

AMENDED ON 25 JANUARY 2013, PURSUANT TO THE ORDER OF FOSTER J.

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

FSD CAUSE NO 165 OF 2012 - AFEJ

IN THE MATTER OF THE COMPANIES LAW (2012 REVISION)

AND IN THE MATTER OF JP SPC 1



AMENDED PETITION



TO: The Grand Court of the Cayman Islands

THE HUMBLE AMENDED PETITION of Mr Ronan Guilfoyle and Mr Graham Hampson, the directors of JP SPC 1, PO Box 10176, Governor's Square, Suite 3-213-5, Lime Tree Bay Avenue, Grand Cayman KY1-1002, Cayman Islands, shows that:

The Segregated Portfolio Companies

- 1 JP SPC 1 ("the SPC") was incorporated in the Cayman Islands on 31 October 2007 as a segregated portfolio company under the Companies Law, and is licensed by CIMA under the Mutual funds Law.
- 2 Axiom Legal Financing Fund ("the Portfolio") is a segregated portfolio of the SPC. There are 5 other portfolios in the SPC. 68% of the shares of the SPC are designated to the Portfolio, representing 73.75% of its investors.
- 3 Axiom Legal Financing Fund Master SP ("the Master Portfolio") is a segregated portfolio of the JP SPC 4 ("the Master SPC").
- 4 The only assets of the Portfolio are shares in the Master Portfolio.
- 5 The assets of the Master SPC attributable to the Master Portfolio are receivables from loans to certain English law firms ("the Panel Law Firms").
- 6 JP Fund Administration (Cayman) Ltd is the Administrator of both JP SPC 1 and 4.
- 7 BDO Cayman is the auditor of both JP SPC 1 and 4.

- 8 The participating shares of JP SPC 1 and the shares held by JP SPC 1 in JP SPC 4 are non-voting shares. All the voting shares are held by JP Fund Foundations Ltd, the Promoter of JP SPC 1 and 4.

The Petitioners

- 9 This petition is presented by the directors of the SPC and the Master SPC, both of whom are independent, Mr Graham Hampson, a Cayman Islands Attorney and Mr Ronan Guilfoyle, the Managing Director of DMS Offshore Investment Services, Cayman Islands ("the Directors").

The relief sought

- 10 The Directors seek the appointment of receivers over the affairs of the Portfolio and the Master Portfolio for the reasons set out in this Petition.

Allegations

- 11 Between August and December 2012 serious allegations were made in the publication "Offshore Alert" against the former investment manager of the Portfolio and the Master Portfolio, Tangerine Investment Management ("Tangerine"), against the owner of that entity (Mr Tim Schools), and, in unparticularised terms, against various other service providers and the directors.
- 12 The allegations made against Tangerine included fraud, embezzlement of funds by individuals associated with the investment manager, and that the Portfolio has been operated as a 'ponzi scheme'. This allegation is understood to mean that the Portfolio had not invested any funds of Investors in any realisable assets.

Investigation and Findings

- 13 Investigations commissioned by the directors in response to those allegations carried out by KPMG, with advice from K&L Gates, have confirmed that the Portfolio is not a ponzi scheme in the sense set out above, in that loans have been made to the Panel Law Firms and those law firms are conducting genuine cases.
- 14 Nevertheless, the investment criteria of the Portfolio, as set out in the offering documentation of the Fund, do not appear to have been adhered to. The investigations reveal grounds for suspecting that there has been mismanagement of the Master Portfolio's assets, and that the net asset value has been overstated. Further investigations are required to ascertain whether the allegations of fraud have any foundation.
- 15 The investment criteria set out in the Supplemental Offering Memorandum of the Portfolio dated September 2012 ("the SOM") provide that loans would be made to "*suitably qualified law firms exclusively in the United Kingdom...for 'Permitted Uses'. Permitted uses of the loans are determined by the Investment Manager using the criteria that:*

- (i) *All cases must carry Indemnity Loan Guarantee / Pecuniary Loss Insurance in relation to the Panel Law Firm's solvency;*
- (ii) *Litigation cases must carry "After the Event" insurance to repay the costs if the cases loses – which the SOM states will "protect up to a maximum amount for all legal expenses, disbursements and fees in the event a case is lost."*
- (iii) *It must be straightforward to determine the likely success of each case easily;*
- (iv) *There is a high probability that cases can be completed in under a year."*

16 There is reason to believe that many of the loans have been made without adherence to these criteria:

- (i) Tangerine arranged insurance for the Master Portfolio to be provided by Gable Insurance AG ("Gable"). Gable have indicated that they consider they may be entitled to avoid the policy.
- (ii) Although the Panel Law Firms were required to take out ATE insurance with respect to the cases funded by the loans, it is not yet known whether such insurance is currently in place with respect to all cases, and what the extent of the cover will be. In any event it is highly unlikely that ATE policies would cover the costs and disbursements of the Panel Law Firms in the event the cases are lost, other than adverse costs.
- (iii) There appears to have been little or no meaningful due diligence carried out on the cases being funded. Sampling of some of the cases in respect of which loans have been made suggest that a significant number of the cases have minimal prospects of successful resolution.
- (iv) Most if not all the cases being funded will take well over a year to complete, and a significant number are not expected to complete for 24-36 months.
- (v) At least one of the Panel Law Firms appears to have been close to insolvency at the time the loans were granted.

17 The loan amounts paid out by the Master Portfolio included a "Facilitation Fee" of 50% of the loan value which the Panel Law Firms were liable to repay. This Facilitation Fee was deducted by the Loan Manager, Synergy (IOM) Ltd ("Synergy") from the loan amount and paid to various third parties in which Mr Schools has ownership interests, including Tangerine. Mr Schools also owns Synergy. Further investigation is required to ascertain the application of this Facilitation Fee.

18 BDO Cayman are the auditors of the Portfolio and the Master Portfolio. In both 2010 and 2011 BDO produced audits which raised no points of concern. The audits did not show the amount of the Facilitation Fee being borne by the Panel Law Firms.

Current Status of the Portfolio

- 19 On 26 October 2012 the Directors resolved to suspend the Portfolio and the suspension remains in effect.
- 20 The Investment Management Agreement by which Tangerine was engaged as investment manager has been terminated by the Directors on behalf of the Portfolio and Master Portfolio.
- 21 There are no creditor claims in respect of the Portfolio or the Master Portfolio, but a high number of redemption requests were submitted for November and December 2012 redemption dates, before the suspension of redemptions, which the Portfolio will be unable to satisfy in the immediate or medium term. It will be necessary for further funds to be received by the Portfolio before existing assets can be realised by the Master Portfolio.

Statutory Grounds for Appointment of Receiver

- 22 This petition is made pursuant to section 224 of the Companies Law (2012 Revision).
- 23 The SPC has no general assets. Likewise, the Master SPC has no general assets.
- 24 The Directors have reached the conclusion that the assets of the Master SPC attributable to the Master Portfolio are likely to be insufficient to discharge its liabilities to the Portfolio (and therefore the Portfolio will be unable to discharge its liabilities to its redeeming investors) and, accordingly, become insolvent by reason of the following:
- (i) In order to realise assets to meet redemption requests, the Master Portfolio requires further investment to fund the cases being conducted by the Panel Law Firms;
 - (ii) In order to attract the further investment by way of subscriptions, the suspension will need to be lifted - at which time the redemptions which have been submitted will crystallise and the Master Portfolio's liquid assets will be insufficient to discharge the redemption requests submitted to the Portfolio. It is anticipated that as soon as the suspension is lifted further redemptions will follow;
 - (iii) The Panel Law Firms to whom loans have been extended are unlikely to be able to repay the loans until such time as the cases being conducted by the firms are successful;
 - (iv) In order to bring the cases to a resolution the Panel Law Firms require further funding;
 - (v) the vast majority of the cases being conducted by the Panel Law Firms are unlikely to be resolved within the next 12 to 18 months, and some firms in respect of some cases have indicated a time estimate for resolution of 36 months;

- (vi) any enforcement action against the Panel Law Firms will take time and will require funding, and may not, in any event, be fruitful if their only assets are cases which are not yet resolved, and which cannot be resolved without further funding;
- (vii) there is some uncertainty as to what powers of enforcement the Master SPC may have under the terms of the loan agreements with the law firms;
- (viii) It appears that, for reasons not yet known, certain Panel Law Firms which have received funding have transferred cases between themselves, and some firms are denying liability to repay the loans save under certain circumstances.

25 The Directors believe that claims may exist against third parties and that further investigations are necessary and advice obtained before the Master SPC and SPC are in a position to commence such claims, if such claims exist.

26 As set out above the Master Portfolio and the Portfolio are or are likely to become insolvent. For this reason and also for those set out below it is appropriate that a receiver should be appointed over the assets of the Portfolio and the Master Portfolio:

- (a) the inevitable high cost of continuing the investigations and taking advice as to potential claims;
- (b) the need for urgent decisions as to:
 - (i) the application of the Master Portfolio's cash;
 - (ii) whether that cash should be used to provide further funding to the Panel Law Firms to allow them to bring cases to a resolution;
 - (iii) whether that cash should be used additionally or alternatively to fund claims against third parties)
- (c) that such decisions can only be taken once further advice is taken and further information obtained;
- (d) that it is desirable that an independent party independent of the Master Portfolio and the Portfolio should conduct the analysis and investigation; and
- (e) the inability of the Directors, who are directors of the SPC and the Master SPC which both have other solvent portfolios, to dedicate the necessary time and resources to conduct the investigations on behalf of the Portfolios.
- (f) the view expressed by the Cayman Islands Monetary Authority ("CIMA") that the appointment of an independent person to assume the affairs of the Portfolio and the Master Portfolio may be considered as the most appropriate of the options that could be supported in the circumstances (see paragraph 28 below).

- 27 Accordingly, the Directors take the view that the assets of the Portfolio and the Master Portfolio should now be put under the control of a receiver who will be best placed to take decisions as to how the limited liquid assets should be applied and take all necessary steps to realise the assets with the benefit of further analysis and investigation.

CIMA

- 28 The Directors have been in regular contact with CIMA since the allegations with respect to the Portfolio first appeared in Offshore Alert. CIMA have been notified of (i) the allegations made (ii) the updates to investors which were being sent out on a regular basis (iii) the suspension and other actions of the Directors to preserve assets (iv) the termination of the investment manager, (v) redemptions received and (vi) the investigations which had been commissioned and their findings.
- 29 CIMA have expressed the view that the appointment of an independent person to assume the affairs of the Portfolio (such as a receiver) may be considered the most appropriate of the options that they could support in the circumstances.

EGM

- 30 On 11 December 2012 the Directors convened a meeting of shareholders in order to inform them of the Directors' decision to apply for the appointment of receivers.
- 31 159 shareholders were represented at the meeting in person or by proxy holding 607,428 shares designated to the Portfolio, being 56.3% of the registered shareholding of the Portfolio.
- 32 The Directors gave a report of the actions taken since the Offshore Alert articles first appeared, and KPMG gave a presentation of their findings arising from their advisory appointment and investigations.
- 33 Shareholders were given an opportunity to ask questions and some expressed a desire that the Directors be removed and that claims should be brought against third parties by the SPC under new directors.

KPMG

- ~~34 KPMG have spent considerable time and incurred costs familiarising themselves with the workings of the Portfolio and Master Portfolio and have carried out the preliminary investigations to date. The Directors propose that for reasons of cost efficiency the receivers should be the two partners at KPMG who have been involved to date. Therefore it is proposed that Mr Kris Beighton from KPMG, Cayman and Mr John Milsom from KPMG, London take on that role.~~

Urgency

- 34 In light of the seriousness of the allegations and the risk of dissipation of assets in the event

the allegations of fraud are justified, it is important that action should be taken to secure the assets and that any claims which exist are evaluated as soon as possible.

- 35 Given (i) the appropriateness of the appointment of receivers, (ii) that any claims which exist should be brought by the receivers, (iii) that it would plainly be inappropriate for the Directors to undertake action which anticipates the actions of the receivers once appointed, and (iv) that action is required as a matter of urgency, it is necessary that the application for the appointment of receivers be expedited.

Sealing of the Supporting Affidavit

- 36 An application is also made for the sealing of the supporting affidavit and the exhibit on the basis that:
- (a) They contain information of a confidential nature (ie information concerning an Informant which may allow him to be identified);
 - (b) They contain information which is privileged (ie advice received which may be relevant to potential claims against third parties);
 - (c) Such information would not come into the public domain unless and until the supporting affidavit and exhibit is filed in Court; and
 - (d) Publication or immediate publication of the information contained in the affidavit and exhibit will harm the economic interests of the creditors or contributories of the company as it may harm the prospects of any claims that may be brought in due course for the benefit of shareholders.

YOUR PETITIONER THEREFORE HUMBL Y PRAYS AS FOLLOWS:

- (1) that a receivership order be made in relation to the Portfolio;
- (2) that ~~Mr Kris Beighton and Mr John Milsem of KPMG~~ Mr. Mike Saville, Mr. Hugh Dickson and Mr. James Earp of Grant Thornton Specialist Services (Cayman) Limited be appointed as joint receivers over the Portfolio;
- (3) that an order for the sealing of the supporting affidavit and exhibit of Mr Guilfoyle be made; and
- (4) that such other Order may be made as the Court thinks fit.

~~Dated the 13th day of December 2012~~

Re-dated the 25th day of January 2013



Ogier

Attorneys-at-Law for the Petitioners, whose address for service is 89 Nexus Way, Camana Bay, Grand Cayman KY1-9007, Cayman Islands, Tel: +1 (345) 949 9876, Fax: +1 (345) 949 9377, (Reference: PDC/RAR/421255.00002)

NOTICE OF HEARING

TAKE NOTICE THAT the hearing of this Petition will take place at the Law Courts, George Town, Grand Cayman, on ~~2012~~ **31 January 2013** at 10.00am.

Any correspondence or communication with the Court relating to the hearing of this Petition should be addressed to the Registrar of the Financial Services Division of the Grand Court at P.O. Box 495, Grand Cayman, KY1-1106, Tel: (345) 949 4296.