



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

**FSD CAUSE NO: 28 of 2021 (RPJ)**

**IN THE MATTER OF THE COMPANIES ACT (2021 REVISION)  
AND IN THE MATTER OF UPHOLD LTD**

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**WINDING UP PETITION**

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**TO THE GRAND COURT OF THE CAYMAN ISLANDS**

**THE HUMBLE PETITION OF**

- i. William Laggner of 7319 Birarnoll, Dallas TX 75252 USA
- ii. Bearing Ventures LLC of 251 Little Falls Drive, Wilmington, New Castle, DE, 19808
- iii. Innovasia Capital Partners L.P. of 1500 Broadway, Suite 704, New York, NY 10036 USA
- iv. West End Capital II LLC of 2211 Broadway Suite 11C, New York, NY, 10024 USA
- v. Charles Simmons of 2627 Stuart Manor, Houston, TX, 77082 USA
- vi. Peter Kearns of 270 Wendover Drive, Princeton, NJ 08540 USA
- vii. Eric Samra of 19921 NE 22<sup>nd</sup> Ave, Miami, FL 33180 USA
- viii. Noam Eliahu of 81 Yale Avem Oakdale, NY 11769 USA
- ix. Michael Zaitsev of 241 W 97<sup>th</sup> St, Apt 14M, New York NY 10025 USA

(i. – ix. together the “**Petitioners**”)

shows that:

**Introduction**

1. Uphold Ltd (the “**Company**”) was incorporated as BitReserve Ltd under the Companies Act of the Cayman Islands as an exempted limited company on 20 December 2013 under company number 283772. The Company’s name was changed to Uphold Ltd on or around 23 February 2017.
2. The registered office of the Company is situated at Maples Corporate Services Limited, PO Box 309, Uglan House, Grand Cayman, KYI-1104, Cayman Islands.
3. As at the date of this Petition, the Company is in good standing with the Cayman Islands Corporate Registry. The Petitioners believe the Company is solvent in the sense that its assets exceed its liabilities.

4. The Company operates in the cryptocurrency and blockchain industry. It provides a wallet blockchain platform that facilitates payments within and to the financial services industry. The Company primarily operates in the United States of America, although its online services are available globally and facilitate payments in multiple currencies.
5. The Petitioners are all shareholders in the Company and are named as such on the Company's Register of Members. The exact number of shares currently held by the Petitioners is a matter of dispute and one of the reasons for bringing this Petition.
6. The Petitioners humbly seek an order pursuant to section 92(e) of the Companies Act (2020 Revision) (the "**Act**") for the winding up of, or alternative relief in respect of, the Company on the basis that it is just and equitable that the Company be wound up for the following reasons:
  - a. The board has failed to act in the best interests of the Company and its shareholders and in a manner which perpetrates ongoing misconduct in the management of the Company.
  - b. The directors have demonstrated a lack of probity in their actions and have committed clear breaches of their fiduciary duties by engaging in a series of actions tantamount to a conspiracy to allow one of the Company's shareholders and directors, Adrian Steckel, to gain (directly or indirectly through entities under his control) a majority of the shares in the Company. Certain directors have abused and misused their power and authority by acting in a way which prefers their own interests ahead of that of the Company and its shareholders.
  - c. The directors have caused the Company to act in a manner which is inconsistent with its Articles and the Company has accordingly breached its agreement with its shareholders.
  - d. The Petitioners have therefore justifiably and irretrievably lost all faith and confidence in the directors of the Company and the board's ability to manage the Company's affairs in the best interests of the Company as a whole.
  - e. Consequently, the Petitioners' rights and interests have been oppressed, willfully disregarded, and undermined.

7. In the alternative to the appointment of liquidators, and on the grounds set out above, the Petitioners humbly request that the Court exercises its jurisdiction to make orders pursuant to section 95(3) of the Act regulating the conduct of the Company's affairs and/or for the purchase of the Petitioners' shares and/or for the purchase by the Petitioners of the shares held by and on behalf of Adrian Steckel.

## **Background**

8. The Company was founded in 2013 by Halsey Minor, who was one of the initial directors along with David Bechtel, JP Theriot, and Tim Parsa. The Company initially raised US \$2 million from those four individuals.
9. JP Theriot contacted one of the Petitioners, Bill Laggner, soon after its incorporation with a view to involving Mr Laggner as an investor and board member. The other Petitioners all invested in the Company soon after its incorporation in 2013 as part of the Company's Series A round of financing. Their investment was predominantly for Preferred Shares. The Petitioners' respective number of shares in the Company is set out at Appendix 1.
10. Mr Laggner was appointed to the board of directors by the Series A shareholders, who were entitled to appoint and remove one director under paragraph 2.3 of the Investment Rights Agreement executed in or around May 2014 (the "IRA") and paragraph 3.2 vi of the Company's Articles of Association dated 9 May 2014.
11. Approximately 9 months after its incorporation and Series A round of financing, the Company undertook a further round of financing through the issue of Series B shares. It was at this point that Adrian Steckel and Ricardo Salinas invested in the Company. The Series B round of financing raised US \$15 million.
12. The relationship between the investors was one of mutual trust and confidence, under which they readily agreed upon restrictions on their ability to transfer their interests in the Company whilst at the same time safeguarding their respective percentage shareholdings. For example, as part of the Series B round of financing, the Series A shareholders exercised their right of first offer under an IRA and acquired additional shares so as to avoid any dilution of their shareholding.

13. Adrian Steckel was appointed to the board of directors by the Series B shareholders, who acquired the Series A shareholders' right to appoint and remove a director, and Article 3.2 vi was amended accordingly. Notwithstanding this, Mr Laggner remained on the board with the consent of all parties. Mr Laggner was led to understand from the decision to keep him on the board notwithstanding the removal of the Series A Shareholders' appointment rights that he remained an integral part of the venture. He legitimately expected that he would be entitled to remain on the board of directors unless and until good cause arose to remove him.
14. Between the dates of their respective investment and around the middle of 2016, the Petitioners operated on the basis that their shareholding was in the region of 9% of the Company's issued shares on a fully diluted basis. It has, as is explained further below, subsequently become apparent that due to further purported share issuances by the Company, the Petitioners currently hold in total approximately 3% of the shares on a fully diluted basis.

#### **The Steckel Transaction**

15. In early 2015, the Board was struggling to make the Company grow. Anthony Watson (who was a former CEO of Barclays Bank in the UK) was hired as the Company's CEO, primarily with a view to him assisting in the Company obtaining regulatory approval with the FCA in the United Kingdom so that the Company could obtain a clearing bank license. Notwithstanding Mr Laggner's opposition, Mr Watson was paid a salary in the region of US \$800,000 for his role and given stock options for approximately 4-5 million shares.
16. During 2015 and 2016, the Company (by paying excessive remuneration and travel expenses to some of the senior personnel amongst other things) had severely depleted cash reserves and risked insolvency. The Business Plan that was envisaged had not been followed, the cash generated from the Series B financing had been spent, and the Company's approximately 40 employees had resulted in substantially increased costs. It therefore required urgent financing. Mr Laggner, who was still a director of the Company at that time, raised concerns with the other board members as to how it was being managed. Mr Laggner also requested that an audit of the Company be carried out in 2016 for the purpose of investigating the excessive spending and potential misallocation of corporate funds that he felt was being incurred at the executive level. Mr Laggner's concerns were ignored and the audit request was denied by the rest of the board.

17. In order to meet the Company's liquidity requirements, the board considered proposals for different forms of financing in the first half of 2016. One of these alternate proposals was from a consortium led by Mr Laggner which would have provided financing at zero interest and part convertible preferred stock. The Company also could have sought commercial financing, which was readily available in this growing industry at the time.
18. Despite the availability of alternative and better proposals which were on more commercial terms, a majority of the directors decided to allow the Company to enter into a transaction with Uphold Holdings LLC, an entity owned and controlled by Mr Steckel (the "**Steckel Transaction**").
19. Together Mr Laggner, Mr Minor and Mr Bechtel held in excess of 50% of the Company's shares at the time. All three supported Mr Laggner's financing proposal and strongly opposed the Steckel Transaction, primarily because it was not in the Company's best interests. During a telephone call in the early summer of 2016, Mr Steckel admitted that Mr Laggner's proposal represented a better deal for the Company, but he wished to press his proposal on the Company so that he could take over control of the Company. He also said that Mr Parsa had just flown to Mexico to meet with Mr Salinas to discuss the "takeover". Both Mr Parsa and Mr Steckel had been long time employees of Mr Salinas and his companies prior to their joining the Company. .
20. The Steckel Transaction consisted of (i) a Revolving Credit Agreement dated 30 June 2016 under which the lender could lend up to US \$15,000,000 to the Company at an interest of 2% per month; and (ii) a Warrant issued on the same date in favour of Uphold Holdings LLC. This warrant gave Mr Steckel a right to acquire such number of shares at \$0.01 per share so as to make Uphold Holdings LLC the owner of fifty percent (50%) of the issued and outstanding ordinary shares on a fully diluted basis – and thus reduced the percentage of shares owned by all other shareholders, including the Petitioners and Minor. The Company also gave a guarantee on behalf of all of its subsidiaries and affiliated entities.
21. Uphold Holdings LLC exercised its conversion rights under the Warrant in or around August or September 2016, notwithstanding that:
  - a. No general meeting had taken place to obtain the shareholders' approval on the Steckel Transaction being entered by the Company, contrary to the requirements under the Company's Memorandum and Articles of Association that were in place at the time (see

further below). Halsey Minor, who opposed the Steckel transaction and had raised concerns with the board about the lack of communication regarding it, owned almost half of the issued shares at the time but had his access to his company email account blocked by Mr Watson. Had the shareholders been properly consulted, the Steckel Transaction would therefore not have been approved by them and a change in control could not have been effected;

- b. Mr Steckel had not declared his clear conflict of interest in the transaction, in breach of Article 32.4 of the Company's Articles of Association in force at the time;
  - c. The conversion price for the shares that were acquired by Uphold Holdings LLC under the Warrant were issued at a price of \$0.01 per share, grossly below what their true value was at the time, such that the transaction was completed at an undervalue, even though alternative funding for the Company was available without granting any Warrant and particularly not a Warrant that permitted the change in ownership control;
  - d. Investors, including the Petitioners, who were entitled to a right of first offer under the IRA, were not given any such offer prior to the issue of shares under the Steckel Transaction.
22. The Petitioners will rely upon the restrictions in the Company's Amended and Restated Memorandum and Articles dated 28 April 2015 (the "**2015 MAA**"), which were the relevant Articles in force at the time of the Steckel Transaction, and in the IRA, in particular:
- a. Under Article 3.2(a)(v) of the 2015 MAA, *"the Company and the Board were prohibited from carrying out certain actions "without first obtaining the approval or consent of both the majority of the series A Preferred Shares and the majority of the series B Preferred Shares then outstanding"*
  - b. Subsection (4) to that Article provide that *"altering or changing the rights, preferences or privileges of any series of Preferred Shares so as to affect adversely the rights, preferences or privileges of such Shares"*

- c. Subsection (6) also provides that the Company may not *“authorise or issue, or obligate itself to issue, any shares including any other right or security convertible into or exercisable for any such shares having a preference over, or being pari passu with any series of Preferred Shares with respect to dividends, liquidation or redemption”*
  - d. Clause 2.5 of the IRA also gives each of the investors a *“right of first offer with respect to future sales by the company of its shares (as hereinafter defined). An Investor shall be entitled to apportion the right of first offer hereby granted it among itself and its Affiliates in such proportions as it deems appropriate.”*
23. A majority of the board of directors therefore caused the Company to enter in to a transaction that was ultra vires and in breach of the Articles and/or otherwise than in good faith and/or for an improper purpose and/or not in the Company’s best interests when they entered into the Steckel Transaction, and which also resulted in the Company breaching the IRA. Had shareholders’ approval been requested, it would not have been given and the Steckel Transaction could not have been executed by the Company.
24. The Petitioners will also rely upon the fact that Mr Laggner requested that the directors and the Company seek specific Cayman legal advice as to the validity of the Steckel Transaction and that the Company’s general counsel informed him that the Company’s Cayman counsel was working on such advice but that it was never provided. Mr Laggner was removed as a director shortly thereafter, contrary to his legitimate expectation of involvement in management of the Company as set out above. His removal was at the instigation of the same conflicted directors who had approved the Steckel Transaction and who knew or should have known that Mr Laggner had the support of at least a simple majority of the shareholders.
25. Subsequently, the Company has confirmed that no legal advice was in fact ever provided to the Company regarding the validity of the Steckel Transaction.
26. The Steckel Transaction adversely affected the rights of all shareholders. As a result of the transaction, Mr Steckel directly or indirectly controlled over 50% of the Company’s shares, and therefore had the ability to exercise control of the Company. He has since done so, acting wholly in his own interests and in bad faith as set out in further detail below.

## **Matters following the Steckel Transaction**

27. The Steckel Transaction resulted in Mr Steckel being in control (directly or indirectly) of sufficient votes to be able to pass special resolutions. Utilizing this improperly obtained power, following the Steckel Transaction, the Company has purported to amend its Memorandum and Articles at the instruction of Mr Steckel, most notably in February 2017.
28. The amendments made to the Articles of Association in February 2017 included the creation of 5 additional classes of shares and the the authority to issue additional Series A and Series B Preferred Shares. The effect of these amendments was that the Petitioners' shareholding was substantially diluted without their knowledge or consent and contrary to their legitimate expectations.
29. But for the Steckel Transaction having been entered in to, the Company would not have been able to amend its Articles of Association, and accordingly the Petitioners' shares would not have been diluted.
30. The Company has, in its most recent round of fund raising, put an estimated value of US \$350 million on itself. Whilst the Petitioners consider this to be grossly under the actual value of the Company, particularly with regard to the expansive growth of competitor crypto companies operating in the same field, the fact remains that the dilution of the Petitioners' shares has resulted in considerable financial loss to them. The Company continues to raise funds and issue shares which could further dilute the Petitioners' interests.
31. The Petitioners' shares were diluted from holding 9% of the Company's shares on a fully diluted basis to 3% of the Company's shares on a fully diluted basis, meaning that based on the Company's own most recent self-valuation (which is insufficient), they have lost at least US \$21 million worth of shares.
32. Further, the Steckel Transaction, which created the unnecessary and unlawful Warrant, resulted in Mr Steckel increasing his personal shareholding to over 27% of the Company's shares on a fully diluted basis, and his overall shareholding (through entities of which he is the ultimate beneficial owner) to over 50%. The Petitioners' legitimate expectation as to the organization and operation

of the Company was fundamentally and adversely affected by virtue of the Steckel Transaction, without any consultation with them or any of the other shareholders in the Company.

33. The Petitioners will rely on the Company's financial statements that have been provided as well as materials in the public domain relating to the Company and its industry to show that the true value of the Company is in fact considerably higher than US \$350 million, and that the losses suffered by the Petitioners are therefore considerably more than US \$21 million.

#### **AirTM Transaction**

34. In or around 2015, certain members of the Company's board of directors, including Mr Steckel and Tim Parsa, who was a former colleague of Mr Steckel, were founding investors in a rival cryptocurrency platform called AirTM through an entity called Cloud Money Ventures LLC. AirTM was a competitor of the Company. Notwithstanding this, Mr Steckel and Mr Parsa caused the Company (improperly) not to enforce and/or to waive their breaches of duty in doing so.

35. Mr Steckel and Mr Parsa also caused the Company to license its intellectual property to AirTM (the "**IP Agreement**"). This was not in the Company's best interests, was in breach of Mr Steckel and Mr Parsa's duties to the Company and otherwise improper. In further breach of duty, Mr Steckel and Mr Parsa failed to take any steps to secure any meaningful payment to the Company from AirTM for the license of its intellectual property.

36. The Company has failed to address the Petitioners' concerns regarding the AirTM transaction with the Company, leading to delay and obfuscation.

- a. The Company's initial response was that it was not in a financial position at the time to protect its contractual and legal entitlements, and that subsequently, the Company asserted that it had no further use for its intellectual property. This explanation is bogus.
- b. Subsequently, and as a result of the concerns raised by the Petitioners, the Company has purported to undertake an investigation into the AirTM transaction. The purported investigation was completely meaningless because amongst other things it proceeded on the assumption that there were no contemporaneous records and that the story put forward by Mr Steckel and his associates was true. Unsurprisingly, the purported investigation concluded there was no issue. Further, the purported investigation

concluded that that (i) US \$60,000 was paid to the Company in consideration for the use of its intellectual property (to which the Company will be put to strict proof); and (ii) this was adequate consideration and the Company should not pursue any claim due to there not being any loss. The Petitioners disagree. The Company should never have licensed its intellectual property to a direct competitor, and alternatively should have secured far more than US \$60,000 by way of license fee.

37. The Petitioners allege that the decision to enable a competitor to exploit the Company's valuable intellectual property for no meaningful consideration was motivated by a desire to prefer the conflicting interests of Mr Steckel and his associates. This is a breach of duty and the Company has suffered considerable loss and damage as a result. Further or in the alternative, Mr Steckel, his associates and AirTM should account to the Company for all profits made by them at the expense of the Company.

### **Complaints**

38. The Petitioners have since 2015 consistently and repeatedly opposed Mr Steckel and his associates' taking control of and otherwise improperly exploit the Company's assets for their own benefit, by amongst other things :

- a. Objecting to the payment of excessive remuneration and overly generous share options.
- b. Objecting to the Steckel Transaction, leading to the wrongful removal of Mr Laggner from the board.
- c. Objecting to the AirTM transaction and subsequent mismanagement.
- d. Seeking copies of records such as minutes of meetings and explanations for the conduct complained of, almost none of which have been provided.
- e. These concerns have not been addressed and the Company continues to turn a blind eye to the ultra vires nature of the Steckel Transaction, subsequent unlawful constitutional changes, exploitation of the Company's intellectual property by competitors and other failures to take steps to prevent actions which the Petitioners consider to be against the Company and its shareholders' best interests.

39. Further, Mr Laggner was improperly removed from the board in breach of his legitimate expectation of involvement in management as the representative of the Series A shareholders, all the while the board and Mr Steckel in particular continue to pay themselves excessive remuneration and mismanage the Company. Had they not done so, then significant dividends would have been paid to shareholders and/or the Company would not have required financing and would not have agreed to such onerous terms that have resulted in substantial loss to the Petitioners and other minority shareholders.
40. Despite exhaustive attempts to communicate their concerns to the Company and its legal counsel, and to resolve the issues without the need for issuing this Petition over a period of 5 years between 2015 and 2020, the Petitioners have been met with stonewalled responses and thinly veiled threats against Mr Laggner personally. The Company refuses to acknowledge the Petitioners' legitimate interest and expectation that the board execute its duties properly and in the best interests of the Company, and continues to allow its directors to operate in a manner which promotes their own interests ahead of those of the Company and its shareholders.
41. The Petitioners' rights as shareholders have been unfairly prejudiced by the actions of the other shareholders and directors, and in particular Mr Steckel. As minority shareholders, their rights continue to be oppressed.
42. The Petitioners have a legitimate concern that the directors of the Company are acting on the instructions of Mr Steckel and may take actions that further reduce and oppress their rights and those of other shareholders.
43. The Petitioners are concerned that, despite the concerns raised by them, the directors have not properly investigated and explained the claims arising from the AirTM transaction.
44. Accordingly, the Petitioners have a justifiable lack of confidence or faith in the board of directors, many of whom are hopelessly conflicted given their complicity with and deference to Mr Steckel in his scheme to have taken over the management and control of the Company.
45. Mr Steckel has abused and misused the power and authority he had as chairman of the board by acting in a way which preferred his own interests ahead of that of the Company and its

shareholders and/or was unconstitutional or outside the powers conferred on him by the Company's constitutional documents and by law.

46. In all the circumstances, the Petitioner considers it to be just and equitable that the Company be wound up by the Court pursuant to section 92(e) of the Act, and the alternate relief sought be granted.

**AND YOUR PETITIONER THEREFORE HUMBLY PRAYS THAT**

1. The Company be wound up by the Court in accordance with the Act and such further or alternative relief as this Honourable Court shall think fit.
2. Alexander Lawson and Christopher Kennedy of Alvarez & Marsal 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 shall have the power to act jointly and severally in their capacity as liquidators of the Company.
5. The JOLs be authorized to take any such action as may be necessary or desirable to obtain recognition of the appointment of the JOLs in any relevant jurisdiction and to make applications to the courts of such jurisdictions for that purpose.
6. The JOLs be authorized to exercise all the powers set out in Parts I and II of the Third Schedule to the Act within and outside the Cayman Islands without further sanction of the Court.
7. 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 under any order granted pursuant to this Petition shall be voided by virtue of section 99 of the Act.
8. The JOLs be at liberty to appoint attorneys, counsel 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 Order 25 of the Companies Winding Up Rules (as amended).

9. Subject to section 109(2) of the Act and the Insolvency Practitioner's Regulations 2008 (as amended), the JOLs be authorized to render and pay invoices out of the assets of the Company for their own remuneration and the JOLs be at liberty to meet all disbursements reasonably incurred in connection with the performance of their duties.
10. In the alternative to the appointment of liquidators, the Court exercises its jurisdiction to make orders pursuant to section 95(3)(d) of the Act providing for the purchase by the Petitioners of the shares in the Company held (directly or indirectly) by Adrian Steckel for fair value, to be determined by the Court if not agreed and on the basis that none of the conduct complained of in this Petition had taken place.
11. In the alternative to the appointment of liquidators, the Court exercises its jurisdiction to make orders pursuant to section 95(3)(d) of the Act providing for the purchase of the shares of the Petitioners by the Company for fair value, to be determined by the Court if not agreed and on the basis that none of the conduct complained of in this Petition had taken place.
12. In the alternative to the appointment of liquidators, the Court exercises its jurisdiction to make orders pursuant to section 95(3)(a) of the Act regulating the conduct of the Company's affairs, including regulating the constitution of its board of directors, reinstating the constitution of the Company on the basis that none of the conduct complained of in this Petition had taken place , and a prohibition on the Company from making any alteration to its memorandum and articles of association without further order of the Court.
13. In the alternative to the appointment of liquidators, the Court exercises its jurisdiction to make orders pursuant to section 95(3)(c) of the Act to authorize proceedings to be brought in the name and on behalf of the Company by the Petitioners to remedy the conduct complained of in this Petition.
14. The Court make such order(s) as may be necessary to give effect to the relief sought above and to prevent any action that would seek to undo the Court's regulation of the conduct of the Company's affairs without further order of the Court.
15. The Petitioners' costs of the Petition be paid by the Company, or such other order as to costs be made as this Honourable Court shall think fit.

16. Such further and other relief as this Honourable Court deems appropriate.

**AND YOUR PETITIONERS** will ever pray etc.

DATED this 2<sup>nd</sup> day of February 2021

A handwritten signature in black ink, appearing to be 'Bhavesh Patel', written over a horizontal line.

Bhavesh Patel  
Travers Thorp Alberga  
Attorneys-at-Law for the Petitioners

**NOTE:**

**This Petition is intended to be served on the Company and its Attorneys-at-law, Maples & Calder.**

## APPENDIX 1

Shareholder	Number of shares
William Laggner	4,843,890
Bearing Ventures LLC	358,994
Innovasia Capital Partners L.P.	650,000
West End Capital II LLC	100,000
Chuck Simmons	27,777
Peter Kearns	35,000
Eric Samra	10,000
Noam Eliahu	7,427
Michael Zaitsev	12,136