

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

FSD CAUSE NO: OF 2020 ( )

IN THE MATTER OF SECTIONS 224 AND 225 OF THE COMPANIES LAW (2020 REVISION)

AND IN THE MATTER OF HORIZONTE OPPORTUNITIES FUND SPC

PETITION



TO THE GRAND COURT:

The humble petition of Horizonte Opportunities Fund SPC of PO Box 10085 3rd Floor, Zephyr House, 122 Mary Street, George Town, Grand Cayman KY1-1001, Cayman Islands (the "**Petitioner**") shows that:

Introduction

1. The directors of the Petitioner seek the appointment of receivers over the segregated portfolios of the Petitioner ("**Petitioner**") known as:
  - (a) Horizonte Opportunities Fund SPC – SP III ("**SPIII**"); and
  - (b) Horizonte Opportunities Fund SPC – SP VI ("**SPVI**"),(together "**the Portfolios**"), pursuant to section 224 and 225 of the Companies Law (2020 Revision) ("**the Companies Law**").
2. The Petitioner seeks the appointment of receivers over the Portfolios on the grounds that the assets of the Portfolios are insufficient to discharge the claims of the creditors of the respective Portfolios and that the appointment of receivers will enable the orderly wind down of the Portfolios and the distribution of each of the Portfolios to those entitled to have recourse to them.
3. In addition to the Portfolios, the Petitioner has two other segregated portfolios called 'Segregated Portfolio I' ("**SPI**") and 'Segregated Portfolio IX' ("**SPIX**"). SPI is solvent in that it can pay its debts and its assets exceed its liabilities. SPIX has yet to be launched. The Petitioner is not, by this Petition, seeking to appoint receivers over SPI or SPIX.
4. The values of the monetary sums in this Petition are accurate as at 8 June 2020. As at the date of this Petition, there have not been any material changes to these amounts. All conversions from Swiss Francs ("**CHF**") to United States Dollars ("**US\$**") have been calculated using an online currency converter as at 8 June 2020. The Petitioner knows of no change in circumstances that would render the sums provided in this Petition as materially different as at today.

## **The Petitioner**

5. The Petitioner is an exempted limited liability company that was incorporated as a segregated portfolio company on 19 January 2015 pursuant to Part XIV of the Companies Law 2004 Revision, with registration number 295802 and it was registered and remains registered with the Cayman Islands Monetary Authority ("**CIMA**") as a mutual fund under section 4(3) of the Mutual Funds Law, with CIMA registration number 1303153.
6. The registered office of the Petitioner is c/o Apex Fund Services (Cayman) Ltd. situated at PO Box 10085, 3rd Floor, Zephyr House, 122 Mary Street, George Town, Grand Cayman KY1-1001, Cayman Islands.
7. The directors of the Petitioner are Kanyal Vikrant Vijay and Mahmad Tahleb Rujub ("**the Directors**").
8. The memorandum and articles of association of the Petitioner dated 19 January 2015 ("**the Articles**") show that (i) the objects for which the Petitioner was established are unrestricted; (ii) the Petitioner has full power and authority to exercise all the functions of a natural person of full capacity; and (iii) the authorised share capital of the Petitioner is US\$50,000 divided into 100 management shares of a par value of US\$1.00 each and 4,990,000 portfolios shares of a par value of US\$0.01. The Petitioner's management shares are held by Horizon Lites Enterprises Ltd.
9. The Petitioner's Confidential Offering Memorandum Petitioner dated June 2016 identifies the Petitioner as an investment fund, operating as an investment platform with various segregated portfolios to be managed separately and with each operating its own investment strategy as set out in the relevant portfolio supplements.
10. The Petitioner's administrator is Apex Corporate Services Limited, the Administrator's Agent is Apex Fund Services (Mauritius) Ltd and its auditors are BDO Cayman Ltd.

## **The General Assets and Liabilities of the Petitioner**

### **General Assets**

11. The Petitioner's general assets ("**the General Assets**") comprise of cash in the amount of CHF5,836 (US\$6,096). The Petitioner uses the General Assets to discharge certain operating expenses that are not attributable to any specific segregated portfolio of the Petitioner.

## Liabilities

12. The Petitioner has general liabilities of US\$6,026 arising out of outstanding invoices payable to Aranca UK Ltd for investment reporting services provided to the Petitioner. The Petitioner has no other liabilities.
13. The General Assets are sufficient to discharge the liabilities of the Petitioner.

## The Portfolios: Operational Environment

14. The Petitioner established SPIII by resolution of the Directors dated 9 March 2015 and its supplemental offering document is dated July 2016 ("**the SPIII PPM**"). Pursuant to the terms of the SPIII PPM, SPIII offered shares attributable to SPIII at a subscription price of US\$1,000 per share with a minimal initial subscription amount for shares of US\$100,000. SPIII borrowed securities from SPVI, placed these securities in an account pledged in favour of a Swiss Bank called Falcon Private Bank ("**Falcon**"), and provided the capital to SPVI, for SPVI to use to make investments.
15. The Petitioner established SPVI by resolution of the Directors dated 4 May 2017 and its supplemental offering document is dated 4 May 2017 ("**the SPVI PPM**"). Pursuant to the terms of the SPVI PPM, SPVI offered shares attributable to SPVI at a subscription price of US\$1,000 per share with a minimal initial subscription amount for shares of US\$100,000. SPVI made investments by entering into Sale and Repurchase Agreements ("**SRA's**") with certain counterparties. SPVI either placed the purchased shares in an account pledged in favour of a Swiss Bank called Reyl & Cie SA ("**Reyl**"), or it loaned the shares to SPIII and used the proceeds to make further investments.
16. The SRAs relied on the performance of stocks in various listed Indonesian companies. Accordingly, while the assets and liabilities of both Portfolios have at all times been segregated, the financial performance of both of the Portfolios was and is largely dependent on the Indonesian stocks in which SPVI invested and also the exchange rate between the Swiss Franc (CHF) and the Indonesian Rupiah (IDR), which change daily and are subject to significant price fluctuations.
17. The below table is compiled using data taken from Bloomberg and provides examples of the change in stock prices on the Indonesian Stock Exchange from 1 November 2019 to 8 June 2020. As is apparent from the table, there has been significant volatility in share prices over this period with some shares being suspended altogether. As a result of the downward movement of stock prices and the depreciation of IDR against the CHF, the Portfolios will no longer be able to meet their financial obligations.

Stock/Index	Company	Share Price at 01.11.19	Share Price at 08.06.20	Change
MYRX	PT Hanson International Tbk	IDR 91	Suspended	Suspended
RIMO	PT Rimo International Lestari Tbk	IDR 123	Suspended	Suspended
BTEK	PT Bumi Teknokultura Unggul Tbk	IDR 77	50	-35%
NATO	PT Nusantara Properti International Tbk	IDR 830	374	-55%
ZINC	PT Kapuas Prima Coal Tbk	IDR 392	169	-57%
JCI Index	Jakarta Stock Exchange Composite Index	6,207	5070.561	-18%

### **SPIII: Liabilities and Assets**

#### **Liabilities**

18. SPIII is the sole shareholder of Turquesa Agua Capital Limited, a company registered under the laws of Mauritius ("**TACL**"). TACL has a pledged account with Falcon. On 3 March 2014, TACL entered into a collateral credit facility with Falcon. Pursuant to the terms of the credit facility, Falcon agreed to lend to TACL the sum of CHF24,000,000 (US\$25,056,000) ("**the Falcon Loan**").
19. Pursuant to an understanding between SPIII and SPVI agreed to by the Directors which requires the return of these shares on demand, SPIII borrowed the following shares from SPVI and placed them into a pledged account held with Falcon Bank as collateral for the Falcon Loan ("**the Collateral**"):
  - (a) 494,846,200 shares in Kapuas Prima Coal Tbk PT ("**ZINC**" and the "**ZINC Falcon Shares**") valued at CHF5,754,427 (US\$6,011,017); and
  - (b) 87,133,344 shares in Nusantara Properti International Tbk PT ("**NATO**" and the "**NATO Falcon Shares**"), valued at CHF2,242,338 (US\$2,342,324).
20. The Directors held a meeting with representatives from Falcon in Zurich on or around 22 January 2020 and, following a subsequent telephone call with representatives of Falcon on 31 January 2020, Falcon sent TACL a close-out notice dated 31 January 2020 threatening to sell some of the Collateral. Subsequent to this, Falcon offered TACL more time to repay before insisting the repayment of the Falcon Loan should be made on or before 30 April 2020.
21. The Falcon Loan has not been repaid and TACL therefore owes Falcon approximately CHF9,627,881 (US\$10,057,188). TACL has no money or other assets, realisable or otherwise, to repay the Falcon Loan, which means that the Collateral is in jeopardy.

22. Given that SPIII borrowed the shares that make up the Collateral from SPVI ("**the SPVI Shares**"), and given that the Collateral is pledged in favour of Falcon as security for the Falcon Loan, then if SPVI demands the return of the SPVI Shares, SPIII will not be able to return them and will be liable to SPVI in an amount equal to the value of the SPVI Shares. Although, at this stage, SPVI has not demanded return of the SPVI Shares, there is a real prospect that SPVI could make that demand at any time thereby creating an actual liability in SPVI's favour in an amount equal to the value of the SPVI Shares. Accordingly, this liability is a prospective liability on SPIII's balance sheet.

### **Assets**

23. SPIII transferred the money that it received pursuant to the Falcon Loan to SPVI by way of a series of loans. Accordingly, SPIII's assets are comprised of its loans to SPVI which, as at 8 June 2020, have a value of CHF9,627,881 (US\$10,057,188). As more fully set out below, SPVI is insolvent and is not, therefore, able to repay these loans. SPIII is therefore clearly insolvent when account is taken of the prospective liability owing to SPVI and its asset position.

### **SPVI: Assets and Liabilities**

#### **Liabilities**

24. On 8 June 2017, SPVI entered into a collateral credit facility with Reyl and a United Arab Emirates company called Reyl Finance (MEA) Ltd, pursuant to which Reyl agreed to lend to SPVI the sum of US\$27,000,000 (the "**Reyl Loan**"). The Reyl Loan is secured against the following shares, held by SPVI:
- (a) 1,784,404,888 shares in PT Bumi Teknokultura Unggul Tbk ("**BTEK**"), valued at CHF3,069,577 (US\$3,206,450) (the "**BTEK Reyl Shares**");
  - (b) 4,769,888,939 shares in PT Rimo International Lestari Tbk ("**RIMO**"), valued at CHF8,205,281 (US\$8,571,154) (the "**RIMO Reyl Shares**");
  - (c) 2,964,295,856 shares in PT Hanson International Tbk ("**MYRX**"), valued at CHF5,099,255 (US\$5,326,631) (the "**MYRX Reyl Shares**");
  - (d) 1,180,173,220 shares in ZINC, valued at CHF13,723,903 (US\$14,335,852) (the "**ZINC Reyl Shares**"); and
  - (e) 773,621,642 shares in NATO, valued at CHF19,908,814 (US\$20,796,548) (the "**NATO Reyl Shares**").

25. SPVI does not have sufficient liquid assets to make repayments due under the Reyl Loan and remains unable to pay the interest that was due on the Reyl Loan by 31 March 2020. As a result of a failure to pay interest on the Reyl Loan by 31 March 2020, on 17 April 2020, Reyl sent a letter to SPVI demanding repayment of the Reyl Loan with interest, amounting to CHF36,183,595 (US\$37,205,056), by close of business on that date. As at the date of this Petition, SPVI owes Reyl CHF35,809,548 (US\$37,406,296). SPVI does not have sufficient liquidity to meet this liability.

## **Assets**

26. SPVI has the following assets:
- (a) Cash assets of CHF 181,401 (US\$189,490);
  - (b) The RIMO Reyl Shares. These shares are not currently realisable because RIMO is suspended from trading its shares, and the shares are also charged in favour of Reyl as security for the Reyl Loan;
  - (c) The BTEK Reyl Shares. These shares are not currently realisable, they have low market liquidity and they are charged in favour of Reyl as security for the Reyl Loan;
  - (d) The MYRX Reyl Shares. These shares are not currently realisable because MYRX is suspended from trading its shares and the shares are also charged in favour of Reyl as security for the Reyl Loan;
  - (e) The ZINC Falcon Shares. These shares cannot be realised because of the reasons set out in paragraph 26(j) below and because they are also charged in favour to Falcon as security for the Falcon Loan;
  - (f) The ZINC Reyl Shares. These shares cannot be realised because of the of the reasons set out in paragraph 26(j) below and because they are also charged in favour of Reyl as security for the Reyl Loan;
  - (g) The NATO Falcon Shares. The value of these shares cannot be realised because they are charged to Falcon as security for the Falcon Loan;
  - (h) The NATO Reyl Shares. The value of these shares cannot be realised because they are charged to Reyl as security for the Reyl Loan;

- (i) 423,724,500 shares in MYRX held at Samuel Sekuritas Indonesia ("**Samuel Sekuritas**"), valued at CHF728,901 (US\$761,403). These shares cannot be realised because MYRX is suspended from trading its shares;
- (j) 8,317,180 shares in ZINC held at Banque Heritage ("**the ZINC Heritage Shares**"), valued at CHF96,718 (US\$101,031). These shares cannot be realised. On or around 7 May 2020, SPVI instructed Banque Heritage, in its capacity as custodian of the shares, to sell the shares. By email dated 8 May 2020 Banque Heritage confirmed that it was processing that instruction. On 12 May 2020, SPVI received a further email from Banque Heritage saying that they had been informed by Credit Suisse that the settlement of the transaction could not be completed because the Indonesian Stock Exchange was not prepared to allow the local custodian of the shares to proceed and that the transaction would be unwound. Although Banque Heritage say in their email that they are waiting for an official communication from Credit Suisse, as at the date of this Petition SPVI has not heard anything further. Despite making enquiries, it is not clear why the Indonesian Stock Exchange was not prepared to allow the transaction to complete. Until this restriction has been lifted, it will not be possible to deal with any ZINC shares, including the ZINC Falcon Shares and the ZINC Reyl Shares;
- (k) 251,071,900 shares in NATO held at Samuel Sekuritas ("**the NATO Samuel Shares**"), valued at CHF6,461,225 (US\$6,749,331). These shares are being realised by way of a gradual sale so as not to flood the market, which may depress the share price. Even if these shares were realised in the short term, they would not provide enough value to settle SPVI's present liabilities;
- (l) A contingent asset of approximately CHF4,111,229 (US\$4,294,549) being a sum of money that is owed to SPVI arising out of sale and repurchase agreements dated 25 June 2019 and 4 September 2019 made between SPVI and Boost Bonus Limited ("**Boost**"). Although SPVI made various demands of Boost to repay the sums of money it is owed, SPVI has not received a response to any of those demands and the only way of realising the value of these shares would be to embark on costly and uncertain litigation proceedings in Indonesia, which SPVI does not have the assets to fund;
- (m) CHF8,958,341 (US\$9,357,793), arising from a sale and repurchase agreement dated 14 November 2018 (as amended by an addendum dated 14 November 2019) made between SPVI, ZINC and an Indonesian company called PT Jayabaya Abadi ("**Jayabaya**"), pursuant to which Jayabaya agreed to repurchase from SPVI the ZINC Reyl Shares, the ZINC Falcon Shares and the ZINC Heritage Shares (the "**Jayabaya Agreements**"). On 27

March 2020 SPVI gave notice to Jayabaya to repurchase the subject shares in ZINC for CHF9,247,494 (US\$9,608,868). As at the date of this Petition, Jayabaya has not repurchased the subject shares from SPVI and it has not responded to the 27 March 2020 letter. It is not clear why this is. The only way of recovering the monies it is owed would be for SPVI to embark on costly litigation in Indonesia, which it does not have the realisable assets to fund; and

- (n) CHF8,247,452 (US\$8,615,206), arising from a sale and repurchase agreement dated 18 June 2019, as amended by addendums dated 20 November 2019 and 20 December 2019 ("**the Glenwood Agreement**"), made between SPVI and a Samoan company called Glenwood Corporation ("**Glenwood**"). Pursuant to the terms of the Glenwood Agreement, Glenwood was required to repurchase from SPVI the NATO Reyl Shares, the NATO Falcon Shares and the NATO Samuel Shares for CHF8,247,452 (US\$8,615,206) on 8 June 2020. Notice has not been given to Glenwood to repurchase these shares because, as more fully set out above, they have been pledged as security for the Reyl Loan and the Falcon Loan, and Reyl and Falcon would almost certainly refuse to release them until such time as the Reyl Loan and the Falcon Loan, respectively, have been repaid with interest.

#### **The Appointment of Receivers over the Portfolios**

27. The assets attributable to each of the Portfolios are or are likely to be insufficient to discharge the claims of creditors in respect of each of the Portfolios. Accordingly, the Petitioner respectfully requests that this Honourable Court make an order appointing receivers over each of the Portfolios pursuant to sections 224 and 225 of the Companies Law in order to manage the business and the assets of the Portfolios for the purposes of (i) the orderly closing down of the business of or attributable to each of the Portfolios; and (ii) the distribution of the assets of each of the Portfolios attributable to each Portfolio to those entitled to have recourse to those assets.

#### **Nomination of Receivers**

28. The Petitioner proposes that David Martin Griffin of FTI Consulting (Cayman) Ltd, Suite 3212, 53 Market Street, Camana Bay, PO Box 30613, Grand Cayman, KY1-1203, Cayman Islands, and Nick Gronow of FTI Consulting (Singapore) Pte Ltd, 8 Shenton Way, #32-03 AXA Tower, 068811, Singapore, be appointed as joint receivers of the Portfolios.

#### **YOUR PETITIONER THEREFORE HUMBLY PRAYS THAT:**

1. The Portfolios be placed into receivership by this Honourable Court in accordance with provisions of sections 224 and 225 of the Companies Law.

2. David Martin Griffin of FTI Consulting (Cayman) Ltd and Nick Gronow of FTI Consulting (Singapore) Pte Ltd be appointed as Joint Receivers of the Portfolios (the "**Joint Receivers**").
3. The Joint Receivers shall not be required to give security for their appointment.
4. The Joint Receivers shall have the power to act jointly and severally in their capacity as receivers of the Portfolios.
5. The Joint Receivers be authorised to take any such action as may be necessary or desirable to obtain recognition of the receivership and/or their appointment in any other relevant jurisdiction that the Joint Receivers consider necessary together with such other relief as they may consider necessary for the proper exercise of their functions within that jurisdiction.
6. In addition to the powers prescribed in section 226(1) of the Companies Law, the Joint Receivers be authorized and empowered to exercise the following powers and functions without the further direction or intervention of this Honourable Court:
  - (a) The power to carry on the business of the Portfolios so far as may be necessary;
  - (b) The power to sell or otherwise realise any of the Portfolios' assets (including any of its investments);
  - (c) To initiate, continue, conduct or otherwise manage any litigation or adversarial proceedings including by taking any decision to pursue, settle, compromise or withdraw any litigation or adversarial proceedings or any variation thereof;
  - (d) To engage staff (whether or not as employees of the Portfolios) to assist them in the performance of their functions;
  - (e) To engage such counsel, attorneys and/or other 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;
  - (f) To take possession of, collect and get in the segregated assets of the Portfolios and for that purpose to take all such proceedings as they consider necessary; and
  - (g) To do all acts and execute, in the name of and on behalf of the Portfolios, all deeds, receipts and other documents.

7. The Joint Receivers be authorised to do any acts or things considered by them to be necessary or desirable in connection with the receivership of the Portfolios in the Cayman Islands and/or elsewhere.
8. Pursuant to section 228 of the Companies Law, the Joint Receivers be authorised to render and pay invoices for their own remuneration and meet all disbursements reasonably incurred in connection with the performance of their duties out of the assets of the Portfolios.
9. The Joint Receivers be required to submit a report to the Court and the Petitioner on the conduct of the receivership, including the level of their own remuneration and costs incurred every 6 months from the date of their appointment or such other intervals as the Court may from time to time direct.
10. The Joint Receivers be at liberty to apply generally.
11. The costs of and incidental to the Petition be paid forthwith out of the available assets of the Portfolios.
12. Such further or other relief be granted as the Court deems appropriate.

**AND** your Petitioner will ever pray etc.

**DATED** this 26<sup>th</sup> day of June 2020

**FILED** this 26<sup>th</sup> day of June 2020

*Walkers*

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**WALKERS**

Attorneys at Law for the Petitioner

**NOTE:** This Petition is intended to be served on the Portfolios, the Company, and CIMA

This **PETITION** is presented by Walkers, Attorney's-At-Law for the Petitioner, whose address for service is Walkers, 190 Elgin Avenue, George Town, Grand Cayman KY1-9001, 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 \_\_\_\_\_ at \_\_\_\_\_

Any correspondence of 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 345 949 4296.