



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

**CAUSE NO. FSD      OF 2021 (      )**

**IN THE MATTER OF THE COMPANIES ACT (2021 REVISION)**

**AND IN THE MATTER OF PADMA FUND L.P.**

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**WINDING UP PETITION**

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**To the Grand Court**

The humble Petition of San Miguel Holdings Corp ("**SMHC**") of No. 40 San Miguel Avenue, Mandaluyong City, Metro Manila, Philippines, and Atlantic Aurum Investments B.V. ("**AAIBV**", and together with SMHC, the "**Petitioners**") of Museumlaan 2, 3581 HK Utrecht, the Netherlands shows that:

**Introduction**

1. The Petitioners present this Petition for the winding up of Padma Fund L.P. of Campbells Corporate Services Limited, Floor 4, Willow House, Cricket Square, Grand Cayman KY1-9010, Cayman Islands (the "**Debtor**").
2. The Debtor is an exempted limited partnership and was registered in the Cayman Islands on 8 September 2008 with registration number 28970.

**THIS PETITION** was presented by Carey Olsen, attorneys-at-law for the Petitioners, whose address for service is Level 1, Willow House, Cricket Square, Grand Cayman, Cayman Islands KY1-1001. (Ref: PS/TB/1075787.0001)

3. The Debtor is a private equity fund which invests in infrastructure projects and companies in Indonesia and in the Philippines. It holds 1,721,693 shares B representing approximately 5% of the issued share capital in AAIBV. SMHC holds the remaining issued shares comprised of 47,369 shares A and 32,664,809 shares B representing approximately 95% of the issued share capital in AAIBV.
4. The Petitioners seek the winding up of the Debtor pursuant to section 92(d) of the Companies Act (2021 Revision) (the "**Companies Act**"), as applied by section 36(3) of the Exempted Limited Partnerships Act (2021 Revision), on the basis that the Debtor is unable to pay its debts.

#### Particulars of the Debt

5. The Petitioners are creditors of the Debtor, and the Debtor owes the Petitioners the principal sums and interest (calculated as of 8 June 2021, the date of the Statutory Demand as defined in paragraph 14 below) set out in the following table (the "**Debt**"):
 

Principal	Interest	Total
USD 9,910,700.01	USD 54,994.88	USD 9,965,694.89
EUR 1,940,495.54	EUR 10,767.89	EUR 1,951,263.43
PHP 27,171,546.36	PHP 150,776.03	PHP 27,322,322.39
SGD 2,006,712.36	SGD 11,135.33	SGD 2,017,847.69
GBP 196,816.36	GBP 1,092.14	GBP 197,908.50
HKD 8,871.80	HKD 49.23	HKD 8,921.03

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6. The Debt arises from the Debtor's liability for the Petitioners' costs of unsuccessful arbitration proceedings that the Debtor commenced, together with three other claimants (PT Citra Lamtoro Gung Persada, PT Bhaskara Duniajaya, and PT Matrasarana Arsitama (together, the "**Citra Group**"), against the Petitioners under the auspices of the Singapore International Arbitration Centre with case reference SIAC Arbitration No. 060 of 2016 (ARB060/16/MV) (the "**Arbitration**") on 10 March 2016.
7. On 16 November 2020, the Arbitral Tribunal issued a Partial Final Award in the Arbitration dismissing all of the Debtor's claims on the merits.
8. On 30 April 2021, the Arbitral Tribunal issued a Final Award on Costs in the Arbitration (the "**Final Award**"). The Debtor must comply with the Final Award, and the Debtor has not done so.
9. In the operative part of the Final Award, at paragraph 134 the Arbitral Tribunal ordered as follows:

*"(a) The Claimants shall fully bear the costs of the arbitration in the amount of SGD 3,797,345.51, and shall reimburse the Respondents for any sums paid by the Respondents towards the costs of the arbitration, less any refunds received by the Respondents from the SIAC.*

*(b) The Claimants shall pay the Respondents' legal and other costs in the sum of:*

- *USD 9,910,700.01;*
- *EUR 1,940,495.54;*
- *PHP 27,171,546.36;*
- *SGD 108,039.61;*
- *GBP 196,816.36; and*

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- HKD 8,871.80.

(c) *The Claimants shall pay compound interest at a rate of 5.33%, with annual rest, on all sums awarded in this Final Award, from its date until full payment.*"

10. Paragraph 8 of the Final Award defines "*the Claimants*" as the Debtor and the Citra Group, and "*the Respondents*" as the Petitioners.
11. The Debtor is jointly and severally liable for the full amount of the costs that are the subject of the Final Award, pursuant to the Final Award and to Singapore law.
12. As set out in the Final Award, the Debtor is also required to pay the Petitioners compound interest at a rate of 5.33%, with annual rest, on the sums shown above, from 30 April 2021 (the date of the Final Award) until full payment.

#### **The Petitioners' Demands for Payment**

13. On 4 May 2021, the Petitioners issued a letter of demand for payment to the Debtor, in which they demanded that the Debtor pay the full amount awarded to them under the Final Award within 48 hours of receipt of the letter. To date, the Debtor has not responded to the Petitioners' letter of demand and has yet to pay any of the sums ordered in the Final Award.
14. On 9 June 2021, the Petitioners issued a statutory demand on the Debtor (the "**Statutory Demand**") by personally serving the Statutory Demand at the Debtor's registered office in the Cayman Islands. The Statutory Demand was accepted and signed for on behalf of Campbells Corporate Services Limited.
15. The Statutory Demand demanded that the Debtor pay the Debt or secure or compound for it to the Petitioners' satisfaction.
16. The Statutory Demand stated that if the Debtor did not make payment of the Debt within 21 days of the date that the Statutory Demand is served on the Debtor's registered office, the

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Debtor will be deemed to be insolvent and a winding up petition may be presented against the Debtor in accordance with section 92(d) of the Companies Act.

17. The Debtor has failed to satisfy the Statutory Demand within 21 days of service of the Statutory Demand (i.e. by 30 June 2021), or by the date of this Petition.
18. Pursuant to section 93(a) of the Companies Act, the Debtor is therefore deemed to be unable to pay its debts for the purposes of section 92(d) of the Companies Act.

#### **Further Evidence of Insolvency**

19. In addition to the unsatisfied statutory demand described above, the Petitioners are aware of another debt that the Debtor has failed to pay.
20. The Debtor was required to pay its share of the Arbitration Tribunal secretary's fees, in the amount of SGD 15,375.00 (approximately USD 11,400). This relatively low amount had been outstanding since 19 February 2021, but remained unpaid despite repeated reminders from the Arbitral Tribunal and the Debtor's own counsel in the Arbitration:
  - (a) On 26 April 2021, the Arbitral Tribunal indicated that the Final Award would shortly be released, but the Debtor had yet to make payment to the tribunal secretary in accordance with her final invoice dated 19 February 2021.
  - (b) The Debtor's attorneys responded in an email to the Arbitral Tribunal on the same day, stating that "*[w]e have been reminding the client to settle this outstanding invoice from the Tribunal secretary, and will continue to do*", but did not indicate when the Debtor would settle the outstanding invoice.
  - (c) On 27 April 2021, the Arbitral Tribunal indicated that it would only release the Final Award once the outstanding fees were paid, and invited the Petitioners to pay the outstanding amount of the Debtor's share of the fees if they wished.

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- (d) Given the length of time that had already elapsed and the Debtor's unwillingness or inability to pay, SMHC itself elected to pay the tribunal secretary's outstanding fees owed by the Debtor so that the Final Award could be issued.
  - (e) The Arbitral Tribunal accordingly issued the Final Award on 30 April 2021.
21. In the premises, the Debtor's failure to pay its share of the Arbitration Tribunal secretary's fees further demonstrates that the Debtor is insolvent.

### Conclusion

22. Accordingly, the Petitioners seek the winding up of the Debtor pursuant to section 92(d) of the Companies Act on the basis that the Debtor is unable to pay its debts.
23. Further and/or alternatively, it is just and equitable that the Debtor be wound up pursuant to section 92(2) of the Companies Act in all the circumstances.

### YOUR PETITIONERS THEREFORE HUMBL Y PRAY THAT:

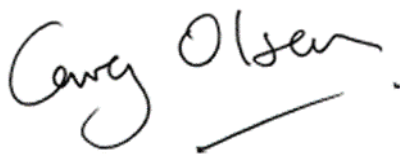
1. The Debtor be wound up in accordance with the Companies Act.
2. Mr Mitch Mansfield of Borrelli Walsh (Cayman) Limited, Strathvale House, 3rd Floor, 90 North Church Street, Grand Cayman KY1-1204, Cayman Islands, and Mr Cosimo Borelli of Borrelli Walsh Limited, Level 17, Tower 1, Admiralty Centre, 18 Harcourt Road, Hong Kong be appointed as joint official liquidators of the Debtor (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 Debtor.
5. In addition to their powers prescribed by Part II of the Third Schedule to the Companies Act which are exercisable without further sanction of this Court, the JOLs are authorised to

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exercise, within and outside of the Cayman Islands, and without further sanction of the Court, the powers to:

- (a) engage attorneys and other professionally qualified persons, whether in the Cayman Islands or elsewhere, to assist in the performance of their functions, on such terms as the JOLs think fit, and to remunerate them out of the assets of the Company as an expense of the official liquidation; and
  - (b) take any such action as may be necessary or desirable to obtain recognition of the JOLs and/or their appointment and assistance in any other relevant jurisdictions and to make applications to the courts of such jurisdictions for that purpose.
6. No disposition of the property of the Debtor by or with the authority of the JOLs in carrying out their duties, functions, and exercise of their powers shall be voided by virtue of section 99 of the Companies Act.
  7. The Petitioners' costs of and incidental to this Petition be paid forthwith out of the assets of the Debtor, to be taxed on the indemnity basis if not agreed.
  8. Such other orders as the Court thinks fit.

Dated this 16th day of July 2021



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**Carey Olsen**  
Attorneys-at-law for the Petitioners

**NOTE:** This Petition is intended to be served on the Debtor.

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**NOTICE OF HEARING**

**TAKE NOTICE THAT** the hearing of this Petition will take place at the Law Courts, George Town, Grand Cayman, Cayman Islands, on \_\_\_\_\_ 2021 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 PO Box 495, George Town, Grand Cayman KY1-1106, Cayman Islands; Tel: 3459494296.

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