



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

FSD CAUSE NO. 177 OF 2020 (RPJ)

**IN THE MATTER OF SECTIONS 224 AND 225 OF THE COMPANIES LAW (2020
REVISION)
AND IN THE MATTER OF SIMPLON CAPITAL LTD. SPC**

PETITION

TO THE GRAND COURT:

The humble petition of Banco Nacional de Angola¹ of Av. 4 de Fevereiro, no. 151, Luanda, Angola, Caixa Postal 1243 (the "**Petitioner**") shows that:

INTRODUCTION

1. The Petitioner presents this petition seeking the appointment of receivers over the segregated portfolios of Simplon Capital Ltd. SPC ("**Simplon**") known as:
 - (a) Quantum Global Opportunities Fund Segregated Portfolio (the "**Opportunities Fund**"); and
 - (b) Refund Emerging Market Fund Segregated Portfolio ("**Refund**" and together with the Opportunities Fund (the "**SPs**")),pursuant to sections 224 and 225 of the Companies Law (2020 Revision) (the "**Companies Law**").
2. The Petitioner is a creditor of Simplon in respect of the SPs, and seeks the appointment of joint receivers over the SPs on the grounds that:

¹ Also referred to as The National Bank of Angola.

- (a) the assets attributable to the SPs are, or are likely to be, insufficient to discharge the claims of creditors when the Claim (as defined in paragraph 31 below) is taken into account; and
 - (b) the appointment of receivers to manage the assets and business of the SPs would facilitate the orderly close down of the business attributable to the SPs and the distribution of their assets to the sole holder of the economic interests in the SPs, namely the Petitioner.
- 3. Simplon is an exempted company incorporated with limited liability and was registered as a segregated portfolio company on 22 March 2006 pursuant to Part XIV of the Companies Law 2004 Revision, with registration number 164643. Further, Simplon 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 (as amended) with CIMA registration number 11199.
- 4. The registered office of Simplon is c/o Cayman Management Ltd., of P. O. Box 1569, Governors Square, 2nd Floor, 23 Lime Tree Bay Avenue, Grand Cayman KY1-1110 Cayman Islands.
- 5. The directors of Simplon are Mr David Roberts and Mr Kristoffer Huldt (the "**Directors**").
- 6. The memorandum and articles of association of Simplon adopted by special resolution dated 12 April 2006 ("**Articles**") show that the objects for which Simplon was established are unrestricted, and that the authorised share capital of Simplon is EUR 20,000 divided into:
 - (a) 100 management shares of EUR 1.00 par value each; and
 - (b) 1,990,000 participating shares of EUR 0.01 par value each.

The Opportunities Fund

- 7. According to the confidential private placement memorandum of the Opportunities Fund dated November 2010 (the "**Opportunities Fund PPM**"), the authorised

share capital of the Opportunities Fund was in the aggregate of EUR15,000, US\$10,000, CHF10,000 and GBP4,360 constituting 3,926,100 shares of which 100 are voting non-participating shares² and 3,926,000 are non-voting participating shares³.

8. The Directors act in the name of the Opportunities Fund.
9. The Opportunities Fund is an investment vehicle which, as stated in the Opportunities Fund PPM, has the:
 - (a) objective of applying its assets to achieve absolute return by employing multiple strategies whilst giving due consideration to the protection of capital (the "**Stated Objective**"); and
 - (b) strategy of investing in a variety of assets and financial instruments including but not limited to; investments with restricted transferability and limited liquidity; private equity or real estate and granting any loan or acting as guarantor on behalf of third parties (the "**Stated Strategy**").
10. The investment manager of Opportunities Fund was, pursuant to an investment management agreement dated 22 September 2010 (the "**IMA**"), Quantum Global Investment Manager AG (the "**Investment Manager**"). Under the IMA, the Investment Manager was delegated responsibilities for the management of the Opportunities Fund, including the deployment of the Stated Strategy in pursuance of the Stated Objective. On 30 October 2018, the Investment Manager issued a notice of termination of the IMA to Simplon stated to be effective as of 30 November 2018.

² According to Simplon's register of members, these voting non-participating shares were transferred from Venice Investments Group Corp. to Simplon Asset Management Ltd. C/o Paradigm Governance Partners Ltd., 3rd Floor, One Capital Place, Shedden Road, George Town, Grand Cayman, Cayman Islands ("**SAM**") on 13 February 2020.

³ The 3,926,000 non-voting participating shares are comprised of 1,490,000 shares with a par value of EUR0.01 each, 1,000,000 shares with a par value of US\$0.01 each, 1,000,000 shares with a par value of CHF0.01 each and 436,000 shares with a par value of GBP0.01 each.

11. The Opportunities Fund also appointed an administrator, IFIT Fund Services AG (the "**Administrator**") pursuant to an administrative services agreement dated on or about 5 November 2010.

Refund

12. According to the confidential private placement memorandum dated May 2011 (the "**Refund PPM**"), the authorised share capital of Refund was in the aggregate of EUR15,000, US\$10,000, CHF10,000 and GBP4,360 constituting 3,926,100 shares of which 100 are voting non-participating shares⁴ and 3,926,000 are non-voting participating shares⁵.
13. The Directors also act in the name of Refund.
14. Refund is an investment vehicle, the objective of which - as stated in the Refund PPM - was seeking capital appreciation in the medium term by investing mainly in the real estate market in Africa.
15. The investment manager of Refund was Aspect Capital Management Ltd., a Cayman Islands limited liability company and the investment advisor is Refund Emerging Market SA, a company incorporated in Switzerland.
16. The Administrator also acted as the administrator of Refund.

The Petitioner

17. The Petitioner is the central bank of Angola. It is owned by the Angolan government and is responsible, *inter alia*, for ensuring the preservation of the value of the Angolan national currency. It is also responsible for acting as sole banker of the Angolan state.

⁴ These non-voting participating shares are held by SAM.

⁵ The 3,926,000 non-voting participating shares consists of the following: 1,490,000 shares with a par value of EUR0.01 each, 1,000,000 shares with a par value of US\$0.01 each, 1,000,000 shares with a par value of CHF0.01 each and 436,000 shares with a par value of GBP0.01 each.

18. The Petitioner is the sole investor in the Opportunities Fund. As set out further below, the Petitioner is also a creditor of Simplon (in respect of the Opportunities Fund and Refund) in the amount of the Claim.
19. As a creditor of the Opportunities Fund and of Refund, the Petitioner has standing to present this Petition pursuant to section 225(1)(c) of the Companies Law.

The Petitioner's investments and intended investment

Investments into the Opportunities Fund

20. During the period 22 November 2010 to 31 December 2013, the Petitioner sought to make various investments into the Opportunities Fund by way of subscriptions for shares in the total amount of US\$81,837,316.5 (net of redemptions)⁶ upon the terms of the Opportunities Fund PPM. It is the Petitioner's understanding that no party other than the Petitioner ever invested in the Opportunities Fund.
21. The Petitioner understands that the Opportunities Fund has made the following investments:
 - (a) a loan made to an entity that provides prospecting research services to a company that held certain rights to a mine in Africa that have since been revoked⁷ (the "**N Investment**");
 - (b) an investment in an entity that acquires contract rights for athletes (the "**QS Investment**");
 - (c) a loan to a software company incorporated in England and Wales (the "**I Investment**");

⁶ The total amount of the Petitioner's intended investments in the Opportunities Fund was US\$128,225,915.3. This amount of US\$81,837,316.5 reflects redemptions that were made between 22 November 2010 to 28 September 2018 in the total amount of US\$46,314,138.1 and equalisations of US\$74,460.70. Total redemptions exclude a non-cash adjustment of US\$26,763,682.9 in relation to the Diverted Investment.

⁷ This loan was subsequently converted into an equity interest in the borrower

(d) a loan in respect of a real estate asset in London (the "**ER Investment**");
and

(e) certain loans to a BVI incorporated entity (the "**F Investment**"),

(together, the "**Investments**").

22. As at 31 March 2011, the Petitioner had invested capital (or had intended to invest capital) into the Opportunities Fund in the sum of US\$90,000,000.

23. The Petitioner has never subscribed for shares, or attempted to subscribe for shares in Refund.

The Opportunities Fund's investment into Refund

24. On or about 29 July 2011, the sum of US\$25,000,000 was transferred from the Opportunities Fund, to Refund. This sum represented part of the Petitioner's intended investments into the Opportunities Fund (the "**Diverted Investment**").

25. The Diverted Investment was not authorised by the Petitioner, was not consistent with the Stated Objective or the Stated Strategy and accordingly, was not made in accordance with the Petitioner's legitimate expectations when it agreed to invest in the Opportunities Fund.

26. Further, the Diverted Investment occurred in breach of the Companies Law, given that:

(a) pursuant to section 219(6) of the Companies Law, procedures are required to ensure that assets of a given segregated portfolio of a segregated portfolio company, such as Simplon, are not co-mingled with the assets of its other segregated portfolios; and

(b) pursuant to section 220 of the Companies Law, assets of a segregated portfolio are only permitted to be available to meet the liabilities attributable to that same segregated portfolio.

27. Accordingly, the Diverted Investment occurred in contravention of the Companies Law, the Petitioner's contractual rights under the constituent documents of the Opportunities Fund, and the Petitioner's legitimate expectations as intended investor of the Opportunities Fund.

The treatment of the Diverted Investment

28. It is understood that the entirety of the Diverted Investment, was subsequently transferred by Mr Rolf Kueng, chairman of the board of the Administrator for both the Opportunities Fund and Refund, from Refund to a third party (the "**Misappropriation**").
29. The Misappropriation is now the subject of ongoing civil and criminal proceedings in Switzerland, where the Administrator is domiciled (the "**Swiss Proceedings**").
30. As a consequence of the Misappropriation, the Petitioner considers that the true value of the Diverted Investment represents a liability in the amount of US\$24,377,001.70 on the Opportunities Fund's balance sheet⁸.

The Claim

31. As a result of the Diverted Investment (and the Misappropriation) the Petitioner has a claim against the Opportunities Fund, and against Refund in the amount of at least US\$24,377,001.70⁹ (the "**Claim**").
32. On 7 April 2020, the Petitioner's Cayman Islands legal counsel issued a letter to the Directors' Cayman Islands legal counsel which, *inter alia*, set out the basis of the Claim, and noted that while the Claim was asserted against both SPs, there was no suggestion that the Petitioner sought to make 'double recovery' of the full

⁸ The Petitioner notes that the Investment Manager booked an adjustment to the value of the Diverted Investment in the accounts of the Opportunities Fund from US\$26,524,131 as at 30 June 2017, to US\$622,998.32 as at 29 September 2017 to reflect cash then held by the Opportunities Fund (the "**Cash Balance**"). The figure of US\$24,377,001.70 represents the Diverted Investment (i.e. US\$25,000,000) less the Cash Balance.

⁹ Per the previous footnote, this figure represents the Diverted Investment less the Cash Balance and is a minimum amount which could be higher. The Petitioner claims this minimum amount to avoid any dispute as to the quantum of the Claim.

amount of the Claim against both the Opportunities Fund and Refund (the "Claim Letter").

33. The Directors acknowledged the Claim by countersigning the Claim Letter on 8 April 2020 noting that by doing so they did not purport to adjudicate or accept the validity of the Claim.

The effect of the Claim on the balance sheet of the SPs

34. Based on the information available to the Petitioner, the assets of the Opportunities Fund and Refund are (or are likely to be) insufficient to discharge its liabilities, including the Claim.

The Opportunities Fund

35. Based on the latest net asset valuation of the Opportunity Fund's investments, provided by the Administrator on 28 June 2019, and subject to necessary adjustments in order to better represent the true current value of its assets, the Opportunities Fund is balance sheet insolvent, as demonstrated by the following table:

Assets	US\$
Cash	502,432
Investments	19,514,784
Total Assets	20,017,216
Total Liabilities	24,640,719
Net Assets	(4,623,503)

Refund

36. The Petitioner understands that Refund does not have any assets. Accordingly, its assets will be insufficient to meet its liabilities when an account is taken of the Claim (or any portion of it).

Receivership

37. The Petitioner wishes to divest itself of its interest in the Opportunities Fund and to mitigate the effects of further losses attributable to the Misappropriation.
38. To achieve this, and given that the Petitioner holds the sole economic interest in the Opportunities Fund (and indirectly, Refund), the Petitioner desires that the business of the Opportunities Fund and Refund to be closed down in an orderly manner such that the available assets attributable to the Opportunities Fund and Refund (if any) can ultimately be distributed to the Petitioner.
39. The Directors do not object to the appointment of receivers over the SPs and are supportive of the SPs being closed down.
40. The Petitioner desires that receivers be appointed as soon as possible so that the receivers have control of the process of closing down the businesses of the Opportunities Fund and Refund can commence, without the need to contemplate more invasive options such as winding up proceedings in respect of the entirety of Simplon, which could conceivably cause detriment to other segregated portfolios of Simplon.
41. In the circumstances, the Petitioner avers that the Opportunities Fund and Refund should be placed into receivership pursuant to sections 224 and 225 of the Companies Law on the grounds that:
- (a) the assets attributable to the Opportunities Fund and Refund are, or are likely to be insufficient to discharge the claims of creditors when the Claim is taken into account; and

- (b) the appointment of receivers to manage the assets and business of the Opportunities Fund and Refund would facilitate the orderly close down of the business attributable to the Opportunities Fund and Refund and the distribution of their assets to the sole holder of the economic interests in the SPs, namely the Petitioner.

Nomination of Receivers

- 42. The Petitioner proposes that Mr Ben Browne of AlixPartners UK LLP and Ms Elizabeth Mackay of Kalo (Cayman) Limited be appointed as joint receivers of the Opportunities Fund and Refund.

YOUR PETITIONER THEREFORE HUMBLY PRAYS THAT:

1. The Opportunities Fund and Refund be placed into receivership by this Honourable Court in accordance with provisions of sections 224 and 225 of the Companies Law.
2. Mr Ben Browne of AlixPartners UK LLP and Ms Elizabeth Mackay of Kalo (Cayman) Limited be appointed as joint receivers of the Opportunities Fund and of Refund (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 Opportunities Fund and Refund.
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 authorised 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 Opportunities Fund and Refund so far as may be necessary;
 - (b) the power to sell or otherwise realise any of the Opportunities Fund's and Refund's 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 the Swiss Proceedings or any variation thereof;
 - (d) to engage staff (whether or not as employees of the Opportunities Fund and Refund) to assist them in the performance of their functions; and
 - (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.
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 Opportunities Fund and Refund 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 Opportunities Fund and Refund.
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 Opportunities Fund and/or Refund.

12. Such further or other relief be granted as the Court deems appropriate.

AND your Petitioner will ever pray etc.

DATED the 30 day of July 2020

FILED the 3 day of August 2020

WALKERS

WALKERS
Attorneys at Law for the Petitioner

NOTE: This Petition is intended to be served on Simplon for itself and for and on behalf of the Opportunities Fund and Refund, and on CIMA

This Petition was presented by Walkers, Attorneys-at-Law for the Petitioner, whose address for service is 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 20 August 2020 at 9 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.