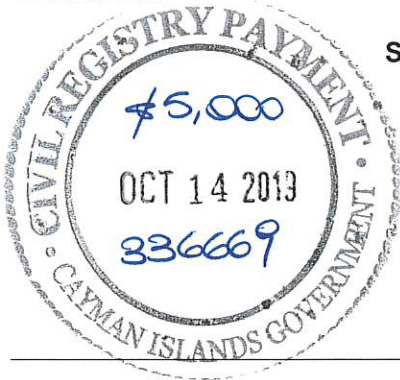


IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 201 of 2019 ( )

BETWEEN:



SAFEGUARD MANAGEMENT LIMITED

AND

XIO CAYMAN LIMITED

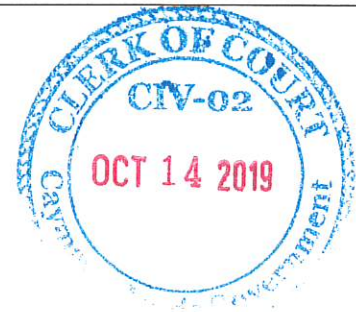


PLAINTIFF

DEFENDANT

WRIT OF SUMMONS

To: **XIO CAYMAN LIMITED**  
c/o FFP (BVI) Limited  
2nd Floor Belisarius Building  
Road Town, Tortola,  
VG 1110, British Virgin Islands



**THIS WRIT OF SUMMONS** has been issued against you by the above-named Plaintiff of ARKA Corporate Services (Cayman) Limited, 71 Fort Street, 1st Floor Appleby Tower, P.O. Box 950, Grand Cayman KY1-1102, Cayman Islands in respect of the claim set out on the next page.

Within 14 days after the service of this Writ on you, counting the day of service, you must either satisfy the claim or return to the Court Office, P.O. Box 495, George Town, Grand Cayman, the accompanying Acknowledgment of Service stating therein whether you intend to contest these proceedings.

If you fail to satisfy the claim or to return the Acknowledgment within the time stated, or if you return the Acknowledgment without stating therein an intention to contest the proceedings, the Plaintiff may proceed with the action and judgment may be entered against you forthwith without further notice.

Issued this 14<sup>th</sup> day of October 2019

This Writ may not be served later than 4 calendar months (or, if leave is required to effect service out of the jurisdiction, 6 months) beginning with the date of issue unless renewed by order of the Court.

## IMPORTANT

Directions for Acknowledgment of Service are given with the accompanying form.

### STATEMENT OF CLAIM

1. The Plaintiff, Safeguard Management Limited ("**Safeguard**"), is an exempted company incorporated in the Cayman Islands with limited liability and having its registered office at 71 Fort Street, 1st Floor Appleby Tower, P.O. Box 950, Grand Cayman KY1-1102, Cayman Islands.
2. The Defendant, XiO Cayman Limited ("**XiO Cayman**"), is an international business company registered in the Island of Nevis with limited liability and having its registered office at Southpac Trust Nevis Limited, Hunkins Plaza, Ste 21, Main Street, Charlestown, Nevis (with its address for service being c/o FFP (BVI) Limited, 2nd Floor Belisarius Building Road Town, Tortola, VG 1110, British Virgin Islands).
3. XiO Cayman acts *inter alia* as an investment adviser and/or investment manager to a number of different legal entities.

#### **Appointment of Receivers**

4. By order of the High Court of Nevis dated 10 December 2018, in Claim No. NEVHCV 2018/0144, Stephen Briscoe and Hadley Chilton of Fund Fiduciary Partners ("**FFP**") 2<sup>nd</sup> Floor, TICO Building, Wickhams Cay II, Tortola VG1110, British Virgin Islands were appointed as receivers over all the issued shares in XiO Cayman.

#### **Appointment of Directors**

5. Following their appointment as receivers, Messrs. Briscoe and Chilton signed a written resolution dated 11 December 2018 appointing themselves directors of XiO Cayman.
6. On 13 December 2018 Messrs. Briscoe and Chilton as directors of XiO Cayman caused XiO Cayman, in its capacity as sole shareholder of XiO Partners HK Limited ("**XiO HK**") (a Hong Kong private company limited by shares), to appoint them and Wong Tek Meng (Flat E, 22<sup>nd</sup> Floor, Evelyn Towers, 38 Cloud View Road, North Point, Hong Kong) as directors of XiO HK.

### **Purported suspension and termination of employees**

7. On or about 14 December 2018, Mr. Briscoe signed, and caused GALL (a law firm) to issue, letters to the employees of XiO HK (namely Joseph Pacini, Qiao Fei and Marianne Rajic) purporting to suspend their employment with immediate effect.
8. On or about 16 December 2018, Messrs. Briscoe and Chilton signed, and caused RPC (a law firm) to issue, suspension letters to the employees of XiO (UK) LLP ("**XiO UK**") (namely Carsten Geyer and Paul Wong). XiO UK is a limited liability partnership formed under the laws of England and Wales and a wholly owned subsidiary of XiO HK.
9. On the 31 December 2018, Messrs. Briscoe and Chilton caused letters to be emailed to the abovementioned employees (the "**Individuals**") purporting to terminate their employment with immediate effect. The Individuals dispute the validity of the purported suspensions and terminations through actions filed in England and Hong Kong.

### **Engagement of Safeguard**

10. In order to enable XiO Cayman to meet its contractual obligations as an investment advisor and/or investment manager to certain entities, the Messrs Chilton and Briscoe requested that the Individuals provide consultation, management and administrative services ("**Consulting Services**") to XiO Cayman.
11. The Individuals agreed to provide Consulting Services through a separate company, Safeguard, on the basis that any such agreement would be without prejudice to their rights arising out of, or in connection with, the purported suspensions and terminations.
12. Safeguard and XiO Cayman entered into a Sub-Advisory Agreement, governed by Cayman Islands law, on 18 January 2019 ("**SAA**"). The engagement commenced the same day (clause 2.2 SAA). Mr Chilton signed the SAA on behalf of XiO Cayman.

## Services

13. Clause 2.1 of the SAA states as follows:

*"The Manager hereby engages the Sub-Advisor to assist the Manager in providing its services to the Relevant Persons under the Relevant Agreements in accordance with the terms of this Agreement."*

14. The powers and duties of the Sub-Advisor are set out in clause 3. Clause 3.1 states that:

*"...the Sub-Advisor will assist the Manager with all aspects of the Manager's business as the Manager may request from time to time, including (without limitation) the Services".*

15. Pursuant to clause 3.2(b)(i) of the SAA, "Services" includes Safeguard advising:

*"...the Manager in relation to it making, implementing and executing investment and divestment decisions on a discretionary basis (including in respect of financial and tax structuring) within the parameters of the Investment Program"*

16. Pursuant to clause 3.2(b)(iii) of the SAA, "Services" includes Safeguard participating:

*"...in the negotiation of acquisition agreements and sale agreements to directly, or indirectly purchase, sell, exchange or otherwise Dispose of Assets and the respective assets of the Intermediate Entities and advise the Manager and/or the relevant Intermediate Entities or portfolio companies in relation to any of them entering into such matters and exercising the rights (including voting rights) and complying with the obligations derived therefrom."*

17. Pursuant to clause 3.2(b)(v) of the SAA, "Services" include Safeguard advising:

*"... the Manager in relation to all such other acts as it may deem necessary and advisable for, or as may be incidental to, the provision of the services required to be provided by it under any of the Relevant Agreements"*

## Remuneration

18. In consideration of the Consulting Services rendered by Safeguard under the SAA, XiO Cayman agreed to pay a Sub-Advisory Fee (clause 8.1) of US\$750,000 per month payable at the start of each month.
19. In addition to Sub-Advisory Fee, in clause 8.2 of the SAA, the parties agreed fees for services in respect of other specified matters:

*"[T]he Manager shall pay the Sub-Advisor additional fees for services rendered in connection with the evaluation, acquisition, holding, monitoring, disposal and management of Investments in amounts equal to the related Partnership Expenses (as defined in the Platinum Partnership Agreement or equivalent terms of any Relevant Agreement) that the Manager is entitled to receive from the Platinum General Partner or any other Relevant Person or transaction advisory or management services fees that the Manager receives from the Platinum General Partner or any other Relevant Person related to such services rendered, in each case as soon as practicable and in no event later than 30 days following the date such services have been rendered."*

20. XiO Cayman is the "Manager" referred to in clause 8.2 of the SAA.
21. XiO Cayman is the sole investor in a Cayman Islands exempted limited partnership named XiO Platinum LP (registration number 86449) which is the partnership referred to in clause 8.2 of the SAA as "the Platinum Partnership". XiO Platinum LP holds a beneficial interest (worth in excess of US\$400 million) in the sale of the asset referenced below at paragraph 27.
22. XiO Cayman also agreed, per clause 8.3, to pay a Sub-Advisory Retainer in respect of those fees due pursuant to clauses 8.1 and 8.2.

## Relevant Agreements

### Transaction Services Agreement

23. One of the "Relevant Agreements" referred to in the SAA is a Transaction Services Agreement which XiO Cayman entered into with Jefferson Holdco Inc. on 7 September 2016 (the "TSA").

24. Clause 2(b) of the TSA states:

*"In consideration of the performance of the Exit Services, the Company [Jefferson Holdco Inc.] agrees to pay XiO or the XiO Designees a fee equal to 1.5% of the value of a Sale, which percentage is in accordance with industry standard practice (the "Exit Fee"). The Exit Fee shall be payable in cash by the Company upon the closing of a Sale."*

25. The TSA defines "Exit Services" as transactional services provided by XiO Cayman or XiO Cayman's Designees, during the term of the TSA, in connection with a sale.

26. The TSA defines "XiO Designees" as those of XiO's officers, employees, agents, advisers, representatives and affiliates as XiO, in its sole discretion, may designate from time to time.

27. One of the services solicited by XiO Cayman, and provided by Safeguard, has been advice and assistance in connection with the disposal and sale of an asset (the "Asset") in accordance with the TSA.

28. The sale of the Asset (the "Sale") is due to close on or around 31 October 2019 for the sum of US\$1.875bn. Upon said date Jefferson Holdco Inc. will be liable to pay XiO Cayman, or the XiO Designees (i.e. Safeguard), the sum of US\$28,125,000 (1.5% of US\$1.875bn). If the exit fee is paid by Jefferson Holdco. Inc to XiO Cayman rather than to Safeguard, XiO Cayman will be liable to pay the exit fee to Safeguard in accordance with 8.2 of the SAA.

#### Management Services Agreement

29. Another of the "Relevant Agreements" referred to in the SAA is a Management Services Agreement which XiO Cayman entered into on 7 September 2016 (the "MSA").

30. Clause 2(a) of the MSA states:

*"In consideration of the performance of the Monitoring Services, the Company agrees to pay XiO or the XiO Designees an annual fee payable in cash equal to \$2,000,000 (the "Monitoring Fee"). The Monitoring Fee shall be payable in cash by the Company in equal monthly instalments in advance, on the first business day of each month commencing on 7 September 2016 (the "Monitoring Fee Payments"), without regard to the amount of the Monitoring Services actually performed by XiO. Notwithstanding the foregoing, at the option of XiO, the Monitoring*

*Fee Payments shall accrue monthly and be payable in cash upon the sale of all or substantially all of the assets of the Company or its successor (and such sale transaction, a "Sale")."*

31. Upon closing of the Sale, XiO Cayman or the XiO Designees (i.e. Safeguard) will receive the Monitoring Fee of US\$2m. If the Monitoring Fee is paid to XiO Cayman rather than to Safeguard, XiO Cayman will be liable to pay the Monitoring Fee to Safeguard in accordance with 8.2 of the SAA.

**Non-payment of Sub-Advisory Fees**

32. Pursuant to the SAA, Safeguard provided services and duly submitted the following invoices for payment:

- a. INV-2019-0001 dated 28 January 2019, in the amount of US\$750,000 for January 2019 Sub-Advisory Fees and US\$750,000 as a retainer to set off against the previous month's fees;
- b. INV-2019-0004 dated 16 March 2019, in the amount of US\$1,469,852.31;
- c. INV-2019-0005 dated 16 March 2019, in the amount of US\$416,472.64;
- d. INV-2019-0006 dated 16 March 2019, in the amount of US\$225,261.93;
- e. INV-2019-0007 dated 16 March 2019, in the amount of US\$123,956.55;
- f. INV-2019-0008 dated 16 March 2019, in the amount of US\$102,153.67;
- g. INV-2019-0009 dated 27 March 2019, in the amount of US\$605,929.24;
- h. INV-2019-0010 dated 27 March 2019, in the amount of US\$77,755.62;
- i. INV-2019-0011 dated 27 March 2019, in the amount of US\$37,500.00;
- j. INV-2019-0012 dated 27 March 2019, in the amount of US\$40,555.25;

- k. INV-2019-0016 dated 25 April 2019, in the amount of US\$600,000.00;
  - l. INV-2019-0017 dated 25 April 2019, in the amount of US\$272,115.26;
  - m. INV-2019-0018 dated 25 April 2019, in the amount of US\$37,500.00; and
  - n. INV-2019-0019 dated 25 April 2019, in the amount of US\$202,062.01.
33. The above invoices were never paid by XiO Cayman and remain outstanding notwithstanding the fact that XiO Cayman had, and has, sufficient funds to settle such invoices and was, and is, contractually bound to make payment.
34. On 25 September 2019, Safeguard submitted to XiO Cayman the following further invoice(s):
- a. INV-2019-0026 dated 23 September 2019, for interest incurred (12% interest per annum, compounded annually) on the outstanding amounts on invoices that have not been paid on time in accordance with the SAA, in the amount of US\$182,000;
  - b. INV-2019-0027 dated 23 September 2019, for the sub-advisory fees for the months of June to September 2019 (inclusive), in the amount of US\$3,000,000; and
  - c. INV-2019-0028 dated 24 September 2019, in the amount of US\$28,125,000.
35. In breach of the SAA, despite numerous requests for payment, XiO Cayman has failed to pay, by the due date or at all, the consideration required by the terms of the SAA (save for one payment of US\$500,000 on 13 March 2019).
36. XiO Cayman has not disputed Safeguard's entitlement to the Sub-Advisory Fees for the period January – May 2019 however it has disputed Safeguard's entitlement to all other fees claimed (for the reasons set out in the paragraphs immediately below).

**Purported termination of no effect**

37. On 7 May 2019 Andrew Childe of FFP, purporting to act as Director of XiO Cayman, wrote to Safeguard purporting to terminate the SAA with effect from 7 June 2019.

38. Clause 2.2 of the SAA states that the engagement of Safeguard shall continue unless terminated in accordance with the terms of Clause 13.
39. Clause 13.2 requires XiO Cayman to make payment of all fees, incurred expenses and other monies accrued up to the date of termination. XiO Cayman failed to make payment and failed to comply with the terms of 13.2 and 2.2 rendering the purported termination ineffective.
40. Notwithstanding the purported termination, XiO Cayman has continued to solicit, and Safeguard has continued to provide, Consulting Services from January 2019 to date.
41. The parties have continued to perform the SAA (save for XiO Cayman's failure to make payment in accordance with the terms of the SAA).

**Entitlement to Exit Fee**

42. When the Sale closes on or around 31 October 2019, and unless Jefferson Holdco pays the Exit Fee to Safeguard directly in its capacity as the XiO Designees, XiO Cayman will receive the Exit Fee. Upon receipt, XiO Cayman will be liable to pay the Exit Fee to Safeguard in accordance with 8.2 of the SAA.
43. XiO has disputed Safeguard's entitlement to the Exit Fee in correspondence dated 27 September 2019 on the ground that the SAA was terminated with effect from 7 June 2019.
44. Safeguard seeks a declaration that it is entitled to be paid the Exit Fee of US\$28,125,000 on 31 October 2019.

**Entitlement to Monitoring Fee**

45. When the Sale closes on 31 October 2019, and unless the Monitoring Fee is paid to Safeguard directly in its capacity as the XiO Designees, XiO Cayman will receive the Monitoring Fee. Upon receipt, XiO Cayman will be liable to pay the Monitoring Fee to Safeguard in accordance with 8.2 of the SAA.
46. Safeguard anticipates that XiO Cayman will dispute Safeguard's entitlement to the Monitoring Fee (for the same reasons it disputes the Exit Fee).

47. Safeguard seeks a declaration that it is entitled to be paid the Monitoring Fee of US\$2m on 31 October 2019.

**Interest**

48. The Plaintiff claims pre and post judgment interest in accordance with the contractual rate (per clause 8.6 SAA) of 12% per annum;
49. The amount of interest owing at the date of issue of this Writ on the outstanding sum of US\$4,211,114.48 is US\$242,934.26;
50. The amount of interest on the outstanding sum of US\$4,211,114.48 which shall accrue each day following the issue of the Writ is US\$1,384.48;
51. Interest shall become payable on the sum of US\$3,000,000 at the daily rate of US\$986.30 starting 24 October 2019 if the debt remains unpaid.

**AND THE PLAINTIFF claims:**

- (1) The sum of US\$4,211,114.48 for Sub-Advisory Fees due for the period January to May 2019;
- (2) The sum of US\$3,000,000 for Sub-Advisory Fees due for the period June to September 2019 (and in the alternative payment *quantum meruit*);
- (3) Further or alternatively damages for breach of contract;
- (4) Pre and post judgment contractual interest at a rate of 12% per annum (and in the alternative statutory interest in accordance with the Judicature Law (as Revised));
- (5) A declaration that it is entitled to be paid the Exit Fee of US\$28,125,000;
- (6) A declaration that it is entitled to be paid the Monitoring Fee of US\$2,000,000;
- (7) Costs; and
- (8) Such further and/or other relief as this Honourable Court deems appropriate.



**McGrath Tonner**

**Attorneys for the Plaintiff**

**DIRECTIONS FOR ACKNOWLEDGMENT OF SERVICE**  
**OF WRIT OF SUMMONS**

1. The accompanying form of Acknowledgment of Service should be completed by an Attorney acting on behalf of the Defendant or by the Defendant if acting in person.

After completion it must be delivered or sent by post to the Law Courts, P.O. Box 495G, George Town, Grand Cayman.

2. A Defendant who states in his Acknowledgment of Service that he intends to contest the proceedings must also serve a defence on the Attorney for the Plaintiff (or on the Plaintiff if acting in person).

If a Statement of Claim is indorsed on the Writ (i.e. the words "Statement of Claim" appear on the top of page 2), the Defence must be served within 14 days after the time for acknowledging service of the Writ, unless in the meantime a summons for judgment is served on the Defendant.

If the Statement of Claim is not indorsed on the Writ, the Defence need not be served until 14 days after a Statement of Claim has been served on the Defendant.

If the Defendant fails to serve his defence within the appropriate time, the Plaintiff may enter judgment against him without further notice.

3. A Stay of Execution against the Defendant's goods may be applied for where the Defendant is unable to pay the money for which any judgment is entered. If a Defendant to an action for a debt or liquidated demand (i.e. a fixed sum) who does not intend to contest the proceedings states, in answer to Question 3 in the Acknowledgment of Service, that he intends to apply for a stay, execution will be stayed for 14 days after his Acknowledgment, but he must, within that time, issue a Summons for a stay of execution, supported by an affidavit of his means. The affidavit should state any offer which the Defendant desires to make for payment of the money by instalments or otherwise.

**See over for notes for guidance**

**Please complete overleaf**

1. Each Defendant (if there are more than one) is required to complete an Acknowledgment of Service and return it to the Courts Office.
2. For the purpose of calculating the period of 14 days for acknowledging service, a writ served on the Defendant personally is treated as having been served on the day it was delivered to him.
3. Where the Defendant is sued in a name different from his own, the form must be completed by him with the addition in paragraph 1 of the words "sued as (the name stated on the Writ of Summons)".
4. Where the Defendant is a FIRM and an attorney is not instructed, the form must be completed by a PARTNER by name, with the addition in paragraph 1 of the description "Partner in the firm of (.....)" after his name.
5. Where the Defendant is sued as an individual TRADING IN A NAME OTHER THAN HIS OWN, the form must be completed by him with the addition in paragraph 1 of the description "trading as (.....)" after his name.
6. Where the Defendant is a LIMITED COMPANY the form must be completed by an Attorney or by someone authorised to act on behalf of the Company, but the Company can take no further step in the proceedings without an Attorney acting on its behalf.
7. Where the Defendant is a MINOR or a MENTAL PATIENT, the form must be completed by an Attorney acting for a guardian ad litem.
8. A Defendant acting in person may obtain help in completing the form at the Courts Office.



**Notes on address for service**

Attorney: where the Defendant is represented by an attorney, state the attorney's place of business in the Cayman Islands. A Defendant may not act by a foreign attorney.

Defendant in person: where the Defendant is acting in person, he must give his post office box number and the physical address of his residence or, if he does not reside in the Cayman Islands, he must give an address in Grand Cayman where communications for him should be sent. In the case of a limited company, "residence" means its registered or principal office.

Indorsement by plaintiff's Attorney (or by plaintiff if suing in person) of his name, address and reference, if any, in the box below.

McGrath Tonner  
Attorneys at Law  
5<sup>th</sup> Floor Genesis Building  
Genesis Close, PO Box 446  
George Town, Grand Cayman  
Attn: Ben Tonner QC

Indorsement by defendant's Attorney (or by defendant if suing in person) of his name, address and reference, if any, in the box below.

