

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION

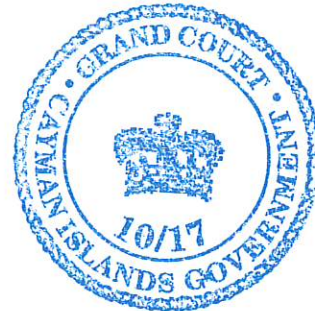


CAUSE NO: FSD 9 OF 2019 (KMJ)

IN THE MATTER OF THE COMPANIES LAW (2018 REVISION)  
AND IN THE MATTER OF OAKRUN PRECIOUS METALS FUND, LTD.



WINDING UP PETITION



**To the Grand Court**

The humble petition of Bejoy International Ltd., a limited company formed under the laws of [the British Virgin Islands], with its registered offices at Sea Meadow House, Blackburne Highway (P.O. Box 116) Road Town, Tortola, British Virgin Islands and with its principle place of business located at 20 Jalan Awana 14, Taman Cheras Awana, BT 71/2 Cheras 43200, Selangor, Malaysia (the “**Petitioner**”)

shows that:

**Introduction**

1. OakRun Precious Metals Fund, Ltd. (the “**Fund**”) was registered on 25 April 2008 as an exempted company with registration number 209525 pursuant to the Companies Law (2007 Revision) (referred to herein, together with amendments and revisions thereto as the “**Companies Law**”).
2. The registered office of the Fund is at Mourant Governance Services (Cayman) Limited, 94 Solaris Avenue, Camana Bay, George Town, PO Box 1348, Grand Cayman.
3. The share capital of the Fund is US\$50,000 divided into 4,999,000 non-voting participating shares and 1,000 voting management shares of a par value of US\$0.01 each.

THIS PETITION was presented by Campbells, attorneys-at-law for the Petitioner whose address for services is that of its attorneys, Floor 4, Willow House, Cricket Square, George Town, KY1-9010 (Ref: 16975-28912).

4. The objects of the Fund are unrestricted.
5. The Fund was registered with the Cayman Islands Monetary Authority (“CIMA”) as a regulated mutual fund under the Mutual Funds Law (as revised) (the “Mutual Funds Law”) on 20 October 2010 with registration number 566403. The Fund is an open-ended investment company.
6. The Fund’s directors were, until January 2019, Messrs Mike McDonald and Chris Bowring of International Management Services Ltd. (the “Independent Directors”).
7. The Fund’s investment manager is OakRun Capital, LLC a Delaware limited liability company with offices at 111 Brickell Avenue, Suite 1124, Miami, Florida, 33131 (the “Manager”) and which holds 100% of the management (voting) shares of the Fund.
8. The Petitioner understands that Mr Scott Rhodenizer is a resident of the United States and is the sole owner and principal of the Manager. Given that Mr Rhodenizer is the sole owner and principal of the Manager it is understood that he took all decisions relating to, *inter alia*, the investment strategy of the Fund.
9. The Petitioner understands that the Fund’s administrator is Maitland Group, 5th Floor, George Town Financial Center, 90 Fort Street, George Town, Grand Cayman, Cayman Islands (the “Administrator”) and the Fund’s custodians are Jefferies & Company, Inc. with offices at Pershing LLC, One Pershing Plaza, Jersey City, NJ, 07399 and Goldman Sachs Execution and Clearing L.P., 30 Hudson Street, Jersey City, NJ, 07302.
10. The Petitioner is a limited company which carries on business as an investment holding company.

#### **The Fund**

11. According to the Fund’s Private Placement Memorandum dated October 2010 (the “PPM”) the Fund expected to commence investment operations and accept subscriptions in October 2010.
12. The PPM sets out the Fund’s investment objective and strategy, *inter alia*, as:

*“...to seek exceptional total returns over the long term through investing in micro, small and mid-cap global Precious Metals companies listed primarily on the TSX Venture Exchange in Canada and the NASDAQ in the United States. The Fund will seek to achieve its objective by investing in primary and secondary offerings and open market transactions of emerging Precious Metals companies of precious metals. The Fund will utilize its’ [sic] proprietary research, its’ [sic] Canadian network, and utilize firm research from Canadian Investment Firms to uncover investment opportunities”.*
13. The PPM specifically states that the descriptions of the strategies of the Fund within the PPM do not limit its investment strategies overall.
14. Shares in the Fund are divided into separate series of shares each participating ratably according to its net asset value. The different series of shares were offered at US\$1,000.00 per share and the

minimum share subscription was US\$5,000,000.00 per investor, subject to the sole and absolute discretion of the Manager to accept a lesser amount. Accordingly, unless otherwise approved by the Manager, the minimum initial share subscription in the Fund for any investor was for 5,000 shares (i.e. US\$5,000,000.00), regardless of the series.

15. According to the PPM the Fund initially had two directors, namely Mr Rhodenizer and Mr Marian Stupka. The Petitioner understands that Mr McDonald was appointed as an Independent Director on 29 August 2014 and Mr Bowring was appointed as an Independent Director on 27 May 2016.

#### **The Petitioner's Investment**

16. Based on the limited information provided by the Fund, the Petitioner understands that there has only ever been one subscription for shares in the Fund, being its own subscription on or around 1 November 2010 when it subscribed for 5,000 participating Class A shares at a price of US\$1,000.00 per share.
17. The Petitioner therefore invested US\$5,000,000.00 into the Fund as at that date (the "Petitioner's Shares") and understands that it was always the sole participating shareholder of the Fund.

#### **The Manager**

18. According to the PPM the Manager is responsible for management of the Fund's investment portfolio and performing certain other management and administrative functions.
19. Pursuant to clause 1(a) of an investment management agreement dated 15 October 2010 between the Fund and the Manager (the "IMA"), the Manager is obliged to, *inter alia* "provide general supervision of all aspects of the Fund's operations, including coordinating the services provided by the Fund's administrator(s), custodian(s), fund accounting agent(s), transfer and dividend disbursing agent(s), independent auditors, and legal counsel".
20. Pursuant to clause 1(b) of the IMA "[t]he Fund authorize[d] the Manager to organize and execute an investment program for the Fund wherein the Fund seeks to acquire shares of global natural resource companies of precious metals, base metals and hydrocarbons, listed on global exchanges..." and to take any steps necessary thereto but the Fund remained responsible for the determination of any amounts available for distribution to the Fund's shareholders and for making distributions.

#### **The Fund's Investments**

21. The Petitioner understands that the Manager caused the Fund to make the following investments:
  - 21.1. on or around 10 December 2010 approximately 20,000,000 common shares of GoGold Resources Inc. ("GoGold") a corporation listed on the TSX Venture Exchange in Canada bearing the unique stock symbol "GGD". The Petitioner understands that the Fund's investment in GoGold represents an ownership interest of less than 10% in that corporation;

- 21.2. on or around March 17 2017, an investment of approximately CAD250,000 into a private water management company, River Birch Global Water Inc, representing an ownership interest of approximately 35% in that corporation; and
- 21.3. in or around 2015, approximately 10,260,000 common shares of Zephyr Minerals Limited (“Zephyr”) a company listed on the TSX Venture Exchange in Canada bearing the unique stock symbol “ZFR”, representing approximately 30.7% of all the (then) outstanding common shares of Zephyr. The Petitioner understands that the Manager caused the Fund to purchase 9,000,000 of the aforementioned 10,260,000 common shares on or around 2 December 2015 for an aggregate purchase price of \$1,350,000. The Petitioner also understands that the Manager caused the Fund to purchase a number of share purchase warrants.

### The Petitioner’s Redemption

22. Article 54 provides that *“...a Member may redeem all or any of such Member’s Participating Shares by serving a Redemption Notice on the Company which shall be required to be received at least 90 days prior to the proposed Redemption Day with respect to such Participating Shares (or such number of days prior to such Redemption Day as may be determined by the Directors)...”*.
23. Further, “Redemption Day” is defined in the Fund’s Articles of Association<sup>1</sup> (the “Articles”) as being *“...in relation to any class or series of Participating Shares such day or days as may be specified by the Directors in the Confidential Memorandum from time to time upon which a Member may redeem Participating Shares of that class or series...”*.
24. The PPM provides (on page 3) that *“...subject to any applicable Redemption Fee (as defined below), a Shareholder may redeem all or a portion of its Shares on a quarterly basis as of the last Business Day of each calendar quarter, (the “Redemption Date”), subject to the limitations described herein, upon 90 days’ prior written notice...”*.
25. Pursuant to article 54 the Petitioner wrote to the Manager on 30 June 2016 (the “Redemption Request”) to request that an amount of the Petitioner’s Shares be redeemed.
26. No notice of suspension of redemptions was ever served on the Petitioner by the Fund. Accordingly, pursuant to the provisions of the Articles and the PPM, a number of the Petitioner’s Shares (to the value of US\$5,000,000) were redeemed on, at the very latest, 31 December 2016 (depending on when the Redemption Request was in fact received by the Fund) (the “Redemption”)<sup>2</sup>.

<sup>1</sup> As amended and restated by written resolution of the Manager dated 18 October 2010

<sup>2</sup> Due to the lack of information provided by the Fund in relation to the Fund’s business and, more specifically, the Redemption, the Petitioner has not yet been able to ascertain whether the Redemption amounted to a full or partial redemption of the Petitioner’s Shares. The PPM provides (at page 43) that *“...each Shareholder will receive a quarterly statement showing the NAV of the Shareholder’s Shares and Shares purchased or redeemed by the Shareholder since the last quarter end. In addition, each Shareholder will receive within 120 days after the end of each fiscal year (or as soon thereafter as is reasonably practicable) audited annual financial statements of the Fund”*. In breach of this requirement, however, the last quarterly statement that the Petitioner received was for the period

27. On or around 25 July 2016 Mr Rhodenizer sent the Redemption Request to the Administrator and on the same day the Administrator asked for clarification regarding the value date for the redemption. In an email dated 26 June 2016 Mr Rhodenizer told the Administrator “...we are going to make and acceptation [sic] and send out what we can prior to September quarter end. We are looking to send out [US]\$1MM this month End [sic] and [US]\$1MM next month end.” In response the Administrator indicated that, as the Manager was acting outside the PPM, directors’ resolutions would be required stipulating that the Manager would attempt to redeem the Petitioner’s shares on a best efforts basis, namely i) US\$1,00,000 to be redeemed on 31 July 2016; ii) US\$1,00,000 to be redeemed on 31 August 2016; and iii) the balance of the US\$5,000,000 to be paid on 30 September 2016 “of [sic] however you would want this spelled out.”
28. On 28 July 2016 Mr Rhodenizer emailed the Petitioner’s representative saying “I am working on this with the directors...see below!” which was a reference to the correspondence referred to in paragraph 27 above. On 29 July 2016 the Petitioner’s representative acknowledged receipt of Mr Rhodenizer’s email and thanked him for arranging the redemption payment of US\$1,000,000 as soon as possible.
29. Accordingly, pursuant to conversations and correspondence between the Petitioner, the Manager and the Administrator, the Petitioner understood that both the Redemption and payment the proceeds of the Redemption would be accelerated, such that i) US\$1,000,000 would be paid on 31 July 2016; ii) US\$1,000,000 would be paid on 31 August 2016; and iii) US\$3,000,000 would be paid on 30 September 2016.
30. In the event, only the first of the above payments was made, and the Petitioner received the sum of US\$1,000,000 on 24 August 2016. The financial statement provided by the Administrator for the period ending 30 September 2016 (the “September 2016 Statement”) shows that this sum represented the proceeds of the redemption of 356.5161 shares, which were redeemed on 31 July 2016. The balance of US\$4,000,000 (the “Outstanding Redemption Payment”) continues to remain outstanding.
31. By letter dated 3 August 2017, the Manager requested an extension of twelve months for making payment of the Outstanding Redemption Payment. By letter dated 11 August 2017 the Petitioner agreed to the Manager’s request.
32. In advance of the revised August 2018 deadline for making payment of the Outstanding Redemption Payment, the Manager emailed the Petitioner on 29 May 2018 requesting that the Redemption Request be “lifted” or, if that was not agreeable, that the deadline for payment be extended for a further nine months. On 27 June 2018 the Petitioner wrote to the Manager stating, *inter alia*, that it was not prepared to agree a further extension of nine months but would agree an extension of four months (i.e. such that payment would be due on 11 December 2018). During this time the possibility

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ending 31 March 2018. That statement showed, erroneously, that the Petitioner continued to hold 4,643.4849 Class A shares as of that date. To the extent that the Fund’s net asset value exceeds US\$5,000,000, such that only a proportion of the Petitioner’s Shares were redeemed in order to effect the Redemption, the Petitioner therefore remains a shareholder of the Fund. As at the date hereof, the Petitioner has not received any audited annual financial statements for the Fund for at least two years.

of an in-specie distribution was discussed with the Independent Directors, and it was agreed that such a distribution would be effected if practicable.

33. On 11 December 2018 the Independent Directors emailed the Petitioner's representative stating that the Net Asset Value date was "today" and that the Fund "*will endeavour to pay out Bejoys full redemption request in cash or in-kind as per the Funds' [sic] Confidential Memorandum and Articles of Association*". The Independent Directors also indicated that the in-kind distribution of the River Birch Investment would likely be delayed due to River Birch's AML obligations.
34. The Independent Directors also indicated that "*the final NAV of December 11th will be struck using the closing independent prices for the GoGold and Zephyr holdings. The River Birch shares will continue to be valued at their cost (in USD) converted to CAD on the USD/CAD FX rate at close on December 11th. As the underlying Gogold, Zephyr, and ultimately River Birch shares will be transferred in-kind to Bejoy at a later date(s), the values of the shares may be higher or lower depending on the value on the date transferred*".
35. As at the date hereof the Fund has failed to pay the Outstanding Redemption Payment (or any part thereof), whether in kind or in cash, and as such the Petitioner is a creditor of the Fund in the sum of US\$4,000,000.
36. In the premises, the Fund's failure to pay the above sum or any part of it demonstrates that the Fund is unable to pay its debts as they fall due and that it should be wound up pursuant to section 92(d) of the Companies Law.
37. Further and/or alternatively, it is just and equitable that the Fund be wound up pursuant to section 92(e) of the Companies Law so that official liquidators may investigate the Fund's affairs and take control of its assets in circumstances set out below.

#### **Improper Expenses Claims by the Manager**

38. On 11 December 2018 the Independent Directors made the Petitioner aware that the Manager had withdrawn US\$199,746.60 from the Fund's accounts during the course of 2017 and the first six months of 2018. The Independent Directors confirmed that they had objected to the majority of those withdrawals, had refused to ratify them as proper expenses of the Fund and had therefore classified them in the Fund's books and records as sums "*due from Investment Manager*". Accordingly, as at the date hereof, the Petitioner understands that the Fund is owed US\$149,746.60, being the sum of US\$199,746.60 mentioned above less the amount of US\$50,000 due to the Manager for monthly fees, however, the Petitioner reserves its position in relation to the propriety and validity of the same.
39. Further, the Independent Directors informed the Petitioner that, during the week commencing 3 December 2018, the Manager had also submitted a one page summary of "Fund expenses" in the sum of US\$2,676,935 to the Independent Directors. The Petitioner was advised that these expenses (the "**Purported Expenses**") are expenses which had purportedly been "*carried by [the Manager] over the past 8 years*".

40. The Independent Directors have informed the Petitioner that the Purported Expenses had never been raised with the Fund previously and that, having reviewed the Purported Expenses in conjunction with the Fund Documents and the IMA, they had refused to reimburse the Manager for the same.

#### **Removal of the Independent Directors**

41. On 1 January 2019 the Independent Directors informed the Petitioner that the Manager had removed both of them as directors of the Fund with effect from 31 December 2018.

42. The Petitioner understands that at some point between 1 January and 3 January 2019 the Manager provided the necessary resolutions and documentation to the Fund's counsel evidencing that the Independent Directors had been removed; the Petitioner was officially notified of the Independent Directors' removal by an email from Mr McDonald on 3 January 2019. No reason for the removal of the Independent Directors has been provided to the Petitioner.

43. The Petitioner contends that the removal of the Independent Directors was for improper purposes, namely i) to cause the Fund to avoid paying the Petitioner the proceeds of the Redemption; ii) to cause the Fund to ratify the expenses claimed by the Manager described at paragraph 38 above; and, iii) to cause the Fund to pay the Manager the Purported Expenses.

#### **Loss of Substratum**

44. As set out above, save for the Petitioner, the Fund has never been able to attract other investors. As such, to the extent that all of the Petitioners Shares have been redeemed, the Fund has no investors or participating shareholder. To the extent that not all of the Petitioners Shares have been redeemed, the Petitioner remains the only investor and is seeking to exit from the Fund. The Petitioner has not submitted a further redemption request in respect of any remaining shares because (a) the lack of information provided by the Fund means that the position (and the question of whether the Petitioner continues to hold any shares in the Fund) remains unclear; and (b) for the reasons particularised herein, an investigation by official liquidators is required.

45. In any event, the business of the Fund has come to an end and it has become impractical or impossible for that business to be carried on. There is no prospect of any further investment into the Fund being made and the Fund is no longer viable as an investment fund.

#### **Breach of the Directors Registration and Licensing Law, 2014 and the Articles**

46. Pursuant to section 4 of the Directors Registration and Licensing Law (the "DRL Law") a natural person appointed as a director of a covered entity (such as the Fund) is not permitted to act in that capacity unless registered under the DRL Law. The Petitioner understands that Mr Rhodenizer is not so registered.

47. Further, the Petitioner contends that the Fund is in breach of Article 133, which provides that the Board of directors shall consist of no less than two persons<sup>3</sup>.

#### **Need for investigation of the Fund's affairs**

48. As particularised above, in circumstances where:

- a) the Manager has removed the Independent Directors from office and replaced them with the owner and principal of the Manager;
- b) no reason has been given for the removal of the Independent Directors;
- c) prior to their removal from office, the Independent Directors had raised significant concerns about the conduct of the Manager and the validity and propriety of claims which the Manager is asserting against the Fund (and which were never raised previously with the Independent Directors);
- d) the Manager has, during the course of 2017 and 2018, paid itself monies from the Fund's accounts which were neither approved nor authorised by the Independent Directors;
- e) the Manager has frustrated the payment of the sums due to the Petitioner pursuant to the Redemption;
- f) the Fund has not provided the Petitioner with information and documents regarding its investment to which it is entitled under the provisions of the PPM (including audited annual financial statements for the Fund for at least the last two years);
- g) the last financial statement provided to the Petitioner showed that, as of 31 March 2018, 356.5161 of the Petitioner's Shares had been redeemed and the Petitioner held 4,643.4849 Class A shares. Pursuant to the provisions of the Articles and PPM, however, a total of 1782.5805 shares should have been redeemed in respect of the Redemption Request<sup>4</sup>, with such redemption taking place by no later than 31 December 2016. No explanation has been provided for this discrepancy;
- h) the Petitioner understands that the current director of the Fund is not registered under the DRL Law, in breach of that law;
- i) the number of directors is currently less than the minimum amount that is required by the Articles;

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<sup>3</sup> This number may be increased or reduced by an Ordinary Resolution, however, the Petitioner is not aware of any such resolution having been passed.

<sup>4</sup> This figure is extrapolated from the September 2016 Statement, which showed 356.5161 shares were redeemed on 31 July 2016 for a value of US\$1,000,000.

- j) as a result of the foregoing, the Petitioner has lost all trust and confidence in the board of directors of the Fund; and
- k) the business of the Fund has come to an end

it is just and equitable that the Fund be wound up pursuant to section 92(e) of the Companies Law in order that official liquidators can investigate:

- a) what claims may lie against the Manager and/or the Fund's existing and former service providers;
- b) the causes of the Fund's failure; and
- c) its promotion, business, dealings and affairs

with a view to recovering value for the Petitioner.

**THE PETITIONER THEREFORE HUMBLY PRAYS THAT:**

1. The Fund be wound up by the Court under the provisions of the Companies Law (2018 Revision).
2. That Christopher Barnett Kennedy and Alexander Lawson of Alvarez & Marsal, Flagship Building, PO Box 2507, 2nd Floor, 70 Harbour Drive, George Town, Grand Cayman, Cayman Islands of be appointed as Joint Official Liquidators of the Fund.
3. That the Official Liquidator shall not be required to give security for his appointment.
4. In addition to their powers prescribed in Part II of the Third Schedule to the Companies Law (2018 Revision) which are exercisable without sanction of this Court, the Official Liquidators may also without further sanction or intervention from this Court:
  - a) exercise the powers set out in Part I of the Third Schedule to the Companies Law (2018 Revision); and
  - b) take any such action as may be necessary or desirable to obtain the recognition of their appointment in any other relevant jurisdictions and to make applications to the courts of such jurisdictions for that purpose,

and for the avoidance of doubt the powers bestowed on the Official Liquidators may be exercised by them within and outside the Cayman Islands.

5. The costs of the Petitioner of and incidental to the Petition be paid forthwith from the assets of the Fund, to be taxed on the indemnity basis if not agreed.

6. Such other orders and/or directions as the Court deems fit.

Dated this 24<sup>th</sup> day of January 2019

Campbells.

CAMPBELLS

Attorneys-at-Law for the Petitioner

**It is intended that this Petition be served on OakRun Precious Metals Fund, Ltd.**

**INDORSEMENT**

**Notice of Hearing**

This Petition having been presented to the Court on 24 January 2019 will be heard at the Law Courts, George Town, Grand Cayman on 22 March 2019 at 9:30 a.m. or as soon thereafter as the Petition can be heard.