

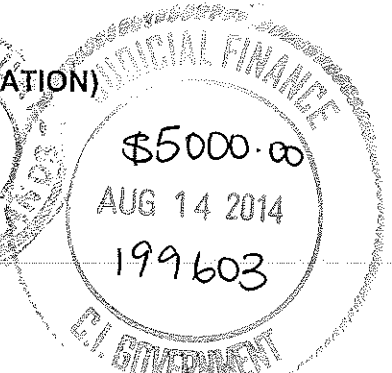
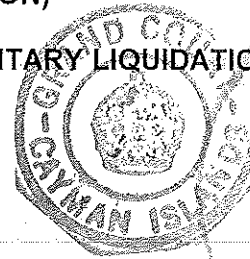
IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION

CAUSE NO. FSD 91 OF 2014 -

IN THE MATTER OF THE COMPANIES LAW (2013 REVISION)  
AND IN THE MATTER OF TYG CAPITAL FUND (IN VOLUNTARY LIQUIDATION)



PETITION



TO THE GRAND COURT

The humble petition of (i) Hugh Dickson of Grant Thornton Specialist Services (Cayman) Limited of 10 Market Street #765, Camana Bay, Grand Cayman KY1-9006, Cayman Islands and (ii) David Bennett of Grant Thornton Recovery & Reorganisation Limited, Level 12, 28 Hennessy Road, Wan Chai, Hong Kong as joint voluntary liquidators of TYG Capital Fund (In Voluntary Liquidation) (the "Fund") shows that:

**Incorporation**

1. The Fund is a Cayman Islands exempted company incorporated on 10 August 2012 (Company No.: 270989) pursuant to the Companies Law (2010 Revision) of the Cayman Islands and was registered as a mutual fund with the Cayman Islands Monetary Authority on 21 February 2013.
1. The registered office of the Fund is situated at Intertrust Corporate Services (Cayman) Limited, 190 Elgin Avenue, George Town, Grand Cayman, Cayman Islands.
2. The objects for which the Fund was established are unrestricted.
3. The Fund has an authorised share capital of US\$50,000.00 divided into 100 management shares of US\$1.00 each, and 4,990,000 participating shares of US\$0.01 each (the "Participating Shares").

**Commencement of voluntary winding up**

4. On 13 August 2014, the following special resolutions were passed by the sole voting shareholder of the Fund, TYG Capital Management (the "Manager"), that:

- (a) the Fund to be wound up voluntarily and placed into voluntary liquidation (the "**Voluntary Liquidation**") and pursuant to Section 92(a) of the Companies Law ultimately be wound up by the Court;
  - (b) (i) Hugh Dickson of Grant Thornton Specialist Services (Cayman) Limited of 10 Market Street #765, Camana Bay, Grand Cayman KY1-9006, Cayman Islands, and (ii) David Bennett of Grant Thornton Recovery & Reorganisation Limited, Level 12, 28 Hennessy Road, Wan Chai, Hong Kong to be appointed as the joint and several voluntary liquidators in respect of the Fund (the "**JVLs**");
  - (c) the JVLs to have the power to act jointly and severally;
  - (d) the JVLs shall apply to the Grand Court of the Cayman Islands (the "**Grand Court**") for an order that Voluntary Liquidation continue under the supervision of the Grand Court;
  - (e) the JVLs to be remunerated in accordance with their usual commercial rates (subject to applicable Cayman Islands law).
5. In the premises:
- (a) the Fund duly resolved by special resolution that it be wound up voluntarily, pursuant to section 116(c) of the Companies Law (2013 Revision) (the "**Law**") and pursuant to Section 92(a) of the Law ultimately be wound up by the Court; and
  - (b) the voluntary winding up of the Fund is deemed to have commenced on 13 August 2014, pursuant to section 117(1) of the Law.
6. The JVLs have filed consents to act as voluntary liquidators of the Fund with the Registrar of Companies pursuant to section 119(3) of the Law, such filing occurring on 13 August 2014.

#### **No Declaration of Solvency**

7. On 13 August 2014, the date on which the voluntary liquidation commenced, the directors of the Fund were John Batchelor, Vincent Fok, DMS Fund Governance I Ltd and DMS Fund Governance II Ltd.

8. The Fund's directors have informed the JVLs that they will not be making a declaration of solvency pursuant to section 124 of the Law.

### **The Fund's insolvency**

9. Based on information provided to the JVLs by the Fund (in particular the balance sheet dated 12 August 2014) and subject to the resolution of whether the Prospective Investors (as defined below) are in fact creditors of the Fund, on a preliminary assessment, the current and prospective solvency of the Fund is doubtful.
10. The Fund's primary assets consist of cash and securities listed on the Hong Kong stock exchange.
11. The Fund's liabilities include monies owed to redeemed shareholders, service providers, legal fees and directors' fees totalling over US\$3.2 million.
12. The total value of the Fund's assets is:
  - (a) cash of US\$2,321,821.76 (subject to currency fluctuations); and
  - (b) shares listed on the Hong Kong Stock Exchange Limited with fair value of HK\$90,574,170 (equivalent to US\$11,774,642.10) as at 12 August 2014.
13. In the period December 2013 to March 2014, subscriptions into the Fund totalling approximately US\$20 million were made by prospective investors into the Fund. These subscriptions appear to have been accepted by the Fund, but these prospective investors ("**Prospective Investors**") were not issued shares. The Prospective Investors may, therefore, be either creditors of the Fund or members of the Fund to whom shares should be issued and the Register of Members updated.
14. If the Prospective Investors are ultimately found to be creditors of the Fund, then the Fund is insolvent on a balance sheet basis and likely to be insolvent on a cash flow basis. If the Prospective Investors are ultimately held to be members of the Fund to whom shares should be issued and the Register of Members updated, then the Fund is solvent. Directions as to the treatment of the Prospective Investors are also likely to be required by the liquidators in due course.

15. The JVLs consider that, pending determination of the Prospective Investors' standing, it would be inappropriate for the Fund to make payments of its other debts as they fall due as doing so may potentially prejudice the interests of the Prospective Investors. For all practical purposes this would render the Fund, at least temporarily, insolvent on a cash flow basis, even if the Prospective Investors are ultimately found to be shareholders and not creditors. The JVLs anticipate that resolving the Prospective Investors standing is likely to be complex and contentious, and is unlikely to be resolved quickly.

**Supervision will result in a more effective, economic and expeditious liquidation process**

16. The Manager, as the sole shareholder of the Fund, has resolved that: (i) the Fund be wound up by the Court; and (ii) an application should be made to bring the Voluntary Liquidation under the supervision of the Court.
17. In doing so, the JVLs believe that the supervision of the Court will result in a more effective, economic and expeditious liquidation process. There are a number of reasons for this, specifically that having a court supervised process will:
- (a) assist with, as appropriate, with the dual appointment of liquidators by the High Court of Hong Kong to grant powers to the liquidators to act in Hong Kong for the benefit of stakeholders;
  - (b) result in the imposition of a stay of proceedings against the Fund;
  - (c) assist in preventing any disposition of the Fund's property or the transfer of its shares or alteration in the status of the company's members unless by the order of the Court.
  - (d) enable directions to be sought from the Court regarding, *inter alia*, the status of the Prospective Investors and the liabilities properly payable by the Fund;
  - (e) provide the liquidators with power to apply to the Court for an order to examine any relevant person (as defined in section 103(1) of the Law) (a "**Relevant Person**") for the purpose of investigating transactions which occurred prior to the liquidation of the Fund;

- (f) provide the liquidators with power to apply to the Court to compel any Relevant Person to transfer or deliver up to the liquidators any property or documents belonging to the Fund;
  - (g) provide the Court with jurisdiction pursuant to section 103(7) of the Law to issue a letter of request seeking assistance from the Hong Kong Court in relation to obtaining the evidence of any Relevant Person resident in Hong Kong;
  - (h) prior to any formal process that may be instigated in Hong Kong, assist the liquidators in liaising with banks and other service providers in Hong Kong with respect to the Fund's assets; and
  - (i) assist the liquidators to take steps in other jurisdictions, including, potentially the People's Republic of China for the purpose of recovering funds which may have been improperly paid out from the Fund.
18. In the premises, the JVLs seek an order pursuant to section 92(a), section 124(1) or alternatively s.131 of the Law that the liquidation of the Fund continue under the supervision of the Court and that the JVLs be appointed as the joint official liquidators of the Fund.

#### **Consent to appointment as Official Liquidators**

19. The JVLs are qualified insolvency practitioners and consent to their appointment as Official Liquidators of the Fund.

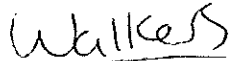
Your petitioners therefore humbly pray that:

1. The liquidation of the Fund continue under the supervision of the Court.
2. The appointment of: (i) Hugh Dickson and (ii) David Bennett as the joint and several voluntary liquidators in respect of the Fund be confirmed;
3. Hugh Dickson and David Bennett of Grant Thornton be appointed as Joint Official Liquidators of the Fund and have the power to act jointly and severally.
4. The costs incidental to this Petition be paid forthwith from the assets of the Fund.

5. Such other orders or directions shall be made as the Court deems fit.

AND your Petitioners will ever pray etc.

DATED the 14<sup>th</sup> day of August, 2014



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**WALKERS**  
Attorneys at Law for the Petitioners

This petition is intended to be served on:

The Cayman Islands Monetary Authority

This Petition is presented by Walkers, Attorneys at Law, 190 Elgin Avenue George Town, Grand Cayman KY1-9001, for the JVLs whose address for service is care of their said Attorneys at Law.