



IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO: FSD OF 2022 ()

IN THE MATTER OF SECTION 124 OF THE COMPANIES ACT (2022 REVISION)

AND

IN THE MATTER OF SCIENS ALTERNATIVE ASSETS RECOVERY FUND II
(IN VOLUNTARY LIQUIDATION)

PETITION

TO: THE GRAND COURT OF THE CAYMAN ISLANDS

The humble petition of Mr David Griffin and Mr Andrew Morrison of FTI Consulting (Cayman) Ltd, Suite 3212, 53 Market Street, Camana Bay, Grand Cayman KY1-1203, Cayman Islands (the "**Petitioners**"), the joint voluntary liquidators of Sciens Alternative Assets Recovery Fund II (in Voluntary Liquidation) (the "**Fund**"), shows that:

Particulars of Incorporation

1. The Fund was incorporated in the Cayman Islands on 27 January 2010 as an exempted limited company under the Companies Act (as revised) (the "**Companies Act**") with company number 236438.
2. The registered office of the Fund is currently at Trident Trust Company (Cayman) Limited, P.O. Box 847, Fourth Floor, One Capital Place, Shedden Road, George Town, Grand Cayman, KY1-1103, Cayman Islands.
3. The Fund's Amended and Restated Memorandum and Articles of Association (the "**Articles**") were adopted by special resolution on 29 January 2010. The objects for which the Fund was established are unrestricted.
4. The Fund has an authorised share capital of US\$50,000, divided into 49,000,000 non-voting participating shares of a nominal or par value of US\$0.001 each (the "**Participating Shares**") and 1,000 voting non-participating shares of par value of US\$1.00 each (the "**Management Shares**"). The Management Shares in issue by the Fund are held by SAARF Management LLC.

The business of the Fund

5. The Fund carries on business as a private fund and was registered as such with the Cayman Islands Monetary Authority ("**CIMA**") with licence number 1762504 on 5 August 2020 under the Private Funds Act (as revised).
6. The Confidential Private Placement Memorandum of the Fund dated January 2013 states that:

"the investment objective of the Class A Shares is to provide attractive risk-adjusted returns to investors through investments (directly or indirectly) in all alternative assets classes, without limitation, including: hedge funds, fund of funds, private equity funds or other securities (including equity or debt securities) which investments may be purchased on the secondary (private or public) market; also including: investments in structured products, special purpose investment vehicles

or other legal entities in which the underlying assets or collateral are liquid or illiquid securities. The Fund is also permitted to invest (directly or indirectly) into the securities (including equity or debt securities) of a distressed asset, company, fund or index...".

Commencement of the Voluntary Liquidation of the Fund

7. Article 8 of the Articles provides as follows:

"The term of the [Fund] shall be five (5) years commencing February 1, 2010 (the "Term"), at which point the Directors, in consultation with the Investment Manager, may extend the Term of the [Fund] for two (2) additional one (1) year periods (the "Extensions"), in order to liquidate the remaining investments in a reasonable manner. Upon the expiration of the Term and the Extensions, the [Fund] may distribute the remaining Investments in-kind or in-specie."

8. Section 117(1)(b) of the Companies Act provides as follows:

"A voluntary winding up is deemed to commence –

[...]

(b) on the expiry of the period or the occurrence of the event specified in the company's memorandum or articles of association..."

9. Accordingly, as a matter of Cayman Islands law, the voluntary liquidation of the Fund was deemed to commence automatically, by operation of law, with effect from 1 February 2017 (at the latest, on the assumption that both Extensions were exercised (which is not known)).

Appointment of the Joint Voluntary Liquidators

10. Section 119(2) of the Companies Act provides as follows:

"When the winding up has commenced in accordance with the company's memorandum or articles of association upon the termination of a fixed period or the occurrence of an event –

- (a) the persons designated as liquidators in the memorandum or articles of association shall become such liquidators automatically from the commencement of the winding up; or*
- (b) if no such person is designated in the memorandum or articles of association [...], the directors shall convene a general meeting of the company for the purpose of appointing a liquidator."*

11. The Articles of the Fund do not identify and/or designate any person as liquidator of the Fund, upon the expiry of the Term and Extensions (as applicable) of the Fund in accordance with Article 8 of the Articles.

12. Article 93 of the Articles provides as follows:

"A resolution in writing signed by all Shareholders for the time being entitled to receive notice of and to attend and vote at a general meetings [sic] of the [Fund] (or being corporations by their duly authorised representatives) shall be as valid and effective as if the same had been passed at a general meeting of the [Fund] duly convened and held."

13. By a written resolution of SAARF Management LLC, in its capacity as the sole holder of the Management Shares (the "**Managing Shareholder**"), dated 20 April 2021, the Managing Shareholder passed, *inter alia*, a special resolution resolving that the Petitioners be appointed as joint voluntary liquidators of the Fund (the "**Written Resolution**").

14. In the circumstances:

- (a) the Fund is in voluntary liquidation, automatically by operation of law, as a result of the expiry of the applicable term of the Fund as set out in Article 8 of the Articles and pursuant to section 117(1)(b) of the Companies Act; and
 - (b) the voluntary winding up of the Company is deemed to have commenced on or before 1 February 2017, being the date of the expiry of the Term and the Extensions (if any) as set out in Article 8 of the Articles, pursuant to section 117(1)(b) of the Companies Act.
15. The notice of winding up and the Petitioners' consents to act as the joint voluntary liquidators of the Fund were filed with the ROC and CIMA on 8 April 2022 and in accordance with sections 123(1)(a), 123(1)(b) and 123(1)(d) of the Companies Act and Order 13, rules 2(a), 2(b) and 2(c) of the Companies Winding Up Rules, 2018 (the "**CWR**").
16. Accordingly, the Petitioners' appointment took effect from 8 April 2022 (that is, upon the filing of the consents to act with the ROC) pursuant to section 119(3) of the Companies Act and Order 13, rule 3(2) of the CWR.

Declaration of Solvency

17. Notwithstanding the commencement of the voluntary liquidation of the Fund, no declaration of solvency in the prescribed form in accordance with section 124(2) of the Companies Act and Order 14, rule 1 of the CWR (a "**Declaration of Solvency**") was filed with the ROC within 28 days of the commencement of the winding up in accordance with section 123(1)(c) of the Companies Act and Order 13, rule 2(2) of the CWR.
18. Additionally, on 21 April 2021, Mr Christopher Meyering, the Chief Legal Officer / Chief Compliance Officer of the Fund wrote to the Petitioners to confirm that John Rigas and Daniel Standen, in their capacities as directors of the Fund (together, the "**Directors**"), were unwilling to provide a Declaration of Solvency.

19. Accordingly, as at the date of this Petition, no Declaration of Solvency has been filed with the ROC.

Requirement for Court Supervision

20. In the absence of a signed Declaration of Solvency being provided by the Directors within 28 days of the commencement of the liquidation, section 124(1) of the Companies Act provides that the Petitioners are required to present a petition seeking an order that the liquidation of the Fund continue under the supervision of the Court.

Consent to Appointment as Joint Official Liquidators

21. Mr David Griffin is a qualified insolvency practitioner (as that term is defined in section 89 of the Companies Act) and consents to his appointment as a joint official liquidator of the Fund.
22. Mr Andrew Morrison is a qualified insolvency practitioner (as that term is defined in section 89 of the Companies Act) and consents to his appointment as a joint official liquidator of the Fund.

Your Petitioners therefore humbly pray that:

23. The liquidation of the Fund continue under the supervision of the Court pursuant to section 124(1) of the Companies Act.
24. Mr David Griffin and Mr Andrew Morrison of FTI Consulting (Cayman) Ltd, Suite 3212, 53 Market Street, Camana Bay, Grand Cayman KY1-1203, Cayman Islands be appointed as joint official liquidators of the Fund (the "**JOLs**").
25. The JOLs shall not be required to give security for their appointment.
26. The JOLs shall have the power to act jointly and severally.
27. The JOLs shall be authorised to do any acts or things considered by them to be necessary or desirable in connection with the dissolution of the Fund and the winding up of its affairs.

28. The JOLs shall be authorised to exercise all the powers set out in Parts I and II of the Third Schedule of the Companies Act and section 110(2) thereof without the further sanction of this Honourable Court.
29. The JOLs shall be at liberty to appoint such attorneys, counsel and/or 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, 2018.
30. No disposition of the Fund'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 the Petition shall be voided by virtue of section 99 of the Companies Act.
31. Subject to section 109(2) of the Companies Act and the Insolvency Practitioner's Regulations, 2018, the JOLs shall be authorised to render and pay all invoices out of the assets of the Fund for their own remuneration.
32. The JOLs shall be at liberty to meet all disbursements reasonably incurred in connection with the performance of their duties and, for the avoidance of doubt, all such payments shall be made as and when they fall due out of the assets of the Fund as an expense of the liquidation.
33. The Petitioners' fees and expenses of and incidental to the voluntary liquidation of the Fund, including but not limited to the Petitioners' fees and expenses of and incidental to the Petition, shall be paid in full out of the assets of the Fund as an expense of the liquidation.
34. The JOLs shall be authorised to take any such action as may be necessary or desirable to obtain recognition of the JOLs and/or their appointment and/or powers in any other relevant jurisdiction and to make application to the courts of such jurisdictions for that purpose.

35. Such further or other orders or directions as the Court thinks fit.

AND your Petitioners will ever pray etc.

DATED the 8th day of April 2022

Walkers (Cayman) LLP

WALKERS (CAYMAN) LLP
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

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.

