



COURT OF THE CAYMAN ISLANDS

SERVICES DIVISION

FSD CAUSE NO: OF 2023 (RPJ)

IN THE MATTER OF SECTIONS 124 AND 131 OF THE COMPANIES ACT (2023 REVISION)

AND IN THE MATTER OF CAYMAN INVESTMENT FUNDS SPC (IN VOLUNTARY LIQUIDATION)

PETITION FOR SUPERVISION ORDER

To: The Grand Court of the Cayman Islands

The humble petition of Mitchell Mansfield and Samuel Cole of Kroll (Cayman) Limited (**Kroll**) of Strathvale House, Third Floor, 90 North Church Street, Grand Cayman, Cayman Islands, as joint voluntary liquidators (**JVLs**) of Cayman Investment Funds SPC (in voluntary liquidation), shows that:

Overview

- 1 This is a Petition seeking orders that the liquidation of an insolvent company continues under the supervision of the Court as a result of the company director confirming that he does not intend to sign a declaration of solvency.

Company Particulars

- 2 Cayman Investment Funds SPC (registration number 336368) (**Company**) is an exempted segregated portfolio company incorporated on 27 April 2018 in the Cayman Islands with limited liability under the Companies Act.
- 3 The Company carries on business as a regulated investment fund, having its registered office at 23 Lime Tree Bay Avenue, P.O. Box 10176, Grand Cayman KY1-1002, Cayman Islands.
- 4 The Company was initially incorporated under the name "Prudent Cayman Investment Funds SPC". On 8 June 2021, it changed its name to "Cayman Investment Funds SPC".

5 The Company's articles of association were adopted on 27 April 2018. The objects for which the Company was incorporated are unrestricted.

6 The sole director of the Company is Dennis Klemming (**Director**).

7 The Company is organised as a feeder fund. It was responsible for deploying all funds contributed by investors, to the extent any part was not retained to meet operating expenses, in acquiring shares in the corresponding master fund, Cayman Investment Funds Master SPC, an exempted company incorporated under the laws of the Cayman Islands, having its registered office at 23 Lime Tree Bay Avenue, P.O. Box 10176, Grand Cayman KY1-1002, Cayman Islands (**Master Fund**).

8 The Company served as the offshore feeder vehicle for US tax-exempt and international investors to contribute funds for investment through the Master Fund. A coordinate onshore feeder fund was established as a vehicle for US-taxable investors to contribute funds for investment through the Master Fund, known as U.S. Investment Funds Series, LLC, a duly incorporated company under the laws of the State of Delaware, United States of America, having its registered office at 8 The Green, Suite A, Dover, Kent, Delaware, United States of America (**Onshore Feeder**).

9 On its incorporation, the Company created four segregated portfolios:

- (a) North America Opportunity SP (**NAOSP**);
- (b) Diversified Corporate Lending SP (**DCLSP**);
- (c) Payment Processing SP (**PPSP**); and
- (d) Mezzanine SP (**MSP**).

(Segregated Portfolios)

10 NAOSP and DCLSP were the only segregated portfolios the Company carried on business through when it entered voluntary liquidation. The Company carried on business through PPSP between 2018 – 2021 but ceased business through PPSP in or around March 2021 after all investors were redeemed out of the portfolio. The Company established MSP in 2018, but no business was carried out through the segregated portfolio.

11 The authorised share capital of the Company is USD50,000.00, divided into:

- (a) 100 management shares of par value USD0.01 each; and
- (b) 4,999,900 participating shares of par value USD0.01 each.

- 12 Based on the information provided by the Director to the JVLs, the Company shareholding appears to be held as follows:
- (a) U.S. Investment Manager, LLC (**Investment Manager**) holds 100 management shares.
 - (b) The 31 July 2023 NAV for NAOSP states there are 7,595 participating shares outstanding in NAOSP, comprising 6,010 Class A shares and 1,585 Class B shares.
 - (c) The 31 July 2023 NAV for the Company states that there are no participating shares outstanding in DCLSP, PPSP or MSP.
- 13 Investors previously held participating shares in the DCLSP and PPSP segregated portfolios, but the Company has redeemed those shares. The Company never issued any participating shares in respect of the MSP segregated portfolio.

Investment Strategy and Performance

NAOSP

- 14 The Company's Supplement to its Private Placement Memorandum issued In August 2021 relating to the investment that the Company would carry out through the Master Fund recorded that:
- (a) The investment objective of the NAOSP portfolio (and the corresponding Master Fund segregated portfolio, North American Opportunity Master SP (**NAOMSP**)) was to create capital appreciation and income by managing investments in a portfolio of private equity companies domiciled in or carrying out business in the United States of America.
 - (b) The Investment Manager intended that NAOSP (through NAOMSP) would deploy the investment funds in acquiring debt securities that the Investment Manager considered would provide a favourable financial return for investors.
- 15 The Director states the Company (through NAOSP) deployed the funds contributed by investors to the corresponding Master Fund segregated portfolio, NAOMSP. In turn, the Director states the Master Fund, through NAOMSP, ultimately invested in three US companies: Alliance Metals, Sinai Medical and Athena Medical Management Group, LLC.
- 16 The relevant investor contractual arrangements provided that the Master Fund would, in turn, issue participating shares in NAOMSP to the Company in respect of its investment. The 31 July 2023 NAV for NAOMSP states that NAOSP holds 20,568 participating shares in NAOMSP.

17 In or around October 2023, the JVLs understand from the information provided by the Director that NAOMSP experienced a significant liquidity crunch because of the following matters:

- (a) The Company (on behalf of NAOSP) received numerous redemption requests from investors, creating payment obligations to the redeeming investors.
- (b) The Master Fund is unable to make payments sufficient to satisfy the redemption requests received by the Company as a result of the underlying investments in the Master Fund portfolio (NAOMSP) becoming distressed.

18 As a result of these matters, it appears the Company (on behalf of NAOSP) cannot meet its obligations to investors to make redemption payments on their redeemed shares as and when those obligations fall due for payment.

DCLSP

19 The Company's Supplement to its Private Placement Memorandum issued In April 2020 relating to the investment that the Company would carry out through the Master Fund recorded that:

- (a) The investment objective of the DCLSP portfolio (and the corresponding Master Fund segregated portfolio, Diversified Corporate Lending Mater SP (**DCLSP**)) was to create strong and sustainable risk-adjusted returns by making short-term loans backed by receivables to small to mid-sized companies based in South America, primarily in Brazil and/or North America.
- (b) The investment strategy for the DCLSP (and corresponding DCLMSP) portfolio was to hold investments in several regulated Brazilian Fundo de Investimento em Direitos Creditórios and other regulated investment vehicles, with at least 90 per cent of the investments being held in various debt securities.

20 The Director states the Company (through DCLSP) deployed the funds contributed by investors in acquiring participating shares in the corresponding Master Fund segregated portfolio, DCLMSP, and in turn, the Master Fund, through DCLMSP, ultimately invested in two South American companies: Prudent Investimentos (**Prudent Investments**) and Wow Solucoes Consultoria (**Wow Solutions**).

21 As was the case with NAOSP, the relevant investor contractual arrangements provided that the Master Fund would, in turn, issue participating shares in DCLMSP to the Company in respect of its investment. Based on the 31 July 2023 NAV, all participating shares issued by DCLMSP formerly held by DCLSP have been redeemed.

22 The JVLs understand from the information provided by the Director that DCLSP experienced a significant liquidity crunch because of the following matters:

- (a) The Company (on behalf of DCLSP) has received redemption requests from all investors for all their DCLSP participating shares.
 - (b) The Master Fund is unable to make payments sufficient to satisfy the redemption requests received by the Company as a result of the underlying investments in the Master Fund portfolio (DCLMSP) becoming distressed.
- 23 The JVLs understand, based on information provided by the Director, that it is unlikely that the funds received from the liquidation of the underlying investments held in the Master Fund through NAOMSP and DCLMSP will be sufficient for the Company to fulfil the redemption payments due to NAOSP and DCLSP shareholders.

The Company's Balance Sheet Position

- 24 The JVLs are in the process of determining the Company's financial position. Based on the information provided to the JVLs, the financial position of the Company, NAOSP, and DCLSP is as follows:

General Assets of the Company

- (a) The JVLs are yet to determine the asset / liability position in relation to the Company's general assets.

NAOSP

- (b) NAOSP holds receivables of USD30,696,017.11 in outstanding redemption requests (including accrued interest) due to it from the Master Fund (on behalf of NAOMSP) assessed as of 31 July 2023.
- (c) NAOSP has received redemption requests from investors totalling USD30,696,017.11 (including accrued interest) as of 31 July 2023, all of which are outstanding.
- (d) Insufficient funds are available to the Company to meet redemption requests from investors as and when those obligations fall due for payment.

DCLSP

- (e) DCLSP holds receivables of USD13,587,621.36 in outstanding redemption due to it from the Master Fund (on behalf of DCLMSP) assessed as of 25 October 2021.
- (f) DCLSP has received redemption requests from investors totalling USD13,587,621.36 as of 25 October 2021, all of which are outstanding.

- (g) Insufficient funds are available to meet redemption requests from investors as and when those obligations fall due for payment.

PPMSP

- (h) PPMSP has no assets or liabilities.

MMSP

- (i) MMSP has no assets or liabilities.

25 The last audited financial statements produced by the Company were for NAOSP for the financial year ending 31 December 2020. The audited financial statements post-December 2020 are outstanding.

Creditors of the Company and its Segregated Portfolios

26 The JVLs understand, on the information currently available, that the creditors of the Company and its Segregated Portfolios include:

NAOSP

- (a) The redeemed investors are creditors of NAOSP with an apparent aggregate claim of USD30,696,017.11 (including accrued interest) assessed as of 31 July 2023.
- (b) On 18 September 2023, Narmo Alpha Fund Limited (**Alpha Fund**) served a statutory demand on the Company for the sum of USD1,536,798 in respect of outstanding redemption requests made in connection with its NAOSP shares. The JVLs understand that payment of the outstanding amount was not made to Alpha Fund before the expiry of the 21-day deadline.

DCLSP

- (c) The redeemed investors are creditors of DCLSP with an apparent aggregate claim of USD13,587,621.36 assessed as of 25 October 2021.

27 The JVLs are continuing their investigation to determine the value of creditor claims and identify additional creditors of the Company and its Segregated Portfolios.

Solvency of the Company and its Segregated Portfolios

28 The Director has informed the JVLs that the Company is unable to realise sufficient liquid value from its assets to meet redemptions due to the Onshore Feeder and the Offshore Feeder.

Voluntary Liquidation of the Company

- 29 On 31 October 2023, the Investment Manager, as the sole management shareholder, passed a unanimous written resolution to appoint Mr Mansfield and Mr Cole as joint voluntary liquidators of the Company. Accordingly, the winding up of the Company commenced on 31 October 2023 in terms of s 117(1)(a) of the Companies Act.
- 30 On 1 November 2023, the JVLs filed with the Registrar of Companies a notice of winding up of the Company in accordance with Order 13, rule 2(1)(a) of the Companies Winding Up Rules (2023 Consolidation) (CWR) and the JVLs' consent to act as voluntary liquidators of the Company.
- 31 On 7 November 2023, the JVLs arranged for notice of the winding up to be published in the Gazette on 20 November 2023, and a notice of appointment of liquidators was sent to the Director.
- 32 On 15 November 2023, the Director advised the JVLs (through their legal counsel) that he could not (and do not intend to) sign a declaration of solvency as he believed the Company was insolvent, as it was unable to pay its debts in full, together with interest at the prescribed rate within for a period of 12 months from the commencement of the winding up.
- 33 On 16 November 2023, the JVLs sent a copy of the notice of winding up and liquidator's consent to the Cayman Islands Monetary Authority, given the Company was carrying on a regulated business in terms of s 2(1) of the Companies Act, per O. 13, r 2(1)(c) of the CWR.

Related Proceedings Affecting the Master Fund

- 34 On 31 October 2023, the Investment Manager, as the sole management shareholder of the Master Fund, also passed a unanimous written resolution to appoint Mr Mansfield and Mr Cole as joint voluntary liquidators of the Master Fund.
- 35 The JVLs have filed a petition seeking a supervision order under section 124 or, alternatively, section 131 of the Companies Act in relation to the Master Fund on the basis that the directors of the Master Fund have not, and do not intend to, sign a declaration of solvency for the Master Fund. This Petition has been filed contemporaneously with the petition concerning the Master Fund.

Grounds for the Supervision Order

- 36 Section 241(1) of the Companies Act provides that the voluntary liquidators of a company must present a petition seeking the winding up of the company to continue under the supervision of the Grand Court

if a declaration of solvency is not provided within 28 days of the commencement of the voluntary liquidation.

37 The voluntary liquidation commenced on 31 October 2023, meaning a declaration of solvency, if forthcoming, is required by 28 November 2023.

38 The Director of the Company has not signed a declaration of solvency since the commencement of the winding up and has informed the JVLs (via legal counsel) that he does not intend to do so. Accordingly, the Companies Act requires that the liquidation continue under the supervision of the Court.

39 Alternatively, section 131(a) of the Companies Act provides that the Court may make an order for the continuation of the winding up of the Company under the supervision of the Court, notwithstanding that a declaration of solvency has been made, on the grounds that the company is or is likely to be insolvent.

40 For the reasons outlined above, the circumstances demonstrate that the Company is, or is likely to become, insolvent.

Consent to Appointment as Joint Official Liquidators

41 The JVLs:

- (a) are “qualified insolvency practitioners” within the meaning of that term under s 89 of the Companies Act and as prescribed by regulation 4 of the Insolvency Practitioners Regulations (2023 Consolidation) (**IPR**);
- (b) meet the residency requirements contained in regulation 5 of the IPR;
- (c) meet the independence requirements prescribed in regulation 6 of the IPR;
- (d) meet the insurance requirements prescribed by regulation 7 of the IPR, and Kroll holds a trade licence that authorised its staff to carry on business as professional insolvency practitioners;
- (e) consent to their appointment as joint official liquidators (**JOLs**) of the Company if the Court so directs.

Notice of Petition

42 On 26 October 2023, the Director notified creditors and shareholders that the Company would be placed into voluntary liquidation.

- 43 On 9 November 2023, the Director notified creditors and shareholders that the Company had been placed in voluntary liquidation and the JVLs would make an application to the Court for the Company's liquidation to be continued under the supervision of the Court.
- 44 As of the date of this Petition, no objection has been received from any creditor or shareholder of the Company to the JVLs' appointment or the application for the Company's liquidation to continue under the supervision of the Court.
- 45 The JVLs will notify and provide a copy of this Petition to all known Company shareholders and creditors. The JVLs will request that any objection to the Petition be made within 14 days of delivery of the notice to the creditor or shareholder. Unless the JVLs receive any objection to this petition within this timeframe, they will request that the Court make the supervision order without needing a hearing, pursuant to O.15, r. 5(1) of the CWR.

THE PETITIONERS HUMBLY PRAY THAT:

- (a) The winding up of the Company is continued under the supervision of the Court pursuant to s 124 (or, in the alternative, s 131) of the Companies Act.
- (b) Mitchell Mansfield and Samuel Cole of Kroll (Cayman) Limited of Strathvale House, Third Floor, 90 North Church Street, Grand Cayman, Cayman Islands, are appointed as JOLs of the Company with the power to act jointly and severally.
- (c) The JOLs are not required to provide security for their appointment.
- (d) The JOLs are authorised to take any action they consider necessary or desirable in connection with the liquidation of the Company and its Segregated Portfolios and the winding up of affairs in the Cayman Islands or elsewhere.
- (e) The JOLs are sanctioned to exercise the following powers outlined in Part One of the Third Schedule of the Companies Act without further order of the Court:
- (i) The power to bring or defend any action or other legal proceeding in the name and on behalf of the Company.
 - (ii) The power to make a compromise or an arrangement with creditors or persons claiming to be creditors or who have or allege the existence of a claim against the company, whether present or future, actual or contingent, or ascertained or not.
 - (iii) The power to compromise calls and liabilities for calls, debts, and liabilities capable of resulting in debts and claims, present or future, actual or contingent, or ascertained or

not, subsisting or supposed to subsist between the company and any person and all questions relating to or affecting the assets or the liquidation of the company, on such terms as may be agreed, and take security for the discharge of any such call, debt, liability, or claim, and give a complete discharge.

- (iv) The power to sell or otherwise dispose of the property of the Company and its Segregated Portfolios.
 - (v) The power to engage staff (whether or not as employees of the Company) to assist the JOLs in the performance of their functions;
 - (vi) The power to engage attorneys and other professionally qualified persons to assist the JOLs in the performance of their functions, within and outside of the Cayman Islands, and on such terms as the JOLs think fit, and to remunerate them out of the assets of the Company and its Segregated Portfolios as an expense of the official liquidation;
- (f) The JOLs are additionally empowered to exercise the following powers without further order of the Court:
- (i) The JOLs are authorised to take any action as may be necessary or desirable to obtain recognition of the official liquidation and their appointment as JOLs in the United States of America or any other relevant jurisdiction, together with such other relief as the JOLs deem necessary for the proper exercise of their functions in that jurisdiction.
 - (ii) The power to control and otherwise deal with all existing bank accounts in the name of the Company and its Segregated Portfolios and to open new bank accounts in the name of the Company.
 - (iii) The power to appoint an agent to do anything the JOLs cannot do.
 - (iv) The power to change the registered office of the Company.
- (g) The JOLs may exercise the powers granted to them within and outside of the Cayman Islands.
- (h) Unless the Court otherwise directs, the JOLs are not required to take steps to establish a liquidation committee.
- (i) No suit, action or other proceeding may be proceeded with or commenced against the Company except with the leave of the Court and subject to such terms as the Court may impose.

- (j) No disposition of the Company or its Segregated Portfolio's property by, or with the authority of, the JOLs in carrying out their functions and exercising their powers under this Order shall be voided under s 99 of the Companies Act.
- (k) The costs of this petition shall be paid out of the assets of the Company and its Segregated Portfolios as an expense of the official liquidation.
- (l) The JOLs are at liberty to apply generally.
- (m) Such further or other orders are made as the Court deems fit.

AND your Petitioners will ever pray, etc.

Dated: 20 November 2023



DENTONS

Attorneys for the JVLs

THIS PETITION was issued by Dentons, attorneys for the Joint Voluntary Liquidators, whose address for service is Dentons, Floor Two, One Capital Place, Shedden Road, P.O. Box 10190, Grand Cayman KY1-1002 Cayman Islands.

