

**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION**

IN THE MATTER OF THE COMPANIES LAW (2012 REVISION)

AND

IN THE MATTER OF CALIBRE FUND SPC

WINDING UP PETITION

TO THE GRAND COURT

The humble petition of Apex Fund Services Ltd. of T.J. Pearman Building, 3 Burnaby Street, Hamilton HM12, Bermuda (the "Petitioner") shows that:

Preamble

1. The Petitioner presents this petition for the winding up of Calibre Fund, SPC (the "Company") and the appointment of an official liquidator.
2. The Petitioner is a creditor of the Company and seeks the winding up of the Company pursuant to section 93 of the Companies Law (2012 Revision) (the "Companies Law") on the grounds that the Company is unable to pay its debts.

Background and Corporate Structure of Company

3. The Company was incorporated on 17 June 2008 in the Cayman Islands as an Exempted Segregated Portfolio Company under registration number 212601. The registered office of the Company is at Mourant Ozannes Corporate Services (Cayman) Limited, P.O. Box

00141785-1 This Petition was presented by **SOLOMON HARRIS** of 3rd Floor, FirstCaribbean House, P.O. Box 1990, Grand Cayman, KY1-1104, Cayman Islands, Attorneys-at-law for and on behalf of the Petitioner whose address for service is that of its said Attorneys.



1348 GT, 94 Solaris Avenue, Camana Bay, Grand Cayman, Cayman Islands, KY1 1108, Cayman Islands.

4. The Company is and was at all material times, a Segregated Portfolio Company incorporated in the Cayman Islands carrying on the business in the United States and Taiwan of an open ended investment company.

Part I
Contractual Background

5. On or about 7 July 2008 the Petitioner entered into an Administrator, Registrar and Transfer Agent Agreement (the "Administration Agreement") with the Company to provide various services as set out in clause 3 of the Administration Agreement for two of the Companies' portfolios; Calibre Resource Income Fund and Calibre Secured and Mezzanine Loan Fund. The Administration Agreement at paragraph 5 stated that:

"As remuneration for acting under the terms of this appointment the Administrator shall receive from the Fund [Calibre Fund SPC] an annual fee as specified in Appendix A hereto, or as may be agreed between the parties from time to time."

6. The fees and remuneration for services provided by Appendix A are as follows:

"(a) USD 2500.00 per month or 15 basis points of the funds net assets per annum.

(b) An initial set up fee of USD 5,000.00.

(c) Provision of one director at USD 5,000.00 per annum.

(d) Disbursement fees of 10% of the monthly administration, registrar and transfer agency fee.

The Administrators fees will be paid monthly in arrears".

7. Peter Hughes was appointed as a director of the Company pursuant to the Administration Agreement and the Petitioner also provided to the Company the administration services requested under the Administration Agreement.
8. The Petitioner issued and delivered to the Company invoices for the services provided pursuant to the Administration Agreement such invoices were paid by the Company.
9. However, the Company has failed to pay invoices for the services provided pursuant to the Administration Agreement and the Administration Agreement was terminated on 19 July 2011 and Peter Hughes resigned as a director of the Company on the same date.
10. On 19 July 2011 the Company executed Unanimous Written Resolutions of the Directors (“Resolutions”) which included a resolution acknowledging sums due from the Company to the Petitioner pursuant to the Administration Agreement as follows:

Services to Calibre Resource Income Fund Segregated Portfolio

Administration Fees USD 30,250

Directors Fees USD 4,583.37

Services to Calibre Secured and Mezzanine Loan Fund Segregated Portfolio

Administration Fees USD 41,800

Directors’ Fees USD 7,916.73 (“the Debt”)

11. By virtue of the terms of the Administration Agreement the Debt is owed by the Company and not any portfolio of the Company.
12. The Debt has been outstanding for over 16 months and to date no payments have been made by the Company. At no time has the Company disputed the Debt.

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13. The Petitioner issued and delivered to the Company a letter dated 3 August 2012 demanding payment of the Debt but no payment was received.

Part II Statutory Demand

14. Given the Company's failure to pay the Debt, the Petitioner served a Statutory Demand (the "Demand") on the Company pursuant to section 93 (a) of the Companies Law (2012 Revision) and the Companies Winding Up Rules 2008 (as amended) giving the Company 21 days to pay the Debt or to secure or compound the amount due to the Petitioner's satisfaction.
15. On 22 October 2012, the Petitioner served on the Company at its registered office the Demand requiring the Company to pay the sum of USD 84,550.10. This sum covered the Debt owed to the Petitioner and acknowledged by the Company in the Resolutions. The Company had until 12 November 2012 to respond to the Demand.
16. On 7 November 2012, a representative of the Company responded to the Demand by written letter (the "Letter") stating that the Company "*fully intends to pay the amounts owed [...]*" and that work was being done to "*bring both of the portfolios of the Fund into a liquid position so that fees can be paid*".
17. On 9 November 2012, the Petitioner responded to the Letter by email giving the Company until 16 November 2012 in which to pay 40% of the Debt (USD 33,820.04) with the remaining 60% (USD 50,730.06) to be paid within the following 21 days (by 7 December 2012).

18. The Company has made no payment of the Debt nor has it secured or compounded the amount due to the Petitioner's satisfaction.

**Part III
Inability to Pay Debts**

19. The Petitioner was given a total of 48 days in which to make payment of the Debt after service of the Demand. No payment has been made.
20. The Company has neglected or otherwise failed to pay the Debt or to secure or compound the amount due to the Petitioner's satisfaction.
21. In the premises, the Company is deemed to be unable to pay its debts pursuant to section 93 (a) of the Companies Law (2012 Revision).

**Part IV
Qualified Insolvency Practitioner**

22. Keiran Hutchison and Robin McMahon, whose business address is at Ernst & Young, 62 Forum Lane, Camana Bay, P.O. Box 510, Grand Cayman, KY1-1106, Cayman Islands, have agreed to be appointed as joint official liquidators of the Company. Keiran Hutchison and Robin McMahon are qualified insolvency practitioners resident in the Cayman Islands.

**Part V
Order**

Your Petitioner therefore humbly prays that:-

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1. The Company be wound up in accordance with the Companies Law (2012 Revision); and
2. Keiran Hutchison and Robin McMahon, whose business address is at Ernst & Young, 62 Forum Lane, Camana Bay, P.O. Box 510, Grand Cayman, KY1-1106, Cayman Islands, be appointed as joint official liquidators of the Company with the power to act jointly and severally.
3. The joint official liquidators shall not be required to give security for their appointment.
4. The joint official liquidators be granted sanction to exercise the following powers pursuant to Part I of Schedule 3 of the Companies Law (2012 Revision):
 - 4.1. Power to carry on the business of the Company so far as may be necessary for its beneficial winding up;
 - 4.2. Power to engage staff (whether or not as employees of the Company) to assist them in the performance of their functions;
 - 4.3. The power to employ attorneys and other professionally qualified persons to employ them in the performance of their functions.
 - 4.4. The joint official liquidators' remuneration and expenses be paid out of the assets of the Company in accordance with Part III of the Insolvency Practitioners Regulations 2008 (as amended) and Companies Winding Up Rules, Order 20.
 - 4.5. The joint official liquidators be at liberty to meet all disbursements reasonably incurred in connection with the performance of their duties and such payments

shall be made as and when they fall due out of the assets of the Company and shall be expenses in the liquidation.

- 4.6. The joint official liquidators be at liberty to apply for further directions relating to the winding up of the affairs of the Company.
- 4.7. The costs of and incidental to this Petition be paid out of the assets of the Company as an expense of the liquidation; and
- 4.8. The Court make such other orders and directions as it deems necessary or expedient.

AND your Petitioner will ever pray etc.

DATED the *30* day of January 2013

Solomon Harris

SOLOMON HARRIS
ATTORNEYS-AT-LAW FOR THE PETITIONER

NOTE: This petition is intended to be served on the Company at its registered office at c/o Mourant Ozannes Corporate Services (Cayman) Limited, P.O. Box 1348 GT, 94 Solaris Avenue, Camana Bay, Grand Cayman, Cayman Islands, KY1 1108, Cayman Islands.