There is little to be gained by looking at the decided cases to see if they establish categories of document which as a matter of law every partnership must maintain as part of its records and which every partner has a right to inspect. The test is a functional one. As a rough rule of thumb, if it would be necessary or advantageous for CIM or Capital to rely on the document or record in order to establish the rights of the partnership as against a third party, or in order to determine or adjust the rights of the partners inter se, then it is a "book, document or record" which relates to the affairs of the partnership, and a limited partner is entitled to see it: and if the partnership has paid for the document that would also establish that it related to the affairs of the partnership (for why else would a fiduciary agent like Capital or CIM charge the partnership for it?).

(l) In this case the starting point is clause 11.1 of the deed. CIM had to keep full and accurate books of the partnership (separate from its own books and separate from the books of Capital) showing all receipts and expenditure, assets and liabilities, and profits and losses and all other books, records and information necessary for recording the partnership's business

A and affairs. If CIM has not done so then the limited partners must see the primary documents from which such books of the partnership would have been prepared. If CIM has done so then the limited partners are in principle entitled to inspect the documents which record and which establish (for example) the assets and the liabilities.

(m) They are entitled (in order to gain an understanding of the state of the partnership business) to establish the existence of those assets. Where B physical assets are held by the partnership, this will comprise the documents of title and any documents recording terms which survive completion of the acquisition transaction (like "overage" or put options). Where rights of action are held by the partnership this will comprise the documents giving rise to the right of action (the joint venture agreement and any relevant schedules relating to the size of the partnership's participation, or the C constitution of the SPV and the documents which establish the exact level or nature of the partnership's participation). The same is true of the liabilities to which the partnership is directly exposed (under loan or hedging arrangements): the limited partners may see the documents from which the liabilities derive. If under GAAP the liability of an SPV should be shown as a liability of the partnership then the limited partner must see the documents relating to that.

D (n) Proper reports to the limited partners will have put a value on the assets and will have quantified the liabilities. The limited partners are in my judgment in principle entitled to see the documents which support those valuations (be that value based on "cost less impairment", "fair value", a DCF analysis, NAV and/or an earnings multiple). If the value is based on CIM's own data (and so in GAAP parlance is "unobservable") then the E limited partners should in principle see that data. It is not possible to understand the state of the partnership business (or to confer or "advise" with the other partners as to the prospects of the partnership business) without understanding the robustness of the attributed values and to what matters they may be sensitive.

(o) If the partnership has directly paid for professional advice about the acquisition, retention or valuation of an asset or the incurring of or exposure F to a liability (by itself paying the fee or reimbursing Capital or CIM for the fee under clause 4 of the management agreement) then the limited partner may see that. But if the cost of such advice has ultimately been borne by Capital or CIM and absorbed as part of its operating expenses then in principle such a document would not form part of the partnership books and records unless it relates to the current state of the partnership or the current G prospects of the partnership (and so relates to some current value adopted by CIM in the accounts it renders).

(p) On the other hand advice by the Advisory Committee of the partnership to Capital/CIM, instructions by CIM to Capital and advice by Colyzeo Investment Advisers Ltd to CIM are all materials which the deed contemplated should be generated and paid for through the remuneration of CIM and Capital in their respective capacities (rather than by way of H reimbursement): and so should be available to the partners so far as such materials relate to assets and liabilities and receipts and expenditure of the partnership business. Likewise minutes of meetings between CIM and Capital (which are reports by the agent of the partnership to its principal acting by its general manager, or instructions or assent on behalf of the

partnership given through its general manager). All of these are in principle part of the partnership books and records, necessary to understand the state of partnership business and to assess and confer about its prospects. On the other hand internal minutes of CIM and its routine internal business documentation (such as telephone attendance notes or briefings prepared for meetings) would not in principle be books or records of the partnership (and so could not be called for by limited partners).

(q) The only specific restriction is to be found in clause 5.2 of the management agreement. This says that CIM cannot be required to disclose to the partnership any confidential information relating to the dealings, portfolio or affairs of another client or any other person. So some documents which at the time of the request for inspection remain confidential or contain confidential information might have to appear in redacted form (for there can be no question of CIM or Capital asserting general rights of confidence against any member of the partnership which prevent production of the document as a whole).

(r) The only general restriction is that the documents and information relate to the business and prospects of the partnership as it is. What might have been (offers that were unsuccessfully solicited, applications which failed, proposals that did not come to fruition, drafts that were subsequently altered) is not relevant to the current state and prospects of the partnership and would not in my judgment be in principle open to inspection or copying; unless they were documents for which the partnership paid because the cost of their preparation was treated as an operating expense of the partnership (in which case the limited partners would be entitled to see what was done with the partnership money).

(s) By merely seeking information about the partnership's affairs a limited partner does not thereby become involved in the management of the partnership. It all depends on what the limited partner does with the information so provided. If IFS examines and analyses the material and then advises with (or, in other words, confers with) the other limited partners, it does not become "involved" in the management of the partnership. If it expresses to the general partner a view about the performance of the partnership or the strategy or future direction of the partnership or a preference about how a particular asset should be dealt with or a particular liability covered, it does not become "involved" in the management of the partnership. But if IFS seeks to participate in the decision-making process by requiring notice of individual decisions and the ability to make representations about individual decisions, if it seeks to scrutinise and to comment upon the operational business decisions which Capital and CIM are taking, then it would become "involved" in the management of the partnership. But the mere fact that the provision of information might enable IFS to take that course is not a reason for the refusing to provide information to which IFS is otherwise entitled as partner.

24 I have so far looked at the nature of the rights which IFS and IVS have. But against whom may those rights be enforced? In my judgment they may be directly enforced against Capital and the other members of the partnership because they are statutory and contractual rights arising under the deed to which Capital was a party. Capital promised (and was under a duty as partner to provide) to IFS and IVS all records and books of account of the partnership: and Capital (as general partner) can procure that

A CIM fulfils its obligation under the management agreement to afford such access. But the rights cannot be directly enforced by IFS and IVS alone against CIM because there is no direct individual contractual relationship (save perhaps under clause 3.6 of the deed which purports to be a direct covenant by CIM with the limited partners). The relationship constituted by the management agreement is between CIM and the partnership. As limited
B partners IFS and IVS are not agents of, and have no authority to act on behalf of, the partnership and to bring an action in its name or otherwise enforce rights vested in all members of the partnership as a body. Their individual remedy (if any) against CIM would seem to lie in tort (inducing Capital to breach the partnership contract by not performing the management agreement so as to enable Capital to comply with its obligations as general partner): but that is a tentative view because the
C matter was not fully argued.

25 There is one further matter of principle to be addressed. On behalf of Capital and CIM Mr Platonow states that the present application is a blatant attempt to trawl through Capital's and CIM's day-to-day operational documents with a view to enabling IFS and their appointed forensic accountants to prepare a claim against CIM, and that the mounting
D of litigation is not a legitimate purpose for which to seek the inspection of documents or the provision of information.

26 In my judgment the question of motive or purpose is irrelevant to the exercise of a statutory right of access to the partnership books. I accept the proposition (stated in *Lindley & Banks on Partnership*, para 22-16) that because the statutory right of inspection is expressed in unqualified terms the motives and bona fides of the partner seeking to exercise it will be irrelevant.

E **27** I would accept that the position may be different in relation to the exercise of a contractual or other non-statutory right. There, if it is absolutely clear that the partner is using a contractual right to obtain partnership documents not for the purpose for which it is expressly or implicitly conferred (in connection with his interests as partner) but for the purpose of injuring the partnership, or for some other manifestly improper
F purpose, then the court will not assist the partner to exercise the right to access partnership books, records and information: compare *Oxford Legal Group Ltd v Sibbasbridge Services Ltd* [2008] Bus LR 1244, para 24. But that principle can only apply in very plain cases: otherwise (as Slade J pointed out in *Conway v Petronius Clothing Co Ltd* [1978] 1 WLR 72, 90) a right of inspection could be rendered more or less nugatory by specious allegations that it was being exercised with intent to injure or for some other
G improper motive. The principle has no application here. It is simply not the law that if a partner thinks he may have grounds to complain about the way a general partner (or its delegate) has performed its obligations then the partner thereby loses any right to obtain access to partnership documents.

28 Control is exercised not by restricting access to the information but by restricting the use that can be made of the information obtained. Thus in
H *Trego v Hunt* [1896] AC 7 it was suggested that a partner wished to obtain access to books for the purpose of identifying customers whom he could solicit when he set up in business on his own. Lord Davey said, at p 26:

> "The notice of motion asked that the defendant might be restrained from making any copy or extract from the books of the partnership for

any purpose other than the business of the partnership. In my opinion the relief asked was misconceived. As well under the general law as under the express provisions of the articles of partnership, the defendant was entitled during the partnership to have access to the books and to make copies thereof or extracts therefrom. It is conceivable that, if the defendant proposed to use such extracts for purposes injurious or hostile to the interests of his firm, he might be restrained from so doing. But in such case it would not be the obtaining of the information, but the use the partner proposed to make of it when obtained, which would be restrained."

29 The purpose for which access is required cannot affect the type of partnership document or record to which a partner has a statutory or contractual right of access; and in the instant case the evidence of Capital and CIM comes nowhere near establishing impropriety sufficient to bar access generally. This ground of objection to the production of documents therefore cannot be sustained.

30 I have endeavoured so far as I can to answer the questions posed on this application as matters of principle. I will hand down this judgment on 14 July 2011 and I do not require the attendance of legal representatives. The parties should endeavour to agree the application of the principles I have set out to the many categories of documents sought: the matter should then be restored before me at an appointment fixed through the usual channels for me to decide such matters as remain in contention (including costs).

Claim allowed.

29 May 2012. **NORRIS J** handed down the following further judgment.

1 The issue in the action is: to what documents can a general partner be ordered to provide access to limited partners in order that they may understand the business in which they have invested?

2 In my first judgment (ante, p 1138) I sought to give an answer in principle to that question, rather than to specify individual documents amongst the many claimed in each of the 60 categories which Inversiones sought in the schedule attached to the Part 8 claim form. I invited the parties to apply those principles, reach agreement on the documents to be produced, and to restore the case for the resolution of any remaining disputes. Regrettably this has led the parties into poring over the first judgment as if it was a statute.

3 The restored hearing took place on the 12 and 13 January 2012. No agreement had been reached at all.

4 In my first judgment, at para 23, I endeavoured to set out what principles underpinned the right of a partner to inspect "the books of the partnership" and to describe the general nature of those "books". But I pointed out, in para 23(k), that what would be required would vary from case to case depending on the nature of the partnership business and its mode of conduct and the terms of the partnership agreement (and any associated arrangements) read in the light of current business practice: the test being essentially a functional one. I took the view that, in general, if it would be necessary or advantageous for the general partner or its delegate to

A rely on a document to establish rights as against a third party or to determine rights as between the members of the partnership themselves, then the document should be available for inspection by the limited partners. Further, if it was a document for which the partners had themselves paid then that might also be taken to be a document which related to the affairs of the partnership (because otherwise it could not properly have been charged directly to the account of the partners).

B

5 The parties have not reached agreement upon what books of the partnership IFS and IVS (I will call them together "Inversiones") have to be shown to enable them to examine into the state and prospects of the partnership business and to confer with the other limited partners thereon. This is because of a fundamental difference of approach. That of Inversiones is to focus on "entitlement"; to look at each of the categories of document C production of which is claimed, and then to ask in relation to that category whether if documents of that type existed then their production for inspection could be justified according to the principles set out in the judgment. That of Capital and CIM was to review what documents actually existed and then to assess each document that actually existed against the principles set out in my first judgment to see whether it formed part of the "partnership books" to inspection of which the limited partners were D entitled. This detailed review (which was undertaken by a team of three solicitors over three months) produced 76 files of documents, 44 of which contained material the production of which the defendants had previously resisted. It should be recorded that the defendants afforded the opportunity for Inversiones to participate in this review process: but the opportunity was not taken up. The reason for that was that Inversiones fundamentally E disagreed with the whole "documentary capture and review process being conducted before the relevant principles were applied".

6 It is regrettable that this metaphysical debate should have stood in the way of getting to Inversiones the documents they need for an understanding of the affairs of the partnership. In so far as it arises from any lack of clarity in the first judgment I apologise to the parties. I had intended clearly to communicate my view that what must be shown to the limited partners will F vary from case to case (depending on the nature of the partnership business and its mode of conduct), that there was little to be gained by looking at decided cases to see if they established categories of document which as a matter of law every partnership had to maintain and which every partner had a right to inspect; and that the whole process should be grounded upon what documents actually existed, and their function, and not upon abstract G categories.

7 As a starting point, the process undertaken by the defendants was essentially that which I envisaged. Whilst I recognise (and would underline) the fact that affording to limited partners access to the partnership books is not a process of disclosure (like that under the CPR) I do agree with the sentiment expressed in a letter from Clifford Chance dated 15 August 2011: "We do not consider that the parties can endeavour to agree the application H of the principles without knowing what documentation actually exists".

8 An examination of the material provided establishes: (a) That there are no real property or marketable securities directly owned by the partnership. (b) The partnership investments consist of participation in SPVs which ultimately own the underlying assets, and there may be multiple

layers of SPVs between the partnership and the underlying asset. (c) In no case does the partnership wholly own an SPV which in turn wholly owns the underlying asset. (d) Accordingly, in no case can the worth of an investment held by the partnership be determined simply by reference to the market value of the underlying asset. Every investment held by the partnership has to be attributed a "fair market value" assessed quarterly. So in relation to the partnership's Accor investment, what is being valued is the partnership's interest in CZ2 Day (a Luxemburg co-ownership entity) which in turn owns 45% of ColDay (another Luxemburg co-ownership entity) which in turn owns some derivatives of the Accor shares. The "fair value" analysis varies from SPV to SPV — depending on the nature of the underlying asset. It may be conducted by reference to market value, third party valuation, third party appraisal, earnings multiple or discounted cash flow. The analysis is summarised in a "FMV package" for the investment. (e) Each SPV has its own income flow and its own expenses, recorded on its own financial recording system (albeit that this is maintained centrally). (f) No SPV has its own independent capital funding. Instead, the acquisition costs of the underlying investment (both price and acquisition costs and expenses, including any due diligence) and any funding costs (such as loan repayments or premiums on hedging transaction) are simply passed up the chain of SPV's until the appropriate proportion is treated as a disbursement to be paid by the partnership out of the capital contributed by the limited partners or out of lines of credit available to the partnership, these amounts being recorded in "a funding package".

9 At the hearing it was accepted by Inversiones that there was extensive duplication of requests within the 60 categories of documents sought. It was accepted by Capital that investors were entitled to see (subject to any necessary redaction to preserve the confidentiality of co-investors) the SPV constitutions under which the partnership rights arise, the FMV packages, the funding packages, the general ledger entries which record the dealings ultimately summarised on the financial statements provided to each partner, and the papers provided to CIM to enable it to make decisions about partnership affairs ("the decision files").

10 The points of difference were recorded on a 69-page Scott schedule, the general nature of which was canvassed at the hearing and details of which I have considered in the course of preparing judgment. But before I address the issues in detail I would note four general themes.

11 First, this litigation is brought by two out of a number of limited partners. They are seeking to exercise their rights as such. No doubt considerable expense will have been incurred in the preparation of documents for provision, which expense might well be charged to the partnership generally. It is important not to lose sight of the interest of other partners when considering the rights of IVS and IFS. As Collins LJ said in *Bevan v Webb* [1901] 2 Ch 59, 68 "their rights are qualified and regulated by the corresponding rights of the other partners". Whatever further provision of documents might be considered, that provision must be such as is truly appropriate to address real and substantial (and not merely theoretical) issues. Equally, it is important not to lose sight of the fact that whatever it is held must be provided to Inversiones must also be made available to every other limited partner of the partnership.

12 Second, what the general partner is obliged to do is afford access to the relevant "partnership books". The exercise by Inversiones of the right to inspection of partnership books does not require the general partner or its delegate to create "partnership books" or to constitute partnership papers which are not already in existence. If such partnership books or papers ought to have been prepared (in performance of the obligation to keep full and accurate books of the partnership and such books records and information as is necessary for recordings its business and affairs) then a limited partner may inspect the primary documents in the possession of the partnership or its delegate from which such partnership books and records ought to have been created. But that is a substitutionary right in lieu of specific performance of the contractual obligation to keep proper records.

13 Third, at the hearing Inversiones advanced the argument that they had the right to inspect documents belonging to all the SPVs either as a matter of general legal right or under specific contractual provisions in particular management agreements. As to general legal right, Inversiones submitted that a general partner could not reduce his obligation to provide documents about the business of the partnership to limited partners by relying on the fact that the economic activity was actually carried out by SPVs, because that in effect empowered the general partner to control what he would tell the limited partners about the business. As to specific contractual provision, it was, for example, provided in a management advisory agreement entered into between an SPV that was a wholly owned subsidiary of the partnership ("the owner") and a Colony advisory company ("the manager") that:

> "The manager shall assemble and retain all . . . records and data as may be necessary to carry out the manager's function hereunder . . . all such records, although in the manager's possession, shall be and remain the property of the owner. The manager will ensure access to all such records to the partnership and the owner at any reasonable time".

14 This was a development of the original claim. In their claim form the Inversiones companies had said that they were seeking "inspection and copying of the books of [the partnership]"; and in their evidence had specifically confirmed that "Inversiones do not seek any papers which do not belong to the partnership". Although there was some complaint at this expansion of the case it seems to me better to grapple with the real issues that have emerged from the disclosure of the precise structure of the partnership's investments.

15 It is not possible to address the issue in the sweeping way suggested by Inversiones. I think the approach has to be much more refined. My approach is as follows:

(a) What are the partnership books that have to be produced will vary from case to case depending on the nature of the partnership business and its mode of conduct and the terms of the governing documents read in the light of current business practice.

(b) The partnership deed itself provided that each partner should be afforded access to the partnership books maintained by CIM, such access being for purposes reasonably connected to that partner's interests as partner. This is an individual right that Inversiones can call upon Capital (as party to the management agreement with CIM) to enforce. That is why

Capital has made available CIM's papers (minus any confidential information relating to the dealings of any third party). The obligation relates to papers that CIM actually has.

(c) Similar clauses in other management agreements between an asset owning SPV and a manager (such as that quoted above) are different in effect. In so far as they create rights that can be enforced by a non-party in whose favour a promise is made, the beneficiary of the promise is "the partnership". The partnership deals with the outside world (whether that is the SPV or the manager) only through its general partner; and the general partner is not obliged to act at the behest of any one limited partner. So these provisions do not give an individual limited partner (such as IFS) a direct or indirect right to inspect the documents.

(d) Where the documents belong to or are in the possession of an SPV, Inversiones has no individual right to call for or compel their production for inspection. If the SPV is wholly owned by the partnership then Capital (as general partner) will have the right and power to exercise the partnership's rights as shareholder or as beneficiary of any contractual promise. If the SPV is an intermediate SPV or an asset-owning SPV then Capital will (as general partner) have sole authority to deal with the outside world (including such SPVs) on behalf of the partnership. But in neither case can IFS alone compel Capital to act in any particular way e g to demand production of agreements between the SPV and other third parties. Capital is not bound to exercise rights that belong to the partnership at the behest of an individual partner.

(e) If in the course of transacting the business of the partnership Capital or CIM has obtained copies of agreements between the SPV and third parties then of course those documents (if of a nature and significance to make them part of the books, documents and records of the partnership) become partnership documents. I reject the submission that it is bizarre to allow the extent of "partnership documents" to be determined "at the whim of CIM". The "partnership documents" are what exists: and what exists is to some extent determined by chance.

16 The fourth point to make is that Inversiones were anxious to stress (i) that they were seeking to exercise contractual and equitable rights to inspect partnership books and documents (and doing so by means of a Part 8 claim); and (ii) they were not seeking to enforce an obligation to make specific disclosure. Accordingly, they argued that to obtain an order they did not have to establish that the claimed documents existed, or that there were any gaps in the documents contained in the 76 files which Colyzeo had disclosed. They simply had to establish their technical entitlement to documents of the type included in any given category, and it was then for the court to order production and inspection of every document within that category. If documents of type "X" existed then the court had to order production of *all* type "X" documents, and neither the court nor the general partner could restrict Inversiones' right to only such of the documents of type "X" as would be sufficient for them to understand the partnership business. The order must be made: if there were none, or no more than had already been provided, then Capital/CIM had to do nothing.

17 I disagree. The matter is not to be approached on such an abstract basis. Capital has, in the light of the principles set out in my first judgment, identified and collated a substantial body of documents which it

A acknowledges are partnership documents. In practice the onus is now on Inversiones to indicate in what respects the available documents are not sufficient to enable Inversiones to examine into the state and prospects of the partnership business and consult with the other limited partners thereon, or indicate the existence of other documents that would be just as material to that exercise as those which have been provided. That is partly because the court will not grant an injunction which has no practical effect. It is partly B because the court will not direct the incurring of expense which may have to be borne by the partners generally simply upon the request of one limited partner who cannot demonstrate that the incurring of that expense secures any practical advantage. In this area (as in others where competing rights are involved, such as easements) the law does not seek to identify the precise outer limits or prescribe the entire and exact content of every rule: it C provides for the core obligation and expects the associated rights to be exercised in a reasonable manner (and it will assist their exercise in that reasonable manner).

18 I therefore turn to consider the categories of documents sought. Inversiones claimed 60 categories of document. Inversiones acknowledged that there was considerable duplication and overlap between the different categories. For the restored hearing they therefore identified 16 consolidated D categories: and at the end of the first day they had narrowed the request further. These I will now address in turn.

19 Category 1 related to funding documents. Inversiones sought disclosure of all credit agreements, loan facilities and interim or mezzanine financing sought or obtained (including all drafts and amendments): all bank and other lender loan schedules (including interest, repayments and draw E downs); all bank and other lender loan documents (including bridging and "loan to value" agreements); and all correspondence with banks and other lenders. In so far as these relate to credit lines and facilities established in the name of the partnership and for which the limited partners may be liable, I agree that such documents ought to be provided (subject to the caveat (i) that routine correspondence having no impact upon the rights of liabilities of the partnership should not be disclosed: and (ii) it is likely to be F unnecessary to provide documents concerning facilities that were sought but not granted or offered but not taken up (depending on circumstances). As I understand it, Capital has provided the material relating to the partnership's credit facility, and all amendments to its lines of credit, and all relevant loan agreements (together with the ledgers, bank statements, draw down notices, interest notices and related correspondence). So far as the G partnership is concerned there therefore seems to be nothing more to provide. I am not persuaded that there is any point in an order for production (even though I agree that the credit facility, all amendments and the ledgers etc ought to be produced).

20 At the hearing the real battle seemed to be whether the same documents should be produced in relation to each credit facility of each SPV. Here what Capital has produced is: (i) the relevant funding package for each H investment by each SPV; and (ii) where there is a liability directly related to ownership of a particular investment, then the relevant FMV (where the fair market value of the SPV's interest in the underlying asset can only be assessed taking into account the related liability). This information will only be in a summary form sufficient for Capital to make decisions about the

partnership's investments and to produce accounts which can be audited. The evidence establishes that it was not the practice of the partnership to call for, examine or retain copies of all transactional or operational documents of the SPV's down the chain. If Capital or CIM did so, then those documents in principle form part of the books, documents and records of the partnership. If they did not then the original documents belong to the SPV and Capital/CIM cannot be compelled by Inversiones to call for their provision by the SPV.

21 In fact it seems that Capital has amongst its partnership papers (and has provided to Inversiones) the key documents relating to the Accor transaction and the key documents relating to the funding of the Carrefour investment because, in each case, these are documents which Capital or CIM asked for and kept. The one exception appears to be something called "the Nataxis credit agreement" relating to the acquisition of the original Accor shareholding: though my understanding of the evidence was that this original agreement was replaced by a facility extended by Credit Suisse (which has been provided). The Nataxis credit agreement (which I think was entered into by ColDay) would not be a "partnership document" (though any copy provided to Capital or CIM would be). If such a complete copy exists it ought to be provided. If it does not (and only the part produced in the available files exists) and Inversiones can explain why the missing part is material to its understanding of the business of the partnership as it now is, then I would expect a request for the obtaining of a copy to be made to ColDay: but it is a matter for the discretion of Capital how far to pursue this request.

22 The claimants' evidence did not establish that what was available was inadequate for the requirements of Inversiones. I decline to make any order in relation to this category. I have given an indication as to what I would expect in relation to the Nataxis credit agreement.

23 Category 2 (as refined) sought all prospectuses prepared for or on behalf of CZ2 Blue, Blue Partners, Blue Capital, CZ2 Day, and ColDay in order to obtain funding. These are the SPVs through which the partnership's participation in the Accor and the Carrefour investments were held. CZ2 Blue and CZ2 Day are both wholly owned subsidiaries of the partnership: the other entities are SPVs in which those wholly owned subsidiaries have a non-majority interest. By the word "prospectus" is meant any document prepared in order for the SPV to obtain finance. The picture emerging from the evidence is that the wholly owned subsidiaries (CZ2 Blue and CZ2 Day) did not themselves raise finance, being funding by the partnership out of its capital or loan facility. The SPVs that own the assets are not wholly owned subsidiaries of the partnership. In so far as the asset owning SPVs (and any intermediate entity) themselves raised finance, any relevant liability will be summarised either in the FMV package or in the funding package. The information so available has been sufficient for the partnership accounts to pass audit. The actual "prospectuses" themselves will belong to the asset owning and intermediate SPVs, and will not be "partnership books and records" save in so far as any copies have actually been provided to Capital or CIM. The position appears to be that no such prospectus has been provided. The purpose of seeking production of such "prospectuses" is to see what sources of funding might have been available to the relevant SPV

A and to try and work out why it selected its actual funding source rather than an available alternative.

24 I will refuse to make any order relating to this category because I am not satisfied that the documents sought (beyond the FMV packages and funding packages already provided) are "partnership documents", nor am I persuaded that it would be right to cast upon the partnership generally the burden of pursuing documents which quite possibly do not exist and which B are on any footing only of the most peripheral interest. What is being considered is a non-adopted proposal to an entity in which the partnership has invested. If the partnership had directly bought shares in X Co Ltd I do not think that anyone could suggest that an unsuccessful loan application by X Co Ltd was a "partnership record" which the managing partner was bound to obtain and produce.

C **25** Category 3 consists of documents relating to the partnership's advisory committee ("PAC") (being presentations made to the PAC, minutes of meetings of the PAC, and documents referred to in those minutes). A second limb relates to the like documents belonging to CIM (the company to whom the partnership delegated its investment management and operating services).

D **26** In the course of the hearing Inversiones clarified that by the term "partnership advisory committee" they meant the advisory committee constituted under clause 14 of the partnership deed (consisting of between five and nine limited partners selected by CIM). The PAC was to meet twice a year to discuss the performance and operations of the partnership (including potential new acquisitions, potential disposals and financing): but CIM was not required to follow any advice tendered by the PAC, but was E entitled to exercise its powers at its own discretion. I would regard the PAC's agenda and its minutes as partnership documents: so does Capital, and it has provided a file of the relevant documents. It is pointed out that there are five meetings for which there is an agenda but no minutes. This complaint is not specifically addressed in Capital's evidence in answer: but it was submitted that all that existed had been supplied. I would dispose of this by directing Capital (as general manager of the partnership) to make a search for the F five missing minutes and to confirm the result of that search by a witness statement. This is a minor matter.

27 I do not regard "presentations" or documents referred to in the agendas or minutes as generally being "partnership documents" simply because they are mentioned in the minutes. The minute book (and any annexures to the minutes) are the partnership record. There is a general duty G on a partner to provide relevant information about the partnership business (though that is not the basis of the present application). A reasonable request to supplement the formal record by the provision of readily available and obviously relevant information (such as the contents of a report that the partnership committee resolve to accept) ought to be met.

28 I would decline to make any order in relation to presentations made to, minutes of meetings of, and documents referred to in the minutes of H the meetings of CIM so far as they relate to partnership investments. Paragraph 15(b) above contains my analysis of the legal position. Inversiones can call upon Capital to get partnership documents held by CIM for any purpose reasonably connected to the interests of Inversiones as partner. But the evidence does not establish that there is some document

reasonably related to the interests of Inversiones as partner which has not been produced in the 76 files of material. At the hearing the debate was conducted entirely in the abstract: if a presentation had been made to CIM then CIM's consideration of it would have been charged as part of the management fee (and so become an expense of the partnership) and might have shown what options might have been available (other than the course of action actually embarked upon by CIM); and knowledge about that might enable Inversiones to judge whether at the time the decision was taken there was a better alternative. But in my judgment this is a clear instance in which Inversiones' theoretical rights are qualified by the reality of the burden that would be cast upon the other partners by the performance of this obligation (even if the actual costs of inspection and copying were borne by Inversiones).

29 Category 4 (as narrowed at the hearing) relates to all documents establishing collateral or margin calls on the SPVs through which the partnership participates in the Accor and Carrefour investments. The short answer of Capital/Colyzeo to this claim is that all of the relevant material is contained in the decision files which form part of the additional material provided after my first judgment: that there is no omission from the material provided: and that from the material Inversiones can trace the entire debate about the manner in which the relevant margin calls were to be satisfied. There is fact in the evidence no criticism of the material provided. The debate at the hearing was once again conducted entirely in the abstract. I will not make an order because I am not satisfied that there is any real gap in the material provided which prevents Inversiones understanding what calls were made, when and in what amount. If that had been shown I would have identified who had the documents that would fill the gap and (if it were an SPV) would have applied the approach set out in para 15 above.

30 The fifth category of documents sought is (to summarise a long list) the constitutional and participation agreements relating to the SPVs involved in the Carrefour investment. Not only are the actual effective documents sought, but also any drafts, or any notes or records of meetings or conversations where any decision to participate in the venture is considered, and any formal or informal records of understanding as to the investment strategies and operational practices of those SPVs. There is a specific request for all documentation setting out the basis upon which it was proposed that the investment of CZ2 Blue in the intermediate and ultimate owning SPVs was to be diluted, including instructions given to any independent experts to enable them to undertake their dilution assessment and their actual advice (and any drafts of such advice). Capital's response to this request is to say that much of the material sought is already included in the FMV packages (in so far as such material bears upon the valuation of the partnership's interest in the underlying investments), or alternatively in the "decision file" which contains the record of the actual decisions made by the manager. But Inversiones say that this is no answer because such material records only the position as it was from time to time and they would wish to know, at each point in time, how that position had evolved (both the financial position that emerged from negotiations, and the legal position as it emerged from the circulating drafts). Inversiones relies heavily on the fact that the partnership is one of the ultimate pay masters of those who produced and considered all this material.

A **31** The Carrefour investment is one of the key investments that sank in value: and that decline in value had significant implications for the extent of the partnership's participation in the investment. So I understand and would support a request for the documents necessary to understand precisely what rights the partnership has (which fall to be valued and managed): and if it had been shown that the present disclosure did not provide these documents then I would have been minded to make an order (if it was proper applying B the approach set out in para 15). But the evidence is lacking.

32 As it is, in my judgment the position adopted by Inversiones is misconceived. Inversiones is entitled to see documents that Capital holds as general manager of the partnership. This should include the constitutional documents of CZ2 Blue (which is a wholly owned subsidiary) and any agreement directly entered into by CZ2 Blue of which it has a copy. C It should also include advice tendered directly to the partnership about any dilution (and its basis). One would expect that the FMV Package which demonstrates the value of CZ2 Blue's interest in the underlying Carrefour investment would include the constitutional documents of Blue Partners and Blue Capital, and copies of all relevant funding and hedging agreements relevant to establishing the fair market value of the partnership's participation. To the extent that these documents are not within the D possession of the partnership (because neither Capital as general manager nor the auditors in the proper performance of their duties have not thought it necessary to see the entirety of these documents) then the request of Invesiones is not for the production of documents (for the purpose of inspection and copying): it is for the provision of the information. Information which is necessary to explain any element of the fair market E valuation ought to be provided if it can with reasonable ease and without undue expense to the general body of partners be obtained.

33 But there is no question of Capital having any obligation (as general manager of the partnership) to make up partnership books and records which do not at present in fact exist by using whatever shareholder rights the partnership's wholly owned SPV may have directly or indirectly against the board of the intermediate SPV or of the ultimate holding SPV. Nor do F I see any basis upon which Inversiones can require Capital to get drafts or notes of conversations or memoranda or informal records of understanding or drafts of expert reports, or correspondence between the intermediate or ultimate SPV on the one hand and third party co investors on the other. In no sense is this material part of the "books documents and records" of the partnership: and in my judgment the general manager is not required to G obtain it pursuant to any general duty to provide information about the partnership. The suggestion that Inversiones has in some sense "paid for" this material is not tenable. They and the other limited partners have paid the charges and reimbursed the manager's general expenses. But that does not mean that Inversiones has bought a share in every piece of paper produced by anyone who has rendered a fee part of which has ultimately been borne out of the Inversiones contribution (or charged against income to H which Inversiones would otherwise have been entitled).

34 There was a specific request for production of any management agreements entered into by the SPVs. I understand that there may be six additional management agreements to those disclosed in the additional files. If there are copies held by Capital or CIM then they should be provided: if no

undertaking is forthcoming I will order their production. If there are no copies on file I would regard a request by Inversiones for their acquisition to be reasonable and not unduly burdensome, and would expect Capital to treat it as a request for information: but how far the request is pursued (if co-operation from the SPV is, surprisingly, not forthcoming) is a matter for the management discretion vested by the partnership deed in Capital, which is not bound to act at the behest of one limited partner.

35 The sixth category of documents consists of the like documents in relation to the Accor investment. I would deal with this request in precisely the same way as category 5.

36 The seventh category may loosely be called "hedging documents". At the hearing this request was confined to hedging documents relating to the partnership's participation in the ownership of the Carrefour and Accor derivatives. The cost to the partnership of participating in hedging transactions is undoubtedly significant: I was shown material which demonstrated that by July 2008 the partnership's share of the premium payable for "put" options on the Accor shares exceeded €20m. But the importance of this material is acknowledged by Capital and (according to them) the relevant documents have already been included in the FMV packages, the funding packages and the "decision files" which they have now provided. This is where one would expect to find that type of material within the partnership's books documents and records since (save for one currency hedge) the partnership itself has not entered into any hedging transactions. Accordingly hedging transactions affect only the value of the partnership's participation in any intermediate or ultimate owning SPV. They do not impose any direct liability (though they may result in a funding request).

37 The partnership itself will not have the actual hedging contracts entered into by the SPV: nor will it have any direct right as against the parties to the hedging transaction to obtain a copy. The copy itself is likely simply to be an ISDA master agreement. What is vital is the *pricing*; and so far as I can ascertain that is apparent from the material provided. I would therefore not make any order for the production of documents for inspection and copying. I would indicate that if Inversiones made a reasonably grounded request for sight of the full terms of any document summarised or referred to in the FMV package or the funding package or the decision file which assists in the definition of the partnership's interest in the asset, and a request could (without undue expense to the partnership) be made to the SPV that was party to or the addressee of that document, then I would expect Capital to make the request. But I would leave it to the discretion of Capital (the discretion conferred by the partnership deed itself) how far to pursue that request.

38 Category 8 is a request for material relating to a transaction that did not in fact occur. The decline in the Carrefour share price meant that the lenders to Blue Capital made a margin call (requiring, in effect, the provision of additional collateral security to maintain the "loan to value" ratio). CZ2 could not match its pro rata share and its co-participant bore a disproportionate part of the margin call (on the footing that the rights would be adjusted as between itself and the partnership). One possibility was that the limited partners in the partnership would consent to the application of additional capital (beyond the concentration limits contemplated in the

A partnership deed) to reimburse this disproportionate funding. The alternative was a dilution of the partnership's interest. At the time all the relevant material was circulated to the limited partners: and the agent for Inversiones said that "[he] fully [understood] the Colyzeo II matter from every angle". I accept that that comment does not amount to a waiver of any right to request further information: but it clearly demonstrates that Inversiones fully understood the problem and the proposed solution. They B made their choice and decided not to agree to application of additional capital (with the result that the dilution took effect).

39 In that context a request for "all documentation" relating to a transaction that did not proceed, including all instructions (whether formal or informal) to advisers and all advice sought for and behalf of the partnership (whether such advice be in draft or final form), any C documentation setting out the basis upon which the scheme should be presented to the limited partners, and all documentation in relation to proposed alternatives that might have been considered, is simply unreasonable. Inversiones made their choice and the business of the partnership (in relation to which they can seek to inspect books, documents and records for the purpose of understanding that present business and conferring with the other limited partners upon it) has been shaped by that D choice. As I have indicated above, advice about dilution directly tendered to the partnership is a partnership document that I would expect to be in the possession of Capital as general and managing partner (or of CIM, its delegate).

40 Category 9 seeks what is in substance primary transactional documentation. It seeks a complete breakdown of all commitments, E including details of when those commitments were made and when the partnership contributions were made in relation thereto. It seeks a complete breakdown of all investments, including full detail of the investments made, the amounts invested and when invested, and when the partnership committed to the investments. It seeks all relevant sale and purchase agreements of investments and hedging products. It seeks investment income documentation. It seeks a schedule of investments (including F opening balances, additions, disposals, revaluations, unrealised and realised gains and losses and details of the proceeds of sale). This is rather like a limited partner in a retail business asking for a copy of all till receipts. I do not understand from the submissions why the production of the partnership's general ledger is insufficient, or why the "decision file" did not contain any sufficient explanation as why transactions were undertaken, or G why the funding packages did not disclose how the investments were undertaken. In so far as the request relates to primary accounting documents (such as income receipts) I could not understand why the audited accounts and statements were insufficient for the purpose. Since the focus of the request seemed to be the Accor and the Carrefour transactions (rather than every single transaction entered into by the partnership) and they have been the subject of extensive disclosure, I would make no further order.

H **41** Category 10 (as refined at the hearing) is a request for the production of all opinions obtained for and on behalf of the partnership. It is acknowledged that Capital has produced a file of advice tendered directly to the partnership and for which the partnership directly paid. The request is persisted in so as to obtain a copy of all legal advice tendered to the wholly

owned SPVs, the intermediate SPVs and the ultimate owning SPVs. Thus, for example ColDay (the ultimate owning SPV for the Accor investment) paid a solicitor's bill which included a charge for "drafting and issuing a Luxembourg law capacity legal opinion". Is that "a book, document or record" of the partnership? In my judgment it is not. It is a book, document or record of ColDay: and I have dealt above with what I consider is the correct approach to documents belonging to or in the possession of the SPV. I would refuse an order.

42 Category 11 comprises management accounts for 2010 and all annual or monthly financial budgets or forecasts. The evidence of Capital is that there are no such management accounts, since the partnership is an investment partnership not a trading partnership. It maintains a general ledger to record income and expenditure (which has been provided to Inversiones) and it produces quarterly accounts and valuations (of which no criticism has been or is now made by Inversiones). I see no grounds upon which to make any order for disclosure.

43 Category 12 requires Capital to disclose all investment proposal documents so that Inversiones can ascertain the basis for making each investment (their evidence suggesting that they have found none amongst the material provided by Capital). In fact the partnership itself did not undertake any due diligence work but rather relied upon that undertaken by the ultimate holding SPVs (which is summarised in the CIA investment committee documents, copies of which have been provided). The summary is described as "distilled and collated . . . raw due diligence material". This is the actual extent of the partnership's books documents and records. It sufficed to enable the general manager to take the decision on behalf of the partnership: and it has not been demonstrated that Inversiones, as a limited partner, is entitled to ask for more by way of the provision of information.

44 Category 13 as originally expressed sought the production for inspection and copying of all investment valuation working papers belonging to Capital or produced by any third party: but as refined at the hearing it became confined to a request for the due diligence documents relating to the Accor and Carrefour investments. It was ultimately accepted that if such due diligence material as *had* been acquired by the partnership had in truth been disclosed, then there was nothing further to be sought. No order is necessary.

45 Category 14 consisted of a generic request for partners' "draw-down requests". At the hearing it was asserted that these had already been disclosed, and it was accepted that if this was so (and Inversiones could not demonstrate otherwise) then there was nothing further to be produced. No order is necessary.

46 Category 15 was originally a request for a group of documents proving how various investments were held. At the hearing it was difficult to tease out in what respect these documents differed from documents caught by other categories: and in the end only one subcategory was pursued. That was "supplemental shareholder/partnership agreements for joint investments" for each of the ultimate owning SPVs. The partnership does not own any physical assets nor any rights in action that can be traded on a market. It owns rights arising from shares in unlisted co-ownership entities and ultimately in contracts relating to listed shared. One might expect those who conduct the business of the partnership to have a copy of whatever

A agreements it would be necessary to sue upon in order to establish the partnership's rights. To the extent that Capital has such agreements they have been provided. To the extent that the agreements do not exist but they bear upon the valuation of the partnership's interest, then they are summarised in the FMV packages. To the extent that the summary is not an entire account of the terms of the agreement, Inversiones can ask the general partner to provide information. I have nothing to add to the views expressed above about the provision of information.

B

47 In the result the only order I will make relates to the search for (and provision of) the missing minutes.

48 Mr de Verneuil Smith (who ably argued the case for Inversiones) said this would be a surprising result since in effect I would holding that Capital and CIM had made the correct judgment call about every document they did not put in the 76 "available files". Of course I make no such finding. I have not seen the documents that were not in the available files (or even all of those that are). The result has come about because I consider that the rights of a limited partner are grounded in what is (not in what might have been or what might be assembled). Amongst what is, the limited partner has the right to see documents of the nature I outlined in my first judgment. If he is provided with a selection which the general partner holding the partnership documents says is complete, then the court will assist the limited partner to exercise his statutory or contractual rights to obtain further partnership documents, if satisfied that they probably exist, that a demand for their production falls within the statutory or contractual right being asserted, and that it is appropriate, having regard to the interest of the other partners, to grant an injunction directing their production.

C

D

E **49** My provisional order on costs is that there should be no order. Capital/CIM undoubtedly adopted too restrictive an approach to the provision of documents in response to the claim (which resulted in the order at the first hearing): Inversiones undoubtedly adopted too expansive an approach to the documents claimed (which has in substance resulted in no order at the second hearing). If either party is dissatisfied with this provisional indication then they should notify me by 4 p m on 1 June 2012 and I will consider the matter entirely afresh and give directions for the determination of the issue by written submissions.

F

Order and directions accordingly.

SCOTT MCGLINCHEY, Barrister

G

H