

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION



CAUSE NO: FSD 38 OF 2020 (NSJ)

IN THE MATTER OF THE COMPANIES LAW (2020 REVISION)

AND IN THE MATTER OF MARA INVESTMENT CORPORATION SPC LIMITED



WINDING-UP PETITION



To the Grand Court

The humble petition of Campbells, Attorneys at Law, whose principal place of business is 4th Floor Willow House, Cricket Square, Grand Cayman, Cayman Islands (the "Petitioner" or "Campbells") shows that:

Introduction

1. Mara Investment Corporation SPC Limited (the "Company") was registered in the Cayman Islands on 29 March 2012 as a segregated portfolio company with registration number 267548. The Company was incorporated and is registered pursuant to the Cayman Islands Companies Law (as revised) (the "Companies Law").
2. The registered office of the Company is at Campbells Corporate Services Limited, Floor 4 Willow House, Cricket Square, Grand Cayman KY1-9010 Cayman Islands. The Company's principal executive office is located at 2nd Floor Harbour Centre, 42 North Church Street, George Town, Grand Cayman.
3. The share capital of the Company is US\$50,000, divided into 49,999,900 portfolio shares (the "Portfolio Shares") and 100 ordinary shares (the "Ordinary Shares"), each with a nominal par value of US\$0.001.

THIS PETITION was presented by Campbells, whose address for services is Floor 4, Willow House, Cricket Square, George Town, KY1-9010 (Ref: MG/GC/15657-32609).

4. The Petitioner is a partnership and firm of attorneys providing legal services in the Cayman Islands.
5. Dhabi One Investments Services LLC ("**Dhabi**") whose principal place of business is 18th Floor, Al Neem Tower, Khalifs Street, PO Box 41244, Abu Dhabi, United Arab Emirates is the sole legal holder of all of the Class A Portfolio shares issued by the Company. The Class A Portfolio Shares are participating, non-voting, non-redeemable shares in the capital of the Company.
6. The sole holder of all of the ordinary voting shares issued by the Company is MIC Investment Limited of Cricket Square, Hutchins Drive, PO Box 2681 Grand Cayman KY1-1111. The Ordinary Shares are non-participating, voting shares in the capital of the Company. The Ordinary Shares do have a 20% economic interest in the Company, once distributions to the holders of Portfolio Shares have equalled the aggregate Capital Contributions made by them.
7. The Company, which was previously named Mara Africa Opportunities SPC Limited, was established as an investment fund, with two separate closed-ended portfolios, the MARA Africa Special Opportunities Segregated Portfolio (the "**Fund**") and the Mara Agriculture Segregated Portfolio, each of which has a separate class of Portfolio Shares. There are no Portfolio Shares in issue in respect of Mara Agriculture Segregated Portfolio.
8. The objects of the Company are unrestricted. To the best of the Petitioner's knowledge, the Company has, since at least 2016, carried on business from the Cayman Islands operating as a holding company.
9. The Company's board of directors (the "**Board**") are currently Andrew Childe and Michael Pearson (the "**Independent Directors**") of FFP (Cayman) Limited ("**FFP**") and Jayesh Manek.
10. The terms of Campbells' engagement as the Company's attorneys were set out in a letter of engagement dated 11 May 2016 (the "**Engagement Letter**") and countersigned by the directors of the Company on or around 1 June 2016. Campbells' appointment was ratified pursuant to a resolution of the board of directors (as it was then constituted) dated on or around 1 June 2016.

11. On 24 April 2016, prior to Campbells' engagement, Dhabi presented a winding-up petition (the "Dhabi Petition") against the Company on just and equitable grounds. In the Dhabi Petition, Dhabi contended *inter alia* that:
- a) the purpose for which the Company was formed had failed and the Company was not viable as an investment fund under its management;
 - b) there had been an irretrievable breakdown in the relationship between the Joint Managing Directors (as defined therein) and between the directors who were then on the Board, which had and continued to have a real and significant detrimental impact on the management of the Company;
 - c) the Board as then constituted had failed to act in the best interests of the Company and its shareholders which amounted to ongoing misconduct in the management of the Company; and
 - d) the members of the Board as then constituted were misconducting themselves by permitting a family dispute to affect the affairs and interests of the Company.
12. Pursuant to Article 36 of its memorandum and articles of association (the "**Articles**") the Board must have not less than 3 members and not more than 11 members. As mentioned in the Dhabi Petition the original 3 members of the Board were Ashish Thakkar, Prashant Manek and Jayesh Manek. On 6 April 2016 Ashish Thakkar resigned from the Board leaving the Board with only two members. Michael Pearson, of FFP, was appointed as an independent director on 30 May 2016 to fill a casual vacancy on the Board pursuant to Article 35.2. The primary purpose of Mr Pearson's appointment was to ensure that the Board was restored to 3 members as per the requirements of the Articles, but also to introduce an element of independence given the complaints advanced in the Dhabi Petition. Andrew Childe, also of FFP, was appointed as an independent director on 29 June 2016 (to fill a casual vacancy), the same day that Prashant Manek resigned. The Board is, therefore, currently in the control of the Independent Directors. Jayesh Manek was retained on the Board in order to provide continuity and given his significant knowledge of the history of the Company.

13. Accordingly, from May 2016 to February 2020, Campbells was engaged as the Company's attorneys and has provided legal advice to the Company (including for and on behalf of the Fund) in relation to various issues. Those issues include (without limitation) advising the Company generally, advising the Company in relation to numerous issues and disputes arising out of the proposed transfer of Portfolio Shares from Mara Holdings Africa Limited to Dhabi (and, ultimately, dealing with the transfer of the same), advising the Company in relation to Dhabi's Petition, preparing for and appearing on behalf of the Company at the hearing of Dhabi's summons for directions (the "Summons")¹, preparing the Company's application for a validation order dated 16 February 2017 and appearing at the hearing of the same on 6 March 2017.
14. As at the date hereof, the Dhabi Petition remains extant and unresolved.
15. In respect of work undertaken at the Company's request and instruction (including for and on behalf of the Fund), Campbells has issued twenty nine invoices to the Company between 31 May 2016 and 30 June 2019, amounting to US\$467,815.33 in total. Pursuant to the provisions of the Engagement Letter and to Campbells' standard terms and conditions (which were incorporated by way of the Engagement Letter), Campbells' invoices are due and payable within 30 days from the date of the respective invoice. Accordingly, all of the invoices that have been issued to the Company by Campbells are due and owing as at the date hereof.
16. Further, pursuant to the Engagement Letter, Campbells is entitled to charge interest on any unpaid balance, from the date of the invoice to the date of payment, at the rate prescribed (from time to time) by the Judgment Debts (Rates of Interest) Rules. As at 14 February 2020, therefore, interest in the sum of US\$31,390.20 is currently due and owing to Campbells.
17. On 21 January 2020 Campbells wrote to the Company to advise of the amount that was then outstanding and to place the Company on notice that, unless payment of that sum was made in full by 28 January 2020, Campbells would have no alternative but to resign as the Company's attorneys and commence winding-up proceedings against the Company. In response to that letter, Mr Childe responded on behalf of the Board, by way of email dated 21 January 2020, to

¹ On 30 August 2017, some fifteen months after it had presented the Dhabi Petition, Dhabi also issued the Summons. The hearing of the Summons took place on 20 September 2017.

advise that the Company had no issues with Campbells' invoices, but that it *"does not have liquid assets to satisfy the invoices at this time"*.

18. By way of letter dated 11 February 2020, Campbells tendered its resignation as attorneys to the Company, with immediate effect.
19. The total amount outstanding to Campbells as at 14 February 2020 is US\$499,205.53 and interest will continue to accrue until payment in full is received. The Petitioner is a creditor of both the Company and the Fund in a proportion to be determined.
20. In the premises, the Company's failure to pay the above sum or any part of it, along with the Company's admission that none of Campbells' invoices are contested but that it has no liquid assets available in which to pay the same, demonstrates that the Company 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.
21. Further and/or alternatively, it is just and equitable that the Company be wound up pursuant to section 92(e) of the Companies Law in all of the circumstances.

THE PETITIONER THEREFORE HUMBLY PRAYS THAT:

1. The Company be wound up by the Court under the provisions of the Companies Law (2020 Revision).
2. John Paul Royle and Margot MacInnis, both of Grant Thornton Specialist Services (Cayman) Limited, 48 Market Street, 2nd Floor, Suite 4290, Canella Court, Camana Bay, Grand Cayman, Cayman Islands be appointed as Joint Official Liquidators of the Company.
3. The Joint Official Liquidators shall not be required to give security for their appointment.
4. In addition to their powers prescribed in Part II of the Third Schedule to the Companies Law (2020 Revision) which are exercisable without sanction of this Court, the Joint Official Liquidators may also without further sanction or intervention from this Court:

- a) exercise all of the powers set out in Part I of the Third Schedule to the Companies Law (2020 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 Joint 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 Company as an expense of the liquidation, to be taxed on the indemnity basis if not agreed with the Joint Official Liquidators.
6. Such other others and/or directions as the Court deems fit.

Dated this 27th day of February 2020



CAMPBELLS

Petitioner

It is intended that this Petition be served on Mara Investment Corporation SPC Limited.

INDORSEMENT

Notice of Hearing

This Petition having been presented to the Court on 27 February 2020 will be heard at the Law Courts, George Town, Grand Cayman on Thursday, 2 April 2020 at 10am or as soon thereafter as the Petition can be heard.