

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION



CAUSE NO: FSD 72 OF 2020 (RPJ)

IN THE MATTER OF THE COMPANIES LAW (2020 REVISION)
AND THE EXEMPTED LIMITED PARTNERSHIP LAW (2018 REVISION)
AND IN THE MATTER OF ODYSSEUS III INVESTMENTS LP



WINDING UP PETITION



TO THE GRAND COURT

The humble petition of J.P. Morgan Bank Luxembourg S.A. of European Bank and Business Centre, 6 Route de Treves, L-2633, Senningerberg Luxembourg, acting through its Brussels branch of 1 Boulevard du Roi Albert II 1, 1210 Brussels, Belgium (the "**Petitioner**") shows that:

INTRODUCTION

1. The Petitioner presents this petition for the winding up of Odysseus III Investments LP (the "**Partnership**") and seeks the appointment of joint official liquidators over the Partnership.
2. The Petitioner is a creditor of the Partnership and seeks the winding up of the Partnership pursuant to Section 36(3) of the Exempted Limited Partnership Law (2018 Revision) (the "**ELP Law**") and Sections 92(d) and (e) of the Companies Law (2020 Revision) (the "**Companies Law**") on the grounds that the Partnership is unable to pay its debts and that it is just and equitable that the Partnership be wound up.
3. The Partnership was constituted pursuant to a limited partnership agreement dated 16 February 2017 (the "**LPA**") between Odysseus III Investments (GP) as a general partner of the Partnership (the "**GP**") and Intertrust Nominees 2 (Cayman) Limited as the initial limited partner. The Partnership was registered as an exempted limited partnership in the Cayman Islands pursuant to the ELP Law on 16 February 2017, with partnership number 89185.
4. The Partnership does not have a registered office. Its former registered office was located at Intertrust Corporate Services (Cayman) Limited ("**Intertrust**") at 190 Elgin Avenue,

George Town, Grand Cayman, KY1-9005, Cayman Islands. Intertrust resigned as the registered office of the Partnership.

THE PETITIONER

5. The Petitioner is a financial institution incorporated under the laws of Luxembourg and provides diversified banking services in the areas of credit, financing and investment for institutional and corporate clients, governments, and high net-worth individuals.

PARTICULARS OF THE DEBT

Loan to Laertes Holdings ("Laertes")

6. Laertes is the sole director of the GP. Laertes is an exempted limited company incorporated under the laws of the Cayman Islands on 9 February 2017, with company number 319530.
7. Pursuant to a facility agreement dated 19 April 2017 entered into between Laertes as borrower and the Petitioner (as J.P. Morgan International Bank Limited, Brussels Branch) as lender, the Petitioner agreed to provide a committed facility in the principal amount of US\$50,000,000 to Laertes (the "**Facility Agreement**").
8. Pursuant to Clause 1 (*Introduction*) of the Facility Agreement, the Facility Agreement is supplemental to the Petitioner's private client terms (as may be amended from time to time) (the "**PCTs**"). Laertes executed an application form on 17 March 2017 pursuant to which, *inter alia*, Laertes agreed to be bound by the terms of the PCTs (the "**Application Form**"). The Application Form was executed by Mr Matthew Sutherland (being the ultimate beneficial owner of Laertes) for and on behalf of Laertes.
9. The Facility Agreement was supported by:
 - (a) a personal guarantee dated 19 April 2017 entered into by Mr Matthew Sutherland (being the ultimate beneficial owner of Laertes) as guarantor in favour of the Petitioner (the "**Personal Guarantee**");
 - (b) a security agreement dated 24 April 2017 entered into by Laertes as chargor and the Petitioner as security agent, under which Laertes granted security in favour of the Petitioner over, amongst other things, its limited partnership interest in a

Cayman Islands exempted limited partnership named Crossover Healthcare Emerging Asia Public Fund, LP (the "**Crossover Security Agreement**");

- (c) a security agreement dated 24 April 2017 entered into by Laertes as chargor and the Petitioner as security agent, under which Laertes granted security in favour of the Petitioner over, amongst other things, its limited partnership interest in the Partnership (the "**Odysseus Security Agreement**"); and
- (d) a security assignment deed (regarding capital of the Partnership) dated 24 April 2017 entered into between the Partnership as the partnership, the GP as the general partner of the Partnership and the Petitioner as the assignee, under which the Partnership granted security in favour of the Petitioner over its rights, titles, interests and privileges in and to the Capital Contributions of the Partnership (the "**Security Assignment Deed**"), being the amount, if any, contributed or agreed to be contributed by a limited partner to the Partnership.

(together, the documents in paragraphs (a) to (d) above, the "**Security Documents**").

- 10. On 25 April 2017, the amount of US\$50,000,000 was advanced by the Petitioner to 'SG And Partners' as a purported nominee of Laertes (the "**Loan**").
- 11. Pursuant to Clause 5 (*Repayment, Prepayment and Cancellation*) of the Facility Agreement, Laertes was required to repay the Loan by the following instalments:
 - (a) on the first anniversary of drawdown of funds, Laertes was required to repay US\$5 million;
 - (b) on the second anniversary of drawdown of funds, Laertes was required to repay US\$7 million (the "**Second Instalment**");
 - (c) on the third anniversary of drawdown of funds, Laertes was required to repay US\$10 million;
 - (d) on the fourth anniversary of drawdown of funds, Laertes was required to repay US\$12 million; and

- (e) on the fifth anniversary of drawdown of funds and the maturity date of the Loan, Laertes was required to repay all other outstanding amounts together with accrued and unpaid interest.
12. Pursuant to Clause 6 (*Interest*) of the Facility Agreement, interest is payable on the Loan at the percentage rate per annum which is the sum of LIBOR plus 2.95% (295 basis points, the "**Margin**") (collectively, the "**Interest Rate**"), and is payable on the last day of each Interest Period (as defined in the Facility Agreement and being the interest period applicable to the Loan as set out in the various confirmations issued by the Petitioner after advancing the Loan on 25 April 2017 on a monthly or quarterly basis (the "**Confirmations**")).
 13. Pursuant to Clause 6.4 (*Default Interest*) of the Facility Agreement, if Laertes fails to pay any amount payable by it under the Facility Agreement on its due date, interest will accrue on the overdue amount from the due date up to the date of actual payment. The default interest rate applicable to such overdue amounts shall be a percentage rate per annum equal to LIBOR plus Margin plus 2.5% (250 basis points, "**Default Rate**").
 14. On 25 April 2019, being the second anniversary of drawdown of funds, Laertes failed to pay the Second Instalment and US\$596,400.00 in interest due and payable on that date, as required in accordance with terms of the Facility Agreement.
 15. Pursuant to Banking and Custody Special Term 10 (*Events of Default*) of the PCT, an Event of Default shall occur, *inter alia*, if Laertes fails to pay any indebtedness or other financial obligation on its stated maturity date.
 16. Pursuant to Clause 15.1(b) (*Events of Default*) of the Facility Agreement, an event of default shall occur under the Facility Agreement if an Event of Default as set out in the Banking and Custody Special Term 10 of the PCT occurs.
 17. Accordingly, upon the failure of Laertes to pay the Second Instalment and US\$596,400.00 in interest due and payable on 25 April 2019, an "Event of Default" occurred under Clause 15.1(b) of the Facility Agreement and under Banking and Custody Special Term 10 (*Events of Default*) of the PCTs ("**Event of Default**").
 18. Pursuant to Clause 15.3 (*Events of Default*) of the Facility Agreement, upon the occurrence of an "Event of Default" under the Facility Agreement, the Petitioner may by

written notice to Laertes declare all amounts outstanding under the Facility Agreement immediately due and payable together with accrued interest (and other sums owed by Laertes in respect of the Loan).

The Security Assignment Deed

19. Pursuant to Clause 3 (*Covenant to Pay*) of the Security Assignment Deed, the Partnership covenanted with the Petitioner "*as primary obligor and not merely as surety that it will pay and discharge the Secured Obligations when due in accordance with the terms of the Finance Documents*".
20. Pursuant to Clause 4 (*Security and Notice of Charge and Assignment*) of the Security Assignment Deed, as continuing security for the full and punctual payment and discharge of the Secured Obligations, the Partnership, *inter alia*:
 - (a) charged by way of first fixed charge and assigned by way of first fixed security all of its right, title and interest in and to the Assigned Property (as defined in the Security Assignment Deed);
 - (b) charged by way of first floating charge all of its rights, title and interest in and to the Assigned Property; and
 - (c) charged by way of first fixed charge and assigned by way of first fixed security all of its rights, title and interest in and to the assets of the Partnership only to the extent they are attributable to the GP.
21. Pursuant to Clause 1 (*Definitions and Interpretation*) of the Security Assignment Deed, 'Secured Obligations' is defined as "*any and all moneys, liabilities and obligations (whether actual or contingent, whether now existing or hereafter arising, whether or not for the payment of money and including, any obligation or liability to pay damages) from time to time owing to the Assignee [being the Petitioner] pursuant to the Facility Agreement...*"
22. Accordingly, the Partnership is under an obligation as primary obligor to pay any and all amounts outstanding under the Facility Agreement (including the Loan and interest and any default interest which has accrued thereon).

Acceleration and Demand Notice in respect of Laertes

23. By way of acceleration and demand notice dated 17 June 2019 from the Petitioner to Laertes (the "**Acceleration and Demand Notice**"), the Petitioner, in accordance with the terms of the Facility Agreement and the PCTs, *inter alia*:
- (a) notified Laertes that it had failed to repay the sum of US\$7,000,000 by way of principal and US\$582,884.23 by way of interest which was due and payable on 25 April 2019 (paragraph 2 of the Acceleration and Demand Notice). The Acceleration and Demand Notice incorrectly understated the interest due and payable as at 25 April 2019 (stating US\$582,884.23 instead of US\$596,400.00);
 - (b) notified Laertes that the Petitioner had declared all amounts outstanding under the Facility Agreement, together with all unpaid accrued interest of fees and any other sums owing to the Petitioner to be immediately due and payable (paragraph 3 of the Acceleration and Demand Notice);
 - (c) demanded payment from Laertes of:
 - (i) US\$45,958,748.47¹, being the total principal outstanding under the Facility Agreement in the amount of US\$45,00,000 and interest in the amount of US\$958,748.47 accrued up to and including 16 June 2019; and
 - (ii) default interest of US\$27,453.12 accrued up to and including 16 June 2019, (paragraph 3 of the Acceleration and Demand Notice);
 - (d) notified Laertes that interest at the Default Rate continues to accrue on the Loan until all obligations are paid in full (paragraph 4 of the Acceleration and Demand Notice); and
 - (e) notified Laertes that the Petitioner reserved the right (without further notice) to take any and all such actions available to the Petitioner under the Facility Agreement

¹ The actual amount owed by Laertes as at 17 June 2019 (the date to which the amount owed to the Petitioner was calculated for the purposes of the Acceleration and Demand Notice) was US\$45,993,370.29, of which US\$45,000,000 is attributable to the principal of the Loan outstanding and US\$993,370.29 is attributable to interest and default interest outstanding, due and payable (being US\$7,168.70 higher than the amount actually set out in the Acceleration and Demand Notice).

and/or the Security Documents (paragraph 6 of the Acceleration and Demand Notice).

Demand Letter in respect of the Partnership

24. By way of a demand letter dated 13 January 2020 from the Petitioner to the Partnership and the GP (the "**Demand Letter**"), the Petitioner, in accordance with the terms of the of the Facility Agreement, the PCTs and the Security Assignment Deed, *inter alia*:
- (a) stated that pursuant to the Security Assignment Deed the Partnership had granted security in favour of the Petitioner over its rights, titles, interests and privileges in and to the Capital Contributions of the Partnership (paragraph 2 of the Demand Letter);
 - (b) stated that pursuant to the Security Assignment Deed, the Partnership covenanted to pay the Secured Obligations when due as primary obligor and not merely as surety (paragraph 2 of the Demand Letter);
 - (c) notified the Partnership and the GP that Laertes failed to repay the sum of US\$7,000,000 by way of principal and US\$582,884.23 by way of interest which was due and payable on 25 April 2019 (paragraph 2 of the Demand Letter). The Demand Letter (as with the Acceleration and Demand Notice) incorrectly understated the interest due and payable as at 25 April 2019 (stating US\$582,884.23 instead of US\$596,400.00);
 - (d) notified the Partnership and the GP that an Event of Default under Clause 15.1(b) of the Facility Agreement and under the Banking and Custody Special Term 10 of the PCTs had occurred (paragraph 2 of the Demand Letter);
 - (e) notified the Partnership and the GP that pursuant to the Acceleration and Demand Notice, the Petitioner had declared all amounts outstanding under the Facility Agreement, together with all unpaid accrued interest of fees and any other sums owing to the Petitioner to be immediately due and payable (paragraph 4 of the Demand Letter);
 - (f) notified the Partnership and the GP that the Petitioner had demanded payment by Laertes of:

- (i) US\$45,958,748.47, being the total principal outstanding under the Facility Agreement in the amount of US\$45,000,000 and interest in the amount of US\$958,748.47 accrued up to and including 16 June 2019; and
 - (ii) default interest of US\$27,453.12 accrued up to and including 16 June 2019, (the "**Laertes Debt**") (paragraph 4 of the Demand Letter);
 - (g) notified the Partnership and the GP that, notwithstanding the Acceleration and Demand Notice, as at the date of the Demand Letter, Laertes had not paid the Laertes Debt (paragraph 5 of the Demand Letter);
 - (h) demanded payment by the Partnership of US\$47,954,269.93 pursuant to the Partnership's covenant to pay at Clause 3 of the Security Assignment Deed, being the total principal outstanding under the Facility Agreement in the amount of US\$45,000,000 and interest and default interest in the amount of US\$2,954,269.93 accrued up to and including 8 January 2020 (paragraph 7 of the Demand Letter); and
 - (i) notified the Partnership that the Petitioner reserved the right (without further notice) to exercise any rights available to it under the Security Assignment Deed and under any other document or agreement (paragraph 10 of the Demand Letter).
25. Notwithstanding the Acceleration and Demand Notice and/or the Demand Letter, as at the date of the Petition, no payment in respect of the Laertes Debt from either Laertes or the Partnership (in its capacity as chargor under the Security Assignment Deed) has been received by the Petitioner.

The Statutory Demand

26. The Petitioner caused a statutory demand under Section 36(3) of the ELP Law and Section 93(a) of the Companies Law to be hand-delivered to the former registered office of the Partnership on 5 February 2020 (the "**Statutory Demand**") under which the Petitioner demanded payment of total indebtedness in the amount of US\$47,954,269.93 (of which US\$45,000,000.00 is attributable to the principal of the Loan outstanding, due and payable and US\$2,954,269.93 is attributable to interest and default interest, calculated up to and including 8 January 2020) (the "**Debt**").

27. The Petitioner also caused the Statutory Demand to be:
- (a) emailed to odyssues-iii@mill-capital.com on 6 February 2020;
 - (b) hand-delivered to Level 42 Emirates Towers, Dubai, United Arab Emirates on 6 February 2020;
 - (c) emailed to laertesholdings@gmail.com on 6 February 2020; and
 - (d) couriered and sent via recorded delivery with Royal Mail to Mr Matthew Sutherland (being the ultimate beneficial owner of Laertes in its capacity as the director of the GP) at Blackdown Mill, Hill Wootton, Warwickshire, CV32 6RN, United Kingdom on 6 February 2020.
28. The email address odyssues-iii@mill-capital.com was provided for the Partnership in the LPA.
29. The alternative contact details for Laertes (as set out at paragraph 27 (b) to (d) above were provided by Laertes as part of the PCTs (Laertes being the sole director of the GP). The Petitioner notified the Partnership (in the Statutory Demand) that if the Debt was not paid within 21 days, the Partnership would be deemed to be insolvent and that a winding up petition may be presented against the Partnership in accordance with Section 36(3) of the ELP Law and Sections 92(d) and 93(a) of the Companies Law.
30. As at the date of this petition, the Partnership has failed to repay the Debt (together with the accrued and unpaid interest and default interest thereon) as set out in the Statutory Demand being US\$47,954,269.93 due and payable as at 8 January 2020 to the Petitioner.

Relief sought

31. In the premises:
- (a) the Petitioner is a creditor of the Partnership and has standing to present this petition under Section 94(1)(b) of the Companies Law;
 - (b) the Partnership is unable to pay its debts pursuant to Section 92(d) of the Companies Law and is therefore insolvent and should be wound up; and

(c) It is just and equitable that the Partnership should be wound up.

32. The Petitioner nominates David Griffin and Andrew Morrison both of FTI Consulting (Cayman) Limited, Suite 3212, 53 Market Street, Camana Bay, Grand Cayman, PO Box 30613, KY1-1203, Cayman Islands, to act as joint official liquidators of the Partnership.

Your Petitioner therefore humbly prays that:

33. The Partnership be wound up by the Court in accordance with the ELP Law and the Companies Law.
34. David Griffin and Andrew Morrison both of FTI Consulting (Cayman) Limited, Suite 3212, 53 Market Street, Camana Bay, Grand Cayman, PO Box 30613, KY1-1203, Cayman Islands, be appointed as joint official liquidators of the Partnership (the "JOLs").
35. The JOLs shall not be required to give security for their appointment.
36. The JOLs have the power to act jointly and severally in their capacity as liquidators of the Partnership.
37. The JOLs be authorised to do any acts or things considered by them to be necessary or desirable in connection with the liquidation of the Partnership and the winding up of its affairs in the Cayman Islands and/or elsewhere.
38. The JOLs be authorised to take any such action as may be necessary or desirable to obtain recognition of the JOLs and / or their appointment and / or powers in any other relevant jurisdiction and to make applications to the courts of such jurisdictions for that purpose.
39. In addition to the powers set out in Part II of the Third Schedule to the Companies Law, the JOLs be authorised to exercise all of the powers set out in paragraphs 1, 4, 5, 7, 8, 10 and 11 of Part 1 of the Third Schedule to the Companies Law pursuant to Section 110(2) of the Companies Law without further sanction of the Court.
40. The JOLs be at liberty to appoint such counsel attorneys, professional advisors whether in the Cayman Islands or elsewhere, as they may consider necessary to advise and assist them in the performance of their duties in accordance with Order 25 of the Companies Winding Up Rules 2018.

41. No disposition of the property of the Partnership by or with the authority of the JOLs in carrying out their duties and functions and the exercise of their power under any Order granted pursuant to this Petition shall be voided by virtue of Section 99 of the Companies Law.
42. Subject to Section 109(2) of the Companies Law and the Insolvency Practitioners' Regulations 2018, the JOLs be authorised to render and pay invoices out of the assets of the Partnership for their own remuneration.
43. The JOLs be at liberty to meet all disbursements reasonably incurred in connection with the performance of their duties and, for the avoidance of doubt, all such payments shall be made as and when they fall due out of the assets of the Partnership as an expense of the liquidation.
44. The JOLs be at liberty to apply generally.
45. The Petitioner's costs of and incidental to the Petition shall be paid forthwith out of the assets of the Partnership as an expense of the liquidation, such costs to be taxed on an indemnity basis if not agreed with the JOLs.
46. Such further or other relief be granted as the Court deems appropriate.

AND your Petitioner will every pray etc.

DATED the 20th day of April 2020

Walkers

WALKERS

Attorneys at Law for the Petitioner

NOTE: This petition is intended to be served on the Partnership.

This **WINDING UP PETITION** is presented by Walkers, Attorneys at Law, 190 Elgin Avenue, George Town, Grand Cayman, KY1-9001, for the Petitioner whose address for service is care of its Attorneys at Law.

NOTICE OF HEARING

TAKE NOTICE THAT the hearing of this Petition will take place at the Law Courts, George Town,
Grand Cayman on _____ at _____ am / pm.

Any correspondence or communication with the Court relating to the hearing of this Petition
should be addressed to the Registrar of Financial Services Division of the Grand Court at PO Box
495, Grand Cayman, KY1-1106, telephone no. 349 949 4296.