

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION



CAUSE NO: FSD 93 OF 2020 (IKJ)

IN THE MATTER OF THE COMPANIES LAW (2020 REVISION)  
AND IN THE MATTER OF OBELISK CAPITAL MANAGEMENT LIMITED



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WINDING UP PETITION

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**To the Grand Court**

The humble petition of Aleksandar Pausak and Suzanne Symonds (the **Petitioners**) c/o Appleby (Cayman) Ltd. shows that:

1. The Petitioners present this petition for the winding up of Obelisk Capital Management Limited (the **Company**) and the appointment of Russell Smith and Declan Magennis of BDO CRI (Cayman) Ltd as joint official liquidators.
2. The Company is an exempt company registered pursuant to the Companies Law (2020 Revision) (the **Companies Law**). It was incorporated on 12 June 2013 with registration number 278504. The registered office of the Company is One Capital Place, 3<sup>rd</sup> Floor, George Town PO Box 1564 Cayman Islands.
3. The Petitioners are creditors of the Company and seek the winding up of the Company on the basis that the Company is unable to pay its debts.

**The business of the Company**

4. The Company promotes itself as being an investment management company offering investment opportunities and fund management services. The Company purports to have a particular focus on finance investments linked to gold production referred to as "gold streaming" investments. The Company promotes these investment opportunities in the Cayman Islands and is believed to operate elsewhere including in Hong Kong. The Company refers to the website obeliskglobal.com (**Obelisk Website**) in its promotional material.
5. The Company is connected to Obelisk Global Fund SPC, a Cayman Islands registered mutual fund which is regulated by CIMA (**Obelisk Fund**). The Obelisk Fund is referred to on the Obelisk Website. It is believed that the Company provides investment management services to

the Obelisk Fund. However, the exact relationship between the Company and the Obelisk Fund is uncertain.

### **The Debt**

6. The Company is indebted to the Petitioners in the sum of US\$448,333.24 as at the date of this Petition pursuant to an investment agreement (**Investment Agreement**) entered into on 27 June 2019 (the **Debt**).
7. Under the terms of the Investment Agreement:
  - 7.1 the Petitioners loaned the Company US\$250,000 (**Principal**);
  - 7.2 the Principal was to be used by the Company to purchase 60kg of gold dore (**Gold Dore**) from a gold producer called Brothers International (UK) Ltd (**Brothers**);
  - 7.3 the Gold Dore was to be delivered to a refinery to be processed and the Company hoped to profit on the difference in value between the Gold Dore and the refined gold;
  - 7.4 the Company was to pay interest of US\$25,000 to the Petitioners per month, being 10% of the Principal until the Principal was repaid;
  - 7.5 the Company agreed there could be no proper basis for not repaying the Principal and unpaid interest, including any reason related to a delay in the delivery of the Gold Dore. Accordingly, the Company is contractually barred from raising any defences to dispute the debt.
8. The Investment Agreement was executed on behalf of the Company by Matthew Ho as a director of the Company.
9. The Company made a payment of US\$25,000 on 5 August 2019 relating to the interest for the month of July 2019. The Company made a further payment of US\$27,500 on 8 October 2019 relating to the interest for the month of September 2019 and including a related late payment fee. The Company has made no other interest payments.
10. The Petitioners have made application to the Company for payment of the Debt, but the Company has failed and neglected to pay or satisfy the same or any part thereof since the interest payment made on 8 October 2019.
11. On 6 February 2020, a statutory demand (**Statutory Demand**) in the form prescribed by the Companies Winding Up Rules, 2018 (the **CWR**) was served on the Company at its registered office demanding payment.

12. Pursuant to CWR Order 2, rule 2(6), the Statutory Demand included a statement that if payment was not made within 21 days of the date upon which it was served on the Company, the Company would be deemed to be insolvent and a winding up petition may be presented against the Company in accordance with section 92(d) of the Companies Law.
13. To date, the Debt has not been repaid. Accordingly, the Debt remains outstanding in full as of the date of presentation of this Petition.

### **Serious wrongdoing**

14. In response to the Petitioners previous demands for payment, the Company has put forward a series of contradictory and inconsistent statements many of which have transpired to be to have been false. In particular:
  - 14.1 on 18 September 2019, Jay Jones of the Company claimed that the August interest payment had been transferred to Petitioners' bank account. The payment did not arrive. On 23 September 2019 a review of the purported wire transfer confirmation by the Petitioners showed that the Company had entered incorrect account information such that the payment was returned to the Company;
  - 14.2 on 30 September 2019, Mr Jones again claimed that the August interest payment had been transferred to the Petitioners' account bank account. Again, the payment did not arrive. No satisfactory explanation was provided by Mr Jones as to why the payment did not arrive and the August interest payment remains outstanding;
  - 14.3 on 10 October 2019, notwithstanding that the Investment Agreement expressly provides that the Company's obligations to pay interest are not excused in any case including a delay in the delivery of the Gold Dore, Mr Jones referred to problems caused by delays in the Gold Dore clearing customs;
  - 14.4 between 10 October and 10 December 2019, the Company sent the Petitioners numerous communications regarding the alleged delays of the delivery of the Gold Dore to the refinery in Hong Kong. Those delays were variously blamed on issues with customs; pro-democracy protests in Hong Kong; elections in Hong Kong; and "*administrative delays*";
  - 14.5 on 30 December 2019, Mr Chang forwarded document purporting to be an email from a Simon Mears at Brothers claiming that Brothers would make payment to the Company of US\$540,000 in the coming days and suggesting that the Petitioners would be paid at that time;
  - 14.6 on 10 January 2020, Mr Chang sent an email to the Petitioners stating that the payment had been sent by Brothers; and

- 14.7 on 21 January 2020, Mr Chang sent an email to the Petitioners stating that Brothers had not in fact been paid themselves and that no payments had been sent to the Company.
15. In the light of the inconsistent and contradictory position put forward by the Company, the Petitioners have very real concerns that some serious wrongdoing underlies the Company's failure to repay the Debt. Indeed, the Petitioners now believe that the Investment Agreement is simply part of a fraudulent scam and that the Company never had any intention of repaying the Debt.
16. By reasons of the aforesaid:
- 16.1 the Debt is acknowledged by the Company to have been owed;
  - 16.2 a Statutory Demand for the Debt was not paid or compounded within 21 Days;
  - 16.3 there is no *bona fide* dispute as to the existence of the Debt;
  - 16.4 further and in the alternative, the Company has promoted an "investment opportunity" to residents of the Cayman Islands which appears to have been a fraudulent scam and which has caused investors to suffer significant losses; and
  - 16.5 allowing the Company to continue to operate creates a continued risk that further investors will make investments and will suffer further losses.
17. Based on the Company's failure to satisfy the Statutory Demand or otherwise make arrangements for the payment of the Debt, the Company is deemed to be unable to pay its debt and is liable to be wound up. Further and in the alternative, it is just and equitable that the Company should be wound up.
18. The proposed liquidators, Russell Smith and Declan Magennis, have undertaken due conflicts checks and diligence in relation to the Company and meet the residency, eligibility and insurance requirements of the Insolvency Practitioners Regulations, 2018. Russell Smith and Declan Magennis also consent to their appointment as joint official liquidators.

**YOUR PETITIONERS THEREFORE HUMBLY PRAYS THAT:**

- (1) The Company be wound up in accordance with the Companies Law.
- (2) Russell Smith and Declan Magennis be appointed as joint official liquidators of the Company (the **JOLs**).
- (3) The JOLs shall not be required to give security for their appointment.

- (4) The JOLs have the power to act jointly and severally in their capacity as liquidators of the Company.
- (5) 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 in any other relevant jurisdiction and to make applications to the courts of such jurisdictions for that purpose.
- (6) The JOLs be authorised to exercise any of the powers listed in Parts I and II of Schedule 3 to the Companies Law and section 110(2) thereof, without further sanction or intervention of the Court.
- (7) The JOLs be authorised to do any act or thing considered by them to be necessary or desirable in connection with the liquidation of the Company and the winding up of its affairs in the Cayman Islands or elsewhere.
- (8) 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 CWR Order 25 and on such terms as they may think fit and to remunerate them out of the assets of the Company.
- (9) No disposition of the Company's property by or with the authority of the JOLs in carrying out their duties and function and exercise of their powers under this Order shall be voided by virtue of section 99 of the Companies Law.
- (10) Subject to section 109(2) of the Companies Law and the Insolvency Practitioner's Regulations, 2018, the JOLs be authorised to render and pay invoices out of the assets of the Company for their own remuneration.
- (11) 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 Company as an expense of the liquidation.
- (12) The Petitioners' costs shall be paid out of the assets of the Company as an expense of the liquidation, such costs to be taxed if not agreed with the JOLs.
- (13) Such further or other relief be granted as the Court deems appropriate.

Dated this 28th day of April, 2020

Filed this <sup>12<sup>th</sup> May</sup> day of April, 2020

*Appleby (Cayman) Ltd.*

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**Appleby (Cayman) Ltd.**  
Attorneys-at-Law for the Petitioners

**TIME ESTIMATE:** The estimated length of the hearing of this Petition is a half day.

This Petition is presented by Appleby (Cayman) Ltd, Attorneys-at-Law for the Petitioners, whose address for service is 71 Fort Street, PO Box 190 GT, Grand Cayman, KY1-1104, Cayman Islands.

**NOTICE OF HEARING**

**TAKE NOTICE THAT** the hearing of this Petition will take place at the Law Courts, George Town, Grand Cayman on *26<sup>th</sup> June* at *9:00am/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 no. 345 949 4296.**