

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION



CAUSE NO: FSD 40 OF 2018

IN THE MATTER OF THE COMPANIES LAW (2016 REVISION)

AND IN THE MATTER OF GRAFTON RESOURCE INVESTMENTS LIMITED



WINDING UP PETITION

To the Grand Court

The humble creditor's petition of **Overseas Asset Management (Cayman) Limited and OAM European Value Fund**, both of P.O. Box 597, The Pavilion, Cricket Square, George Town, Grand Cayman KY1-1107, Cayman Islands (the **Petitioners**) shows that :-

**A. Preamble**

1. The Petitioners, in their capacity as both a major creditor and shareholder, present this petition in relation to Grafton Resource Investments Limited (**Grafton**) pursuant to section 94(1)(b) of the Companies Law (2016 Revision) (the **Law**).
2. Grafton is unable to pay its debts within the meaning of section 92(d) of the Law and is insolvent. On that basis, the Petitioners present this petition together with a proposed appointment of joint official liquidators.

**B. Grafton's background**

3. Grafton was incorporated as an exempted company with limited liability in accordance with the laws of the Cayman Islands on 3 January 2007. The Company's registration number is 180192. Grafton was struck-off by the company registrar on 31 October 2017 and the Petitioners restored Grafton to the register prior to presenting this petition (which included settling unpaid fees and incurring other expenses associated with the application). Grafton was restored to the register on 2 March, 2018.
4. Prior to being struck-off and before the resignation of its administrator, Grafton's registered office was at the offices of DMS Corporate Services Ltd, P.O. Box 1344, DMS House, 20 Genesis Close, Grand Cayman KY1-1108, Cayman Islands.
5. The Petitioners understand that Grafton was at material times a Dublin listed fund which was launched by Mr David ("Sam") Hutchins and was managed by RDP Fund

Management LLP (the **Investment Manager**)<sup>1</sup>. Throughout the life span of the company, it appears that Mr Hutchins was the only director of Grafton not performing the role in an independent non-executive capacity.

6. Subject to the provisions of Grafton's Memorandum and Articles of Association, the investment objective of Grafton is to achieve capital gains in the medium term from investments in the natural resources sector by investing in quoted and unquoted companies. Grafton commenced operations on 31 October, 2008 and its mandate was to operate for 5 years with the objective of selling its investments during the latter part of this period and returning funds to shareholders through distributions and repaying its liabilities.

**C. The Petitioners' debt**

7. The history of the Petitioners' investments in Grafton is set out in greater detail in the affidavit of Mr Desmond Kinch (Managing Director of both Petitioners) sworn on 14 March 2018 in support of this petition.
8. On the basis of representations made by Mr Hutchins to the Petitioners (apparently acting on behalf of the Investment Manager), the Petitioners initially purchased 150,000 shares in Grafton at USD 16.50 per share for USD 2,475,000 in August 2010.
9. In late December 2011, following further representations made by Mr Hutchins to the Petitioner regarding value and exit timing, the Petitioners purchased an additional 75,000 shares in Grafton at USD 11 per share for USD 825,000.
10. In February 2013, the Petitioners were offered USD 4,000,000 of Grafton Convertible Unsecured Loan Stock 2013 (CULS) by N+1 Singer, at 80% of par (i.e. for USD 3.2 million). Following a series of telephone conversations with and emails from Mr Hutchins in relation to Grafton's valuations and balance sheet, the Petitioners agreed to purchase USD 4,000,000 of CULS in two tranches of USD 2,000,000.
11. As at February 2013, Grafton had most recently reported gross assets of more than USD 43,000,000 and liabilities of USD 7,300,000 (which were made up of USD 7,000,000 of CULS and accruals). The Instrument by Deed Poll dated 31 December 2008 by which the CULS were created provided, in clause 3, that the principal amount owing on the CULS would be redeemed and repaid (together with any premium and accrued interest) on or before 31 December 2013.

---

<sup>1</sup> According to UK Companies House records, the Investment Manager was dissolved on 23 January 2018.

12. Furthermore, as set out in detail in Mr Kinch's evidence, Mr Hutchins represented to Mr Kinch both orally and in writing on numerous occasions that the Petitioners should expect to be repaid in full by the due date.
13. Despite the obligations in the relevant CULS documentation, and the many statements and assurances confirming Grafton's ability and intention to repay the CULS, no such payment has been made to the Petitioners and no interest been paid, apart from a nominal amount, since 31 December 2013.
14. The Petitioner is owed a debt which is immediately due and payable of USD 4,000,000, plus interest of USD3,244,860, which continues to accrue, as at 6 March 2018.
15. In the present circumstances, Grafton should be wound up as it is unable to pay its debts.

**YOUR PETITIONER THEREFORE HUMBLY PRAYS THAT:-**

- (1) Grafton be wound up by the Court in accordance with the Law.
- (2) David Martin Griffin and Andrew Morrison of FTI Consulting (Cayman) Limited, Suite 3212, 53 Market Street, Camana Bay, PO Box 30614, Grand Cayman KY1-1203, Cayman Islands be appointed as joint official liquidators of Grafton (the **Joint Official Liquidators**).
- (3) The Joint Official Liquidators not be required to give security for their appointment.
- (4) The Joint Official Liquidators be authorised to take such steps as may be necessary or expedient for the protection of Grafton's assets, and for that purpose they may exercise any of the powers specified in Part I and II of the Third Schedule to the Law, and for the avoidance of doubt such powers may be exercised within and outside the Cayman Islands. Specifically, but without prejudice to the generality of the foregoing, the Joint Official Liquidators shall have the powers to:
  - a. bring or defend any action or other legal proceeding in the name and on behalf of Grafton;
  - b. take possession of, collect and get in the property of Grafton and for that purpose to take all such proceedings as they consider necessary;
  - c. carry on the business of Grafton so far as may be necessary for the presentation of a compromise or arrangement to its creditors and/or its beneficial winding up;
  - d. sell any of Grafton'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;

- e. raise or borrow money and grant securities therefor over the property of Grafton;
  - f. take any action as may be desirable to obtain recognition of their appointment in any relevant jurisdiction;
  - g. engage staff (whether or not as employees of Grafton) to assist them in the performance of their functions; and
  - h. engage attorneys and other professionally qualified persons to assist them in the performance of their functions.
- (5) The Joint Official Liquidators be authorised to act jointly and severally in their capacity as Joint Official Liquidators.
- (6) The Joint Official Liquidators be at liberty to apply for further directions concerning their functions and the exercise or proposed exercise of their powers.
- (7) No suit, action or other proceeding be proceeded with or commenced against Grafton except with leave of the Court and subject to such terms as the Court may impose.
- (8) The remuneration and expenses of the Joint Liquidators be paid out of the assets of Grafton.
- (9) The costs of and incidental to the Petition be paid out of the assets of Grafton as expenses within the liquidation.

And your Petitioners will ever pray etc.

Dated the 15<sup>th</sup> day of March 2018

Filed the 15 day of March 2018

Mourant Ozannes

Mourant Ozannes

Attorneys for the Petitioner

This PETITION is filed by Mourant Ozannes, Attorneys-at-Law for the Petitioners whose address for service is PO Box 1348, 4th Floor, 94 Solaris Avenue, Camana Bay, Grand Cayman KY1-1108

**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 *19 April 2018* at *2pm*.

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, George Town, Grand Cayman, KY1-1106, Cayman Islands