

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION



CAUSE NO: FSD 99 OF 2020 ()

IN THE MATTER OF SECTION 124 OF THE COMPANIES LAW (2020 REVISION)

AND

IN THE MATTER OF ATLANTIS ADVENTURES (CAYMAN) LTD. (IN VOLUNTARY LIQUIDATION)



PETITION



To The Grand Court of the Cayman Islands (the "**Court**")

The humble petition of Christopher James Smith and Martin Nicholas John Trott of R&H Restructuring (Cayman) Ltd., Windward 1, Regatta Office Park, PO Box 897, Grand Cayman KY1-1103, Cayman Islands (the "**Petitioners**"), shows that:

Particulars of Incorporation

1. Atlantis Adventures (Cayman) Ltd. (in Voluntary Liquidation) (the "**Company**") is an exempted company with limited liability incorporated on 29 October 1998 and organised pursuant to the Companies Law of the Cayman Islands (as revised). The registration number of the Company issued by the Registrar of Companies (the "**ROC**") is 85563.
2. The registered office of the Company is currently at The R&H Trust Co. Ltd., PO Box 897, Windward 1, Regatta Office Park, West Bay Road, Grand Cayman KY1-1103, Cayman Islands.
3. The Memorandum and Articles of Association (the "**Articles**") provided to the Petitioners by the Company were amended and restated as of 18 December 2012. The objects for which the Company was established are unrestricted.
4. The Company has an authorised share capital of US\$48,000.00 divided into 48,000 ordinary shares (which were formerly known as Class B shares and converted to ordinary shares) of US\$1.00 par value each (the "**Shares**"). The Shares in issue by the Company are held 90% by Atlantis Submarines (Caribbean) Limited and 10% by Vassel Johnson, (together the "**Shareholders**").

The Business of the Company

5. Prior to the commencement of the voluntary liquidation, the Company operated a passenger submarine dive experience and retail premises located in central George Town, Cayman Islands, targeted primarily at the tourist market.

Commencement of the Voluntary Liquidation of the Company

6. On 16 April 2020, the directors of the Company (the "**Directors**") passed written resolutions recommending to the Shareholders that:
- (a) the Company be wound up voluntarily; and
 - (b) the Petitioners be appointed as joint voluntary liquidators of the Company (the "**Directors' Resolutions**").

7. Section 116(c) of the Companies Law (2013 Revision) (the "**Law**") provides as follows:

"A company incorporated and registered under this Law [...] may be wound up voluntarily –

[...]

(c) if the company resolves by special resolution that it be wound up voluntarily;"

8. A "*special resolution*" is defined in Article 2 of the Articles as:

"a resolution of which not less than twenty-one days' notice specifying the intention to propose the resolution as a Special Resolution has been duly given passed at a general meeting of the Company by a majority of three-fourths of the Members registered in the Register entitled to vote, whether present in person or by proxy at the meeting or not at the meeting or a written resolution signed by all such Members pursuant to Article 70 of these Articles and otherwise in accordance with the Law"

9. Article 70 of the Articles provides as follows:

"Subject and without prejudice to the provisions of the Law, a resolution, whether ordinary or special, in writing, signed by all Members for the time being entitled to receive notice of and to attend and vote at general meetings (or being corporations by their duly authorised representatives) shall be as valid and effective as if the same has been passed at a general meeting of the Company duly convened and held, and becomes effective on the date of the last signature."

10. As at 16 April 2020:

- (a) the Shareholders together hold 100% of the Shares; and
- (b) in their capacity as shareholders of the Shares, the Shareholders executed written resolutions that resolved by special resolution that:
 - (i) the Company be wound up voluntarily; and
 - (ii) the Petitioners be appointed as joint voluntary liquidators of the Company.

11. In the circumstances:
 - (a) the Company duly resolved by special resolution that it be wound up voluntarily pursuant to section 116(c) of the Law; and
 - (b) the voluntary winding up of the Company is deemed to have commenced on 16 April 2020 pursuant to section 117(1)(a) of the Law.
12. The statutory notice of winding up and the Petitioners' consents to act as the joint voluntary liquidators of the Company were filed with the ROC 17 April 2020 in accordance with sections 123(1)(a) and 123(1)(b) of the Law and Order 13, rules 2(a) and 2(b) of the Companies Winding Up Rules 2008 (as amended) (the "**CWR**"). Accordingly, the Petitioners' appointment took effect from 17 April 2020 pursuant to section 119(3) of the Law and Order 13, rule 3(2) of the CWR.

Declaration of Solvency

13. As at the date of this Petition, the Petitioners have not received a sworn declaration of solvency from either of the Directors in the form required by section 124(2) of the Law and Order 14, rule 1 of the CWR (a "**Declaration of Solvency**") (or at all), nor, to the best of the knowledge of the Petitioners, have any of the Directors filed, or intend to file, an executed Declaration of Solvency with the ROC in accordance with section 123(1)(c) of the Law and Order 13, rule 2(2) of the CWR.
14. As set out at pages 36 to 38 of Exhibit CS-1 to the First Affidavit of Christopher James Smith, the Directors have both confirmed to the Petitioners that they will not be swearing a Declaration of Solvency with respect to the Company.

Requirement for Court Supervision

15. The Petitioners are required under section 124(1) of the Law to present a petition seeking that the winding up of the Company continue under the supervision of the Court if a Declaration of Solvency executed by all of the Directors is not provided within 28 days of the commencement of the voluntary liquidation.
16. The Directors have confirmed that they are not willing to swear a Declaration of Solvency. Accordingly, in the circumstances, the Petitioners consider it prudent to now seek that the winding up of the Company continue under the supervision of the Court prior to the expiration of the 28-day period.

Consent to Appointment as Joint Official Liquidators

17. Christopher James Smith is a qualified insolvency practitioner (as that term is defined in section 89 of the Law) and consents to his appointment as a joint official liquidator of the Company.
18. Martin Nicholas John Trott is a qualified insolvency practitioner (as that term is defined in section 89 of the Law) and consents to his appointment as a joint official liquidator of the Company.

Your Petitioners therefore humbly pray that:

1. The liquidation of the Company continue under the supervision of the Court pursuant to section 124(1) of the Law.
2. Christopher James Smith and Martin Nicholas John Trott of R&H Restructuring (Cayman) Ltd., Windward 1, Regatta Office Park, PO Box 897, Grand Cayman KY1-1103, Cayman Islands be appointed as joint official liquidators of the Company (the "JOLs").
3. The JOLs have the power to act jointly and severally.
4. The JOLs shall not be required to give security for their appointment.
5. The JOLs be authorised to engage staff (whether or not as employees of the Company) to assist them in the performance of their functions.
6. The JOLs be authorised to engage attorneys and other professionally qualified persons to assist them in the performance of their functions.
7. The JOLs be authorised to dispose of any property of the company to a person who is or was related to the Company.
8. The JOLs be authorised to sell any of the Company's property by public auction or private contract with power to transfer the whole of it to any person or to sell the same in parcels.
9. The JOLs be authorised to make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim (present or future, certain or contingent, ascertained or sounding only in damages) against the company or for which the company may be rendered liable.
10. The JOLs be authorised to compromise on such terms as may be agreed all debts and liabilities capable of resulting in debts, and all claims (present or future, certain or contingent, ascertained or sounding only in damages) subsisting, or supposed to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company
11. The JOLs' remuneration and expenses be paid out of the assets of the Company in accordance with section 109 of the Law, the Insolvency Practitioners' Regulations 2018 (as amended) and Order 20 of the CWR.
12. The JOLs be at liberty to meet all disbursements reasonably incurred with the performance of their functions.
13. The JOLs be at liberty to and do pay their agents, employees, attorneys, solicitors and whomsoever else they may employ or instruct, remuneration and costs, 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 expenses of the winding up.

14. No suit, action or other proceedings, including criminal proceedings, shall be proceeded with or commenced against the Company except with leave of the Court pursuant to section 97 of the Law.
15. No disposition of the Company's property by or with the authority of the JOLs in carrying out their duties and functions and the exercise of their powers shall be avoided by virtue of section 99 of the Law.
16. The Petitioners' costs of and incidental to this Petition be paid from the assets of the Company on the indemnity basis, as an expense of the liquidation.
17. Such further or other orders or directions as the Court thinks fit.

AND your Petitioners will ever pray etc.

DATED the 15th day of May 2020

FILED the 19th day of May 2020

Walkers

WALKERS

Attorneys-at-Law for the Petitioners

NOTE: This Petition will be served in accordance with any order of the Court requiring the Petitioners to do so.

TAKE NOTICE THAT the hearing of this Petition will take place at the Law Courts, George Town, Grand Cayman, Cayman Islands on the day of 2020 at

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 P.O. Box 495, Grand Cayman KY1-1106, telephone 345 949 4296.

This Petition was presented by Walkers, Attorneys-at-Law for the Petitioners, whose address for service is care of their said Attorneys at 190 Elgin Avenue, George Town, Grand Cayman KY1-9001, Cayman Islands.