

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

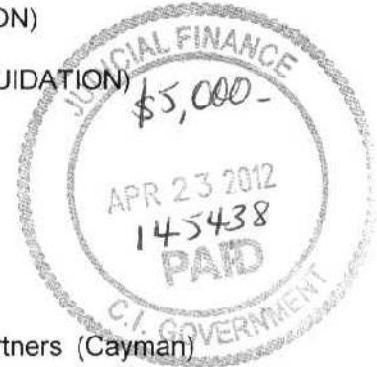


CAUSE NO. FSD 66 OF 2011



IN THE MATTER OF SECTION 131 OF THE COMPANIES LAW (2011 REVISION)

AND IN THE MATTER OF CONSISTENT RETURN LTD. (IN VOLUNTARY LIQUIDATION)



PETITION

To the Grand Court of the Cayman Islands

The humble petition of Geoffrey Varga and Nicolas Matthews of Kinetic Partners (Cayman) Limited, The Harbour Centre, 42 North Church Street, P.O. Box 10387, Grand Cayman KY1-1004, Cayman Islands ("**the Petitioners**"), shows that:

Particulars of Incorporation

1. Consistent Return Ltd. (in Voluntary Liquidation) ("**the Company**") is an exempted company with limited liability incorporated on 2 March 2007 and organised pursuant to the Companies Law (as Revised) ("**the Companies Law**"). The registration number of the Company issued by the Registrar of Companies is 183038.
2. The registered office of the Company is situated at Kinetic Partners (Cayman) Limited, The Harbour Centre, 42 North Church Street, P.O. Box 10387, Grand Cayman KY1-1004, Cayman Islands. The registered office of the Company was formerly situated at Corporate Filing Services Limited, P.O. Box 613, 4th Floor, Harbour Centre, George Town, Grand Cayman KY1-1107, Cayman Islands.
3. The most recent version of the Memorandum and Articles of Association ("**the Articles**") were adopted by the Company on 31 May 2007. The objects for which the Company was established are unrestricted.
4. The Company has an authorised share capital of US\$100,000.00 divided into 50,000 voting shares of a nominal or par value of US\$1.00 each ("**Voting Shares**") and 50,000,000 non-voting participating shares of a nominal or par value of US\$0.001 each ("**Participating Shares**"). Only the holders of the Voting Shares have the right to receive notice of, attend, speak and vote at general meetings of the Company.

The Business of the Company

5. The Company was an open-ended investment company and, in this regard, sought to raise money from investors in return for the issue of Participating Shares in order to fund the Company's investments. The Company issued a Confidential Private Placement Memorandum outlining the terms on which investors subscribed for Participating Shares. The investment objective of the Company was to achieve medium to long-term capital appreciation with no or little correlation to the overall capital markets through the investment in and/or exposure to a combination of investments in real estate and securities of real estate and real estate related issuers and other hedge funds or funds of funds and structured products linked to hedge funds. The Company and any subsidiaries were permitted to utilise or incur borrowing or leverage.
6. The Company retained Real Estate Investment Management Limited ("**the Investment Manager**"), a company incorporated and organised under the Companies Law, to provide investment management services to the Company pursuant to an investment management agreement dated 27 May 2009 (but with effect from 3 March 2007) ("**the IMA**"). The Investment Manager was also responsible for providing administrative services to the Company including the calculation of the net asset value of the Company, collecting subscription payments and disbursing redemption proceeds. The sole director of the Investment Manager was Mr Stefan Seuss ("**Mr Seuss**").
7. According to the Company's Confidential Private Placement Memorandum, the Investment Manager was to hold 100 Voting Shares in the Company. In fact, Investment Directors Limited ("**IDL**"), a company incorporated and organised under the Companies Law and controlled by Mr Seuss, has, since 2 March 2007, held all 50,000 Voting Shares in the Company.
8. Ms Katrin Seuss ("**Ms Seuss**") (the wife of Mr Seuss) was appointed as the sole director of the Company on 2 March 2007 and remained in office at the time when the Company was voluntarily wound up.
9. The Company was not registered as a regulated mutual fund with the Cayman Islands Monetary Authority and no auditor was ever appointed by the Company.

Commencement of Voluntary Winding-Up

10. Section 116(c) of the Companies Law (which was applicable on 8 July 2009) provided as follows:

"A company incorporated and registered under this Law ... may be wound up voluntarily-

...

(c) if the company resolves by special resolution that it be wound up voluntarily; ..."

11. Section 60(1) of the Companies Law (which was applicable on 8 July 2009) states that a resolution is a special resolution when:

"(b) if so authorised by its articles of association, it has been approved in writing by all of the members entitled to vote at a general meeting of the company in one or more instruments each signed by one or more of the members aforesaid, and the effective date of the special resolution so adopted shall be the date on which the instrument or the last of such instruments, if more than one, is executed."

12. A "Special Resolution" is defined in Article 1 of the Articles as being a resolution:

...

"(b) approved in writing by all of the Shareholders entitled to vote at a general meeting of the Company in one or more instruments signed in the aggregate by all of the Shareholders and the effective date of the Special Resolution so adopted shall be the date on which the instrument or the last of such instruments if more than one, is executed;"

13. On 8 July 2009:

- (a) IDL was the sole registered holder of all of the Voting Shares in issue by the Company;
- (b) IDL was therefore the only person entitled to vote at a general meeting of the Company;

- (c) in its capacity as the sole registered holder of all of the Voting Shares in issue by the Company, IDL executed a written resolution which was to take effect as a special resolution that:
 - (i) the Company be wound up voluntarily;
 - (ii) the Petitioners be appointed as the liquidator (sic) of the Company for the purposes of the winding up; and
 - (iii) the engagement letter dated 8 July 2009 received from Kinetic Partners (Cayman) Limited be signed.

14. In the premises:

- (a) the Company duly resolved by special resolution that it be wound up voluntarily pursuant to section 116(c) of the Companies Law (which was applicable on 8 July 2009); and
- (b) the voluntary winding-up of the Company is deemed to have commenced on 8 July 2009 pursuant to section 117(1) of the Companies Law.

15. The Petitioners filed a notice of winding up and consent to act as the joint voluntary liquidators of the Company with the Registrar of Companies on 13 July 2009 in accordance with sections 123(1)(a) and 123(1)(b) of the Companies Law and Order 13, rules 2(a) and 2(b) of *The Companies Winding Up Rules 2008 (as amended)* ("**the CWR**"). The Petitioners' appointment took effect on 13 July 2009 pursuant to section 119(3) of the Companies Law and Order 13, rule 3(2) of the CWR.

16. The Petitioners received an executed declaration of solvency from Ms Seuss ("**the Declaration of Solvency**") in the form required by section 124(2) of the Companies Law and Order 14, rule 1 of the CWR. The Declaration of Solvency was filed with the Registrar of Companies on 29 July 2009 in accordance with section 123(1)(c) of the Companies Law and Order 13, rule 2 of the CWR.

Investigations

17. Following their appointment, the Petitioners investigated the affairs of the Company and determined that:

- (a) the Company held cash balances with Bank Syz, BHF Bank (Switzerland) and Wachovia Bank;
- (b) the Company had incorporated three subsidiaries that held assets:
 - (i) Consistent Income LLC, a company incorporated under the laws of the State of Florida in the United States of America ("**the USA**"), which held two real estate properties in Florida. The managing member, and therefore guiding mind and will, of Consistent Income LLC was Mr Seuss;
 - (ii) Tropical Cars LLC, a company incorporated under the laws of the State of Florida in the USA, which held two boats and three motor vehicles kept in Florida. The managing member, and therefore guiding mind and will, of Tropical Cars LLC was Mr Seuss; and
 - (iii) ERE Investments LLC, a company incorporated under the laws of the State of Delaware in the USA, which held an interest in a German trust which in turn holds the issued shares in two companies incorporated under the laws of Germany, ERE Germany GmbH and ERE Germany Vermögensverwaltung GmbH & Co. KG which own real estate property in Germany. The managing member, and therefore guiding mind and will, of ERE Investments LLC was the Company from 6 August 2009;
- (c) the Company had made a significant investment (through a custodian) in K1 Invest Limited ("**K1 Invest**"), a company incorporated under the laws of the British Virgin Islands which carried on business as a hedge fund; and
- (d) the Company had advanced an amount of US\$500,000.00 to a related entity named Mezzanine Financing Limited in November 2008 which, at the time of appointment of the Petitioners, was outstanding to the Company plus interest.

18. The Petitioners have now realised a significant number of assets held by the Company and its subsidiaries and estimate that the total current value of the assets of the Company is in the range of approximately US\$16.4M and US\$17M.

Need for Supervision

19. The Petitioners have received a number of proofs of debt from alleged creditors, including from contingent creditors based upon indemnities contained in the Articles and the IMA. Even if all of these proofs of debts were admitted in full, the Petitioners believe that the Company will be solvent.
20. The Petitioners have considered these proofs of debt and now wish to pay those debts which have been admitted and make a distribution to the holders of Participating Shares. However, in the absence of a formal process for adjudication, the payment of dividends and/or the making of distributions for the voluntary liquidation of the Company, the Petitioners consider that there is a risk that their adjudication and subsequent payment of dividends or the making of distributions could be subject to challenge.
21. The Petitioners can obtain certainty in respect of their adjudication and subsequent payment of dividends or the making of distributions if the liquidation of the Company is continued under the supervision of the Court as Order 16 of the CWR (Proof of Debts in Official Liquidation) and Order 18 of the CWR (Collection and Distribution of Company's Assets by its Official Liquidator) will apply in such circumstances.
22. In the circumstances, the supervision of the liquidation of the Company by the Court will therefore facilitate a more effective, economic and expeditious winding up of the Company in the interests of the contributories and creditors.

Consent of Shareholders

23. All holders of the Voting Shares and the Participating Shares do not object to an order being made that the winding up of the Company continue under the supervision of the Court.

Consent to Appointment as Joint Official Liquidators

24. Mark Longbottom is a qualified insolvency practitioner (as that term is defined in section 89 of the Companies Law) and consents to his appointment as a joint official liquidator of the Company.

25. Jess Shakespeare is a qualified insolvency practitioner (as that term is defined in section 89 of the Companies Law) and consents to his appointment as a joint official liquidator of the Company.

Your petitioners therefore humbly pray that:

1. The winding up of the Company continue under the supervision of the Court.
2. Mark Longbottom and Jess Shakespeare of Kinetic Partners (Cayman) Limited, The Harbour Centre, 42 North Church Street, P.O. Box 10387, Grand Cayman KY1-1004, Cayman Islands be appointed as joint official liquidators of the Company ("**the JOLs**").
3. The JOLs be authorised to jointly and severally exercise any of the powers within and outside the Cayman Islands specified in Part I and II of the Third Schedule to the Companies Law without further sanction of the Court, namely the powers:
 - (a) to bring or defend any action or other legal proceeding in the name and on behalf of the Company;
 - (b) to carry on the business of the Company so far as may be necessary for its beneficial winding up;
 - (c) to dispose of any property of the Company to a person who is or was related to the Company;
 - (d) to pay any class of creditors in full;
 - (e) to make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim (present or future, certain or contingent, ascertained or sounding only in damages) against the Company or for which the Company may be rendered liable;
 - (f) to compromise on such terms as may be agreed all debts and liabilities capable of resulting in debts, and all claims (present or future, certain or contingent, ascertained or sounding only in damages) subsisting, or supposed to subsist between the Company and a contributory or alleged contributory or other debtor or person apprehending liability to the Company;

- (g) to deal with all questions in any way relating to or affecting the assets or the winding up of the Company, to take any security for the discharge of any such call, debt, liability or claim and to give a complete discharge in respect of it;
- (h) to sell any of the Company's property by public auction or private contract with power to transfer the whole of it to any person or to sell the same in parcels;
- (i) to raise or borrow money and grant securities therefor over the property of the Company;
- (j) to engage staff (whether or not as employees of the Company) to assist them in the performance of their functions;
- (k) to engage attorneys and other professionally qualified persons to assist them in the performance of their functions;
- (l) to take possession of, collect and get in the property of the Company and for that purpose to take all such proceedings as they consider necessary;
- (m) to do all acts and execute, in the name and on behalf of the Company, all deeds, receipts and other documents and for that purpose to use, when necessary, the Company seal;
- (n) to prove, rank and claim in the bankruptcy, insolvency or sequestration of any contributory for any balance against his estate, and to receive dividends in the bankruptcy, insolvency or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent and rateably with the other separate creditors;
- (o) to draw, accept, make and indorse any bill of exchange or promissory note in the name and on behalf of the Company, with the same effect with the respect of the Company's liability as if the bill or note had been drawn, accepted, made or indorsed by or on behalf of the Company in the course of its business;
- (p) to promote a scheme of arrangement pursuant to section 86 of the Companies Law;
- (q) to convene meetings of creditors and contributories; and

(r) to do all other things incidental to the exercise of their powers.

4. The JOLs be authorised to take any such action as may be necessary or desirable to obtain recognition of the appointment of the JOLs in any other relevant jurisdiction and to make applications to the courts of such jurisdictions for that purpose.
5. Subject to section 109(2) of the Companies Law and the Insolvency Practitioner's Regulations 2008 (as amended), the JOLs be authorised to render and pay invoices out of the assets of the Company for their own remuneration.
6. The JOLs be at liberty to meet all disbursements reasonably incurred in connection with the performance of their duties.
7. The JOLs be at liberty to and do pay their agents, employees, attorneys, solicitors, legal counsel and whomsoever else they may employ or instruct, remuneration and costs, and for the avoidance of doubt, all such payments shall be made as and when they fall due out of the assets of the Company as expenses of the winding up.
8. No suit, action or other proceedings, including criminal proceedings, shall be proceeded with or commenced against the Company except with the leave of the Court pursuant to section 97 of the Companies Law.
9. The JOLs be at liberty to apply for additional joint official liquidators to be appointed to the Company.
10. Any act required or authorised to be done by the JOLs may be done by any one of them.
11. The JOLs be at liberty to apply for further directions relating to the winding up of the Company.
12. The Petitioners' costs of and incidental to this Petition be paid forthwith out of the assets of the Company on the indemnity basis.
13. Such further or other orders or directions as the Court thinks fit.

AND your Petitioners will ever pray etc.

DATED the 23rd day of April 2012

Walkers

WALKERS
Attorneys-at-Law for the Petitioners

NOTE: This Petition will be served in accordance with any Order of the Court requiring the Petitioners to do so.

This Petition was presented by Walkers, Attorneys-at-Law for the Petitioners whose address for service is care of their said Attorneys, Walker House, 87 Mary Street, George Town, Grand Cayman KY1-9001, Cayman Islands.

NOTICE OF HEARING

TAKE NOTICE THAT the hearing of this petition will take place at the Law Courts, George Town, Grand Cayman, Cayman Islands on the day of 2012 at

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