

N IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION



CAUSE NO: FSD 84 OF 2020 (CRJ)

IN THE MATTER OF THE COMPANIES LAW (2020 REVISION)

AND IN THE MATTER OF DIVERSIFIED SETTLEMENTS FUND

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WINDING UP PETITION

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**To the Grand Court**

The humble petition of Traded Life Policies Fund (In Official Liquidation) a company incorporated under the laws of the Cayman Islands, with its registered office at PO Box 1787, Grand Cayman, KY1-1109, Cayman Islands (the "**Petitioner**") shows that:

**Introduction and Summary**

- 1 Diversified Settlements Fund ("**DSF**") was incorporated in the Cayman Islands on 22 October 2008 as an exempted company limited by shares under the Companies Law (2020 Revision) ("**Companies Law**"). DSF was originally incorporated under the name Gemini Mixed Policy Fund. On or around 12 August 2009, the name was changed to Diversified Settlements Fund. The registered office of DSF is c/o Stuarts Corporate Services Ltd., P.O. Box 2510, Kensington House, 69 Dr Roy's Drive, George Town, Grand Cayman KY1-1104, Cayman Islands.
- 2 The Petitioner was incorporated on 11 November 2010, and was at all material times registered as a mutual fund with the Cayman Islands Monetary Authority. The Petitioner was placed into voluntary liquidation by resolution of the sole voting shareholder on 28 June 2017, and Michael Penner and Stuart Sybersma appointed as joint voluntary liquidators ("**JVLs**"). The JVLs were subsequently appointed as joint official liquidators of the Petitioner ("**JOLs**") by order of the Grand Court (the "**Court**") dated 21 July 2017.

THIS PETITION was presented by Maples and Calder, attorneys for the Petitioners, whose address for service is PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands (Ref: JSE/JRN/731670.03/60318235).

3 At all material times, Managing Partners Limited ("**MPL**"), a company incorporated in the Cayman Islands, was the investment manager and sole holder of Management Shares of DSF, as defined in DSF's Memorandum and Articles of Association as amended and restated by written resolution of the Management Shareholder of DSF dated 17 September 2013 (the "**DSF Articles**"). MPL was at all material times the investment manager to both DSF and the Petitioner.

4 At all material times prior to the appointment of JOLS (in their capacity as joint voluntary liquidators) on 28 June 2017:

4.1 MPL was the investment manager of both DSF and the Petitioner;

4.2 Mr Jeremy Leach was the sole executive director of DSF, the Petitioner and MPL.

In premise of the above, the Petitioner, DSF and MPL were under common control.

5 Until April 2016, the Petitioner was the holder of record of all of the issued Participating Shares (as defined in the DSF Articles) of DSF. No Participating Shares have been issued since the redemption of the Petitioner's shareholding described in more detail in paragraphs 29 to 33 below. The Petitioner did not receive all of DSF's net assets, which is what it was entitled to receive upon the redemption of its shares in DSF.

6 Furthermore, the Petitioner made two large cash subscriptions for shares in DSF after the purported effective date of the redemption, in a total amount of US\$950,000 (described more fully below at paragraphs 22.10 and 22.11). The Petitioner has not been issued with the shares to which it is entitled as a result of those subscriptions.

7 Since the date that the Petitioner's shares in DSF were redeemed, DSF has obtained a judgment from the Canadian courts for approximately US\$5.2m. The Petitioner has received no details in respect of the steps that are being taken enforce this judgment but, in any event, none of that amount has been paid by DSF to the Petitioner.

8 MPL holds all of DSF's non-participating Management Shares. According to article 17 of the DSF Articles, those shares confer no material economic rights upon the holder. Nevertheless MPL now, albeit incorrectly, claims that, as the holder of DSF's non-participating Management

Shares, it and not the Petitioner is the sole economic stakeholder in DSF and thus entitled to any of its residual assets, including any payment of the Canadian judgment debt.

9 Further, at the time when the Petitioner and DSF were under common control, the Petitioner made a number of loans to DSF, after its shares had been redeemed (as particularised more fully at paragraphs 35 to 40 below). The true basis for these loans remains unclear. Despite requests for repayment, these loan amounts remain unpaid.

10 In premise of the above (and as is particularised more fully below), the Petitioner is a creditor of DSF.

11 By way of general summary of this petition, the Petitioner seeks a winding up order in respect of DSF and its affairs pursuant to section 92(e) of the Companies Law on the basis that it is just and equitable that DSF be wound up, or alternatively on the basis that it is unable to pay its debts pursuant to section 92(d) of the Companies Law, for the following reasons:

11.1 Most fundamentally, the Petitioner is the true sole economic stakeholder of DSF, and the Petitioner wishes for DSF to be wound up under the supervision of the Court, including so that there might now be a proper investigation into and accounting of its affairs;

11.2 DSF has failed to distribute its total net assets to the Petitioner upon a redemption of its Participating Shares in DSF in breach of the DSF Articles and the DSF Offering Document (as defined below at paragraph 14);

11.3 DSF has failed to repay loans and other funds advanced by the Petitioner to DSF despite being payable on demand and payment having been requested;

11.4 DSF has not complied with the terms DSF Offering Document and the Companies Law with respect to the provision of true and full information regarding the state of DSF's business and financial condition and/or failure to keep or cause to be kept proper books of account which give a true and fair view of the business and financial condition of DSF, including the failure to produce audited financial statements for the years ended 2015, 2016 and 2017 and other information either requested by the Petitioner, or required to be provided under the DSF Offering Document;

- 11.5 Such conduct as summarised above and set out further below, has justifiably led the Petitioner to have lost all trust and confidence in DSF's management;
- 11.6 The conduct of DSF and its principals evidences the need for an immediate investigation into the affairs of DSF by independent liquidators.
- 12 All amounts stated in this petition are in United States Dollars unless otherwise specified. Where amounts are stated in a currency other than United States Dollars, the equivalent amount in United States Dollars as at the date of this petition is also stated.

### **Establishment**

- 13 DSF was established as an open-ended investment company on 22 October 2008. DSF was dormant from the date of incorporation until it began trading on or around 24 August 2012.

### Investment Objectives

- 14 As set out in the Offering Document dated September 2015 (the "**DSF Offering Document**"), the investment objectives of DSF were to achieve long term capital growth by investing in a portfolio of traded life policies ("**Life Policies**"). Life Policies are life assurance policies, which policyholders have sold in the secondary life insurance market in order to receive a cash payment.
- 15 The DSF Offering Document states that the investment process and methodology of DSF is as follows:

*"...The Fund purchases Life Policies or portfolios of Life Policies, specifically selected to give maximum returns to the Fund's Shareholders. This will include the ability to invest in Life Policies that are contestable, being less than two (2) years old.*

...

*An Investment Strategy Committee convenes monthly to review the current assets of the Company and to specify appropriate buying criteria. Consideration is given to, amongst other criteria, liquidity, weighting by insurance companies and purchase*

*criteria. The Investment Strategy Committee comprises the Directors, and the directors of the Manager as well as other members of the Manager's management team."*

#### Capital Structure

16 Under the DSF Articles, DSF is authorised to issue two types of shares, Management Shares and Participating Shares (as defined in the DSF Articles). DSF only issued one class of Participating Shares, being USD Growth shares.

17 Under article 17, Management Shares have the following rights:

*"a. as to voting: the holder of a Management Share shall (in respect of such Management Share) have the right to receive notice of, attend at and vote as a Member at any general meeting of the Company;*

*b. as to capital: a Management Share shall confer upon the holder the right in a winding-up to repayment of capital as set out in these Articles but shall confer no other right to participate in the profits or assets of the Company; and*

*c. as to income: no dividends shall be payable on the Management Shares." (Emphasis added)*

#### Participating Shares

18 Under article 18 of the DSF Articles, Participating Shares have the following rights:

*"a. as to voting: unless specified in the Directors' resolution creating the Participating Shares the holder of a Participating Share shall not (in respect of such Participating Share) (save for a vote in connection with the appointment or removal of the directors) have the right to receive notice of, attend at or vote as a Member of the Company at any general meeting of the Company, but may vote at a separate class meeting convened in accordance with these Articles;*

*b. as to capital: a Participating Share shall confer upon the holder thereof the rights to participate in the surplus assets of the Company after the payment of all creditors and the return of the par value of the Management Shares to the holders thereof as provided for in these Articles; and*

*c. as to income: the Participating Shares shall confer on the holders thereof the right to receive Dividends as provided for in these Articles." (Emphasis added)*

#### Directors and Management

- 19 At all material times Mr Leach was the sole executive director of DSF and the Petitioner. Mr Leach is also the sole executive director of MPL which was appointed to act as the investment manager to the Petitioner.
- 20 At all material times, the Petitioner and DSF were under common control and had the same directors, investment manager, investment advisor and administrator, all of which were under the control (indirect or direct) of Mr Leach.

#### Information Rights

- 21 As set out in the DSF Offering Document, DSF's annual financial statements are to be prepared within six months from the year end and copies are to be distributed to each investor. Copies of the audited accounts of DSF are to be made available to investors upon request.

#### **The Petitioner's Investments in DSF**

- 22 Between 15 May 2014 and 17 November 2015 the Petitioner made 11 cash "subscriptions" for Participating Shares in DSF totalling US\$8,400,000. These payments were made as follows:
- 22.1 US\$2,800,000 on or around 15 May 2014;
  - 22.2 US\$2,000,000 on or around 22 May 2014;
  - 22.3 US\$500,000 on or around 28 August 2014;
  - 22.4 US\$200,000 on or around 14 October 2014;
  - 22.5 US\$350,000 on or around 14 November 2014;
  - 22.6 US\$100,000 on or around 17 March 2015;
  - 22.7 US\$250,000 on or around 13 April 2015;
  - 22.8 US\$1,000,000 on or around 25 July 2015;

22.9 US\$250,000 on or around 17 August 2015;

22.10 US\$700,000 on or around 23 October 2015 (the "**October Subscription**"); and

22.11 US\$250,000 on or around 17 November 2015 (together with the October Subscription, the "**New Subscriptions**").

23 In addition to the subscriptions for shares set out in paragraph 22 above, on or around 6 June 2014 the Petitioner received a transfer of 59,003 Participating Shares in DSF from Traded Policies Fund ("**TPF**"), another Cayman Islands incorporated investment fund under the control of Mr Leach.

24 As at 15 December 2014, the Petitioner held all of the issued Participating Shares in DSF. From that time on the Petitioner was the only holder of Participating Shares in DSF.

#### **Policy Exchange**

25 In addition to cash subscriptions, the Petitioner contributed significant assets to DSF, including Life Policies. In or around May 2014;

25.1 the Petitioner transferred a portfolio of 30 Life Policies with a marked value of US\$10,268,299 to DSF (the "**Petitioner Policy Transfer**");

25.2 DSF transferred a portfolio of six Life Policies to the Petitioner with a marked value of US\$16,505,592 (the "**DSF Policy Transfer**"),

together, the "**Policy Exchange**".

26 Despite the marked value ascribed by the directors of DSF (which were at all material times common to the Petitioner) to the Life Policies received by TLPF as part of the DSF Policy Transfer, those Life Policies were only realised by the Petitioner for the amount of US\$4,408,096 (being 26.57% of the marked value ascribed to those Life Policies in the DSF Policy Transfer).

### **Policies transferred as part of related party redemption**

- 27 On 30 June 2016, Sovereign High Security Fund SPC, a related party investor of TLPF, redeemed its bonds and shares in TLPF in return for an in kind distribution of 13 Life Policies (the "**Sovereign Redemption**").
- 28 On 23 August 2016, TLPF transferred 15 Life Policies, at a value recorded by the directors of US\$8,001,519 to DSF, purportedly in connection with the Sovereign Redemption.

### **Redemption**

- 29 By written resolution dated 19 April 2016, the directors of DSF, who were common to the Petitioner, purported to resolve as follows (the "**Redemption Resolution**"):
- 29.1 that the redemption of the Petitioner's shares be settled in kind with the transfer of 13 Life Policies listed in a schedule thereto (the "**Redemption**"), which include policy number 70877001 in respect of a Mr Fimberg (the "**Fimberg Policy**"), such that DSF purported to discharge its obligations to its sole holder of Participating Shares by giving that shareholder only some of its assets; and
- 29.2 that the administrator of DSF would be instructed to process the Redemption with an effective date of 15 October 2015.
- 30 The New Subscriptions set out in paragraphs 22.10 and 22.11 above were made after the purported effective date of the Redemption being the date on which DSF's NAV was calculated. DSF did not issue the Petitioner the additional shares to which it was properly entitled as a result of the New Subscriptions.
- 31 On or around 19 April 2016, the Petitioner received a transfer of 12 of the 13 Life Policies listed in the Redemption Resolution with a value of approximately US\$3,382,460, being the proceeds of the eventual sale of 10 of these Life Policies by TLPF.<sup>1</sup>

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<sup>1</sup> Two of the Life Policies were transferred from TLPF as part of the Sovereign Redemption as described in paragraph 26 and 27.

32 The Petitioner received no cash proceeds, or any other non-cash assets, in respect of the Redemption. None of the Life Policies which the Petitioner had transferred to DSF as part of the Policy Transfer were received upon the Redemption.

33 To the extent that the directors of the Petitioner, who were at the material times common to those of DSF, purported to waive the Petitioner's entitlement to receive all of DSF's net assets upon redemption of the Petitioner's shares, such waiver was clearly not in the best interests of the Petitioner (and known to be such by those directors) and was at a time when the Petitioner was insolvent, in breach of the directors' fiduciary duties and therefore invalid.

#### **Sale of Fimberg policy**

34 On or around 27 January 2016, DSF sold its interest in the Fimberg Policy for US\$400,000 pursuant to a Life Settlement Purchase Agreement. The sale took place over three months after the purported effective date of the Redemption. However, the Petitioner has not received any of the proceeds from the sale (the "**Fimberg Proceeds**").

#### **Loan**

35 On 16 March 2016, the Petitioner made a loan to DSF of US\$23,000 (the "**March 2016 Loan**").

36 There is no formal documentation detailing the purpose or terms of the loan. Accordingly, the March 2016 Loan is payable on demand.

37 Demand for repayment of the March 2016 Loan was made on 21 June 2018. The March 2016 Loan has not been repaid in full or at all.

#### **Payments made on behalf of DSF**

38 Between 30 March 2016 and 24 June 2017, the Petitioner made 49 payments on behalf of DSF totalling approximately US\$457,815 (the "**DSF Advances**"). These payments related to fees including DSF management fees, DSF advisory fees, DSF valuation fees, DSF administrator fees, DSF directors' fees, DSF's legal fees and DSF trustee fees.

39 Each of the DSF Advances relate to obligations of DSF which arose after the purported effective date of the Redemption. The Petitioner was under no obligation, contractual or otherwise to make the DSF Advances.

40 The DSF Advances were (alternatively should be treated as) loans in the form of advances to DSF. The loans and their terms are undocumented. Accordingly, they are payable on demand. Demand for repayment of the DSF Advances was made on 21 June 2018. The DSF Advances have not been repaid in full or at all. Alternatively, if not loans then DSF has been unjustly enriched by the DSF Advances and is liable to repay the same to the Petitioner in any event.

### **Purported Write Offs**

41 On or about 15 July 2017, MPL and / or the directors of TLPF and DSF caused the administrator, Taurus Fund Administration, to "write off" debts totalling US\$1,523,427.97 owed by DSF to the Petitioner (the "**Write Off**").

42 The Write Off includes, amongst others, amounts owed by DSF to the Petitioner in respect of the March 2016 Loan, the DSF Advances and the Fimberg Proceeds.

43 The Write Off took place after the date that the JOLs were appointed (in their capacity as the joint voluntary liquidators) to the Petitioner and without their approval. Further, and in any event the Write Off was manifestly not in the best interests of the Petitioner. The Write Off was ineffective to release DSF from the debts referred to above at paragraph 41.

### **Alberta Claim**

44 On 19 July 2013, DSF commenced an action before the Court of Queen's Bench in Alberta, Calgary (the "**Alberta Claim**").

45 The Alberta Claim concerned the purchase by DSF of a beneficial interest in a group life insurance policy issued by 5Star Life Insurance Company (the "**Policy**"), which was subsequently rescinded.

46 The Petitioner continued to pay DSF's legal fees in respect of the Alberta Claim up until 24 June 2017, over 18 months after the purported effective date of the Redemption.

- 47 On 25 May 2018, DSF was granted judgment on the Alberta Claim (the "**Alberta Judgment**") in the amount of:
- 47.1 CAD\$6,768,633.43 (US\$5,150,775) in respect of the purchase price of the Policy (the "**Purchase Price**"),
  - 47.2 Pre-judgment interest of CAD\$103,464.77; and
  - 47.3 Costs of CAD\$18,002.47.
- 48 Pursuant to the Alberta Judgment: (i) the Lenhard Defendants (defined therein) hold the Purchase Price, and any proceeds or benefit on trust for the benefit of DSF; and (ii) DSF is entitled to a tracing and accounting of the Purchase Price and any proceeds or benefit derived by the Lenhard Defendants.
- 49 The Petitioner understands that DSF is actively taking steps to enforce the Alberta Judgment. MPL has incorrectly asserted that it is entitled to the benefits of the Alberta Judgment. In fact, The Petitioner, as the sole economic stakeholder in DSF in the circumstances set out above, is entitled to the net recoveries from the Alberta Judgment.

#### **Correspondence with DSF / MPL**

- 50 Since their appointment, the JOLs (on behalf of the Petitioner) have written to DSF and MPL (in its capacity as DSF's investment manager) on several occasions to request information relating to the matters outlined above, and to request re-payment of the Fimberg Proceeds, the March 2016 Loan, the DSF Advances and the New Subscriptions (together the "**Outstanding Debt**").

#### Particulars

- 50.1 On 9 November 2017, the JOLs wrote to MPL and queried amongst other things, the DSF Advances, the Write Off, and the Redemption.
- 50.2 On 21 December 2017, the JOLs wrote to MPL with follow-up queries, and requested copies of the 2015 financial statements, as well as copies of the 2016 and 2017 trial balances.

50.3 On 29 December 2017, MPL sent an email to the JOLs which states that no audit had been completed in respect of DSF's financial statements and that "*DSF is not a regulated mutual fund so it is not required to produce financial statements. Therefore [sic] no financial statements available.*"

50.4 On 5 January 2018, the JOLs sent an email to MPL requesting responses to the outstanding queries, including copies of the unaudited trial balances for the 2015, 2016 and 2017 financial periods.

50.5 On 30 January 2018, the JOLs wrote to DSF requesting outstanding information in respect of the matters referred to above and requesting confirmation that DSF accepted that the Petitioner remained the sole economic stakeholder in DSF.

50.6 On 21 June 2018, the JOLs wrote to DSF requesting immediate payment of the Outstanding Debt.

51 DSF has failed to provide satisfactory responses to the JOLs requests, to provide the JOLs with the requested financial information or to pay the Outstanding Debt.

52 On 11 July 2018, Stuarts Walker Hersant Humphries ("**Stuarts**") on behalf of DSF and MPL, wrote to the JOLs confirming that DSF does not accept that the Petitioner has any interest in the Alberta Claim.

## **Grounds for Petition**

### The Wishes of the Sole Economic Stakeholder

53 In the circumstances set out above, the Petitioner is the sole economic stakeholder of DSF. In this regard, the wishes of the sole economic stakeholder ought to be regarded as paramount.

54 The Petitioner wishes to see DSF wound up under the supervision of this Honourable Court, so as to enable further investigations (and if appropriate, recovery and asset tracing actions) to take place, including in connection with what has become of:

54.1 The \$27,150,633 contributed and/or loaned to DSF between 15 May 2014 and 24 June 2017 (in the form of cash in the total amount of \$8,423,000, expenses paid on behalf

of DSF totalling \$457,815, and policies with a value recorded by the directors of the Petitioner of approximately US\$18,269,818, of which only \$7,790,556 has ever been returned to the Petitioner (in the form of certain policies transferred to the Petitioner as part of the Redemption and Policy Exchange and subsequently realised for that value);

54.2 The Fimberg Proceeds; and

54.3 The proceeds (if any) of the Alberta Judgment.

#### Loss of Substratum

55 DSF was incorporated as an open-ended investment fund with the objective of achieving long term capital growth by investing in a portfolio of Life Policies. DSF has never attracted any non-related party external investors. DSF has not fulfilled, is not fulfilling, and can no longer fulfil that purpose.

56 DSF does not have sufficient liquidity to fulfil its commercial purpose, and has not done so since December 2015 at the very latest.

#### Particulars

56.1 In a letter dated 23 March 2016 from MPL Asset Management S.A, DSF's and the Petitioner's investment advisor, it is stated:

*"According to the information provided by the Manager, after forecasted expenses (including acquisition of policies and payment of premiums for the next two months), the Fund is forecasted to have a liquidity shortfall of US\$1,883,822.06."*

56.2 In a letter from Stuarts, attorneys for the DSF, dated 11 July 2018 it is stated that by December 2015:

*"DSF had become reliant on subscriptions from TLPF or Life Policy asset sales to generate liquidity to service periodic premium costs of Life Policy assets, which had become an unsustainable situation."*

- 57 DSF purportedly distributed its portfolio of Life Policies as part of the Redemption and claims not to hold any Life Policies. DSF currently has no meaningful investment strategy or commercial purpose.

Particulars

- 57.1 A letter from Stuarts dated 11 July 2018 on behalf of DSF states that:

*"As the assets of DSF were transferred to [the Petitioner], the NAV of DSF became minimal, meaning that some service provider fees such as management fees which were charged as a percentage of the asset value reduced significantly...The Investment advisor agreement was terminated as DSF no longer required that service. Due to the relative inactivity of DSF following the redemption, the need for monthly investment strategy meetings was removed..."*

- 58 DSF does not, and cannot (and in fact, never did), operate in a way which is consistent with the terms of the DSF Offering Document. It would not have been in the reasonable contemplation of any investor, based on the DSF Offering Document that the investment manager and the directors of DSF would continue to manage DSF in the present circumstances.

Justifiable lack of trust and confidence in management and need to investigate DSF's affairs

- 59 The Petitioner has justifiably lost any trust in DSF's management and believes there is a need to investigate DSF's affairs based on matters set out in paragraphs 22 to 49 above. In particular:

59.1 DSF failed to provide the Petitioner with all of DSF's net assets to which the Petitioner was entitled upon the Redemption, and sought to rely on the purported back dating of the Redemption to October 2015 when calculating the value of the Petitioner's entitlement;

59.2 DSF has failed to provide the Petitioner with the annual financial statements for the 2015 financial year in breach of the DSF Offering Document, or to provide the JOLs with the requested information relating to the Petitioner's interests in DSF;

- 59.3 DSF has failed to account adequately or at all for the very large and unexplained gap between the US\$27,150,633 in value recorded by the directors contributed and/or loaned by the Petitioner to DSF and the mere US\$7,790,556 which it received from eventual realisations from the policies received from the Policy Exchange and upon the Redemption;
- 59.4 DSF and / or MPL has failed to account adequately or at all for the transfer of Life Policies with a value recorded by the directors of US\$8,001,519 to DSF purportedly in connection with the Sovereign Redemption;
- 59.5 The directors and / or MPL purported to write off of debts owed by DSF to the Petitioner, which arose after the appointment of the JOLs and without their approval, totally US\$1,523,427.97, which debts remain due and payable and have not been paid;
- 59.6 MPL, being the sole holder of non-economic Management Shares, asserts that it has, through a series of transactions orchestrated by Mr Leach (who was at all material times the sole executive director of MPL, DSF and the Petitioner and remains the so with respect to DSF and MPL), resulted as the only party entitled to benefit from the Alberta Judgment (and any other assets which might be held by DSF).

60 In the circumstances outlined above, it is just and equitable to wind up DSF and to place it under the control of independent official liquidators, in order to (a) ensure that its affairs are properly and promptly wound up, so that its remaining assets may be properly administered and returned to its true economic stakeholder(s); (b) prevent further mismanagement of DSF by its directors and MPL (including dealings with its affairs for the benefit of Mr Leach and his affiliates, rather than for the benefit of TLPF as the true sole economic stakeholders in DSF); and (c) facilitate an independent investigation into DSF's affairs, as well as recovery and asset tracing actions, to the extent that is appropriate.

DSF is unable to pay its debts

61 Paragraphs 22.10, 22.11, 34, 35 to 37, 38 to 40 above are repeated. The Petitioner, via the JOLs, made a formal demand for payment of these amounts owing by the DSF to the Petitioner on 21 June 2018. DSF and MPL have disputed the existence of the debt, however, the JOLs do not accept the basis relied upon by DSF to dispute the debt (nor is DSF's position supported

by contemporaneous documentation). In the circumstances, the JOLs insist that these amounts are due and payable, and have not yet been repaid by DSF.

### **Nomination of Joint Official Liquidators**

62 The Petitioner nominates Michael Penner and Michael Green of Deloitte & Touche, Citrus Grove Building, Goring Avenue, PO Box 1787, Grand Cayman, KY1-1109 for appointment as joint official liquidators of DSF.

### **YOUR PETITIONER THEREFORE HUMBL Y PRAYS THAT:**

- (1) DSF be wound up in pursuant to section 92(e), or alternatively pursuant to section 92(d), of the Companies Law.
- (2) Michael Penner and Michael Green of Deloitte & Touche, Citrus Grove Building, Goring Avenue, PO Box 1787, Grand Cayman, KY1-1109 be appointed as the joint official liquidators of the Company ("**Liquidators**").
- (3) The Liquidators shall not be required to give security for their appointment.
- (4) The Liquidators shall have the power to act jointly and severally in their capacity as Liquidators of DSF.
- (5) No disposition of DSF's property by or with the authority of the Liquidators in carrying out their duties and functions and exercise of their powers under any Order granted pursuant to this Petition shall be voided by virtue of section 99 of the Companies Law.
- (6) The Liquidators shall have the power to engage staff (whether or not as employees of the company) to assist that person in the performance of that person's functions.
- (7) The Liquidators be at liberty to appoint counsel, attorneys and 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 Companies Winding Up Rules, O.25.

- (8) The Liquidators be at liberty to bring or defend any action or other legal proceeding in the name and on behalf of DSF in Canada (or in any other appropriate jurisdiction) for the purpose of pursuing and making recoveries in connection with the Alberta Claim.
- (9) The Liquidators be at liberty to apply generally.
- (10) The costs of the Petitioner of and incidental to the Petition be paid out of the assets of DSF as an expense of the liquidation.
- (11) Such further or other relief be granted as the Court deems appropriate.

AND your Petitioner will ever pray etc.

Dated the 5th day of May 2020.

*Maples and Calder.*

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**Maples and Calder**

**NOTE:** This Petition is intended to be served on DSF at its registered office.

**NOTICE OF HEARING**

TAKE NOTICE THAT the hearing of this petition will take place at the Law Courts, George Town, Grand Cayman, on June 30<sup>th</sup> 2020 at 10:00 [~~am~~/~~pm~~].

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, Grand Cayman, KY1-1106, telephone +1 345 949 4296.