



IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO. FSD: OF 2024 ()

IN THE MATTER OF SECTION 129 AND SECTION 151(3) OF THE COMPANIES ACT
(2023 REVISION)

AND IN THE MATTER OF ZENIUM TOPCO LIMITED (IN VOLUNTARY
LIQUIDATION)

PETITION

TO THE GRAND COURT

The humble petition (the "**Petition**") of Walkers Liquidations Limited, 190 Elgin Avenue, George Town, Grand Cayman KY1-9008, Cayman Islands (the "**Petitioner**"), shows that:

Establishment of the Company

1. Zenium TopCo Limited (in Voluntary Liquidation) (the "**Company**") is an exempted company limited by shares incorporated on 21 November 2013 pursuant to the Companies Act (as amended) (the "**Companies Act**").
2. The registered office of the Company is located at Walkers Corporate Limited, 190 Elgin Avenue, George Town, Grand Cayman KY1-9008, Cayman Islands.
3. The authorised capital of the Company is US\$427,929.282 divided into 252,000 A Preference Shares of a nominal or par value of US\$0.001 each, 12,846,282 B Preference Shares of a nominal or par value of US\$0.001 each and 162,583 Ordinary Shares of a nominal or par value of US\$1.00 each. The sole shareholder of the Company is CyrusOne Foreign Holdings LLC (the "**Sole Shareholder**").

Business of the Company

4. Pursuant to Article 3 of the Amended & Restated Memorandum and Articles of Association of the Company, adopted by special resolution dated 20 January 2017 (the "**Articles**"), the objects for which the Company is established are unrestricted.
5. However, the principal purpose of the Company was to act as a holding company for a wider group of companies operating in a range of jurisdictions.

Commencement of the Voluntary Liquidation

6. Section 116 of the Companies Act provides that:

"A company incorporated and registered under this Law or an existing company may be wound up voluntarily – ...

(c) if the company resolves by special resolution that it be wound up voluntarily; ..."

7. Section 117 of the Companies Act provides that:

"A voluntary winding up is deemed to commence –

(a) at the time of the passing of the resolution for winding up..."

8. Section 119(3) of the Companies Act provides that:

"Except in the case of a person designated as liquidator in the company's memorandum or articles of association, the appointment of a voluntary liquidator shall take effect upon the filing of that person's consent to act with the Registrar."

9. On 20 March 2024, the directors of the Company, Robert Jackson and Erik Leban (the "**Directors**"), executed written resolutions noting, *inter alia*, that:

- (a) the Company would not be engaging in any further business or investment activity and that the operations of the company had been fully wound down;
- (b) the Company had no assets and no liabilities;
- (c) the Directors had conducted a full enquiry into the Company's affairs and to the best of the directors' knowledge and believe the Company would be able to pay its debts in full together with interest at the prescribed rate within a twelve month period from the commencement of any voluntary winding up; and
- (d) there was no reason for the Company to continue as a going concern and the Company should therefore be wound up voluntarily;

and resolving, *inter alia*, that:

- (a) the Directors recommend to the Sole Shareholder that the Company be wound up voluntarily; and
 - (b) the Petitioner be appointed as the voluntary liquidator of the Company.
10. Later that same day, the Sole Shareholder executed written special resolutions resolving, *inter alia*, that:
- (a) the Company be wound up voluntarily; and
 - (b) the Petitioner be appointed as the voluntary liquidator of the Company.
11. Also on 20 March 2024, the Petitioner filed its consent to act as voluntary liquidator of the Company with the Registrar of Companies (the "**Registrar**").
12. In the premises:
- (a) the Company had resolved by special resolution that it be wound up

voluntarily in accordance with section 116(c) of the Companies Act; and

- (b) the voluntary winding up of the Company, and the appointment of the Petitioner as voluntary liquidator of the Company, commenced on 20 March 2024.

Compliance with statutory requirements

13. Section 123(1) of the Companies Act provides that:

"Within twenty-eight days of the commencement of a voluntary winding up, the liquidator, or in the absence of any liquidator, the directors shall –

- (a) file notice of the winding up with the Registrar;*

...

- (c) file the director's declaration of solvency with the Registrar (if the supervision of the court is not sought);*

...

- (e) publish notice of the winding up in the Gazette."*

14. In compliance with Section 123 of the Companies Act and Order 13 of the Companies Winding Up Rules (2023 Consolidation) (the "**CWR**"), the Petitioner (in its capacity as voluntary liquidator of the Company):

- (a) filed a notice of winding up of the Company with the Registrar on 20 March 2024;
- (b) filed the Directors' declaration of solvency pertaining to the Company with the Registrar on 20 March 2024; and
- (c) published notice of the winding up of the Company in the Gazette on 22

March 2024.

15. On 22 March 2024, in accordance with section 127(1) of the Companies Act and Order 13 of the CWR, the Petitioner prepared its final reports and accounts pertaining to the conduct of the winding up of the Company (the "**Final Report**"). Based on the information made available to the Petitioner by the Company and its Directors, the Final Report noted that:
 - (a) there were no assets held by the Company at the time the Company was placed into administration; and
 - (b) there were no liabilities owing by the Company at the time the Company was placed into voluntary liquidation.

16. At 10.30am on 18 April 2024, in accordance with section 127(1) of the Companies Act, the Petitioner convened the final meeting of the Company (the "**Final Meeting**") for the purpose, *inter alia*, of presenting the Final Report. The minutes of the Final Meeting record that:
 - (a) the meeting was quorate in accordance with Articles by virtue of the Sole Shareholder's attendance by proxy;
 - (b) the following shareholder resolutions were passed:
 - (i) *"that the Voluntary Liquidator's final report and account showing how the winding up of the Company has been conducted, how the Company's property has been disposed of and any explanation that may be given by the Voluntary Liquidator thereof be approved"*; and
 - (ii) *"that the Voluntary Liquidator be authorised to retain the books and records of the Company for a period of three years from the date of dissolution of the Company, after which time they may be*

destroyed".

17. Following the Final Meeting, the Petitioner filed its final return with the Registrar in accordance with section 127(3) of the Companies Act (the "**Final Return**"). The Final Return stated that "*the final resolutions were passed with the result that the Company is deemed to be dissolved upon the expiration of three months from the date upon which this Final Return is registered.*"
18. Pursuant to the Certificate of Dissolution subsequently issued by the Registrar and section 151(2) of the Companies Act, the Company will be deemed to be dissolved on 22 July 2024 and thereupon removed from the Companies Register.

Contingent liabilities of the Company

19. In the period following the filing of the Final Return, the Petitioner has been notified by the Company's German legal counsel that despite recommending to the Company's shareholders that the voluntary liquidation of the Company be commenced on a no assets / no liabilities basis, the Directors had overlooked the fact that the Company remained subject to certain contingent liabilities pursuant to certain outstanding guarantee obligations which are described in further detail below.

Guarantee of Tenant's obligations pursuant to the Lease

20. On 23 January 2012, each of Prologis UK CCXLIV S.à r.l. (as landlord) (the "**Landlord**"), ISDC Developments (No3) Limited (now Zenium UK2 Limited) (as tenant) (in such capacity, the "**Tenant**"), Infinity SDC Limited (as original guarantor) (the "**Original Guarantor**") and Prologis Park Heathrow Management Company Limited (as estate management company) entered into a lease in respect of a property located at DC2, Prologis Park, Heathrow, United Kingdom (the "**Lease**").
21. Pursuant to a deed of variation to lease and release dated 20 March 2017

entered into by each of the Landlord, the Tenant, the Original Guarantor and the Company, the Company agreed, *inter alia*, to act (and continues to act) as guarantor in respect of the obligations of the Tenant pursuant to the Lease (in place of the Original Guarantor).

Guarantee of obligations pursuant to Occupational Lease / MSA

22. In addition, on 10 January 2013:
- (a) each of ISDC Developments (No3) Limited (now Zenium UK2 Limited) (as landlord), Infinity SDC Limited (as original guarantor), Cable & Wireless UK (now Vodafone Enterprise UK) (as tenant) and Cable & Wireless Worldwide Limited (as guarantor) entered into a lease agreement; and
 - (b) each of ISDC Developments (No3) Limited (now Zenium UK2 Limited) (as supplier) (in such capacity, the "**Supplier**"), Infinity SDC Limited (as original guarantor), Cable & Wireless UK (now Vodafone Enterprise UK) and Cable & Wireless Worldwide Limited (as guarantor) (together, the "**Customers**") entered into a managed services agreement,

(together, the "**Occupational Lease / MSA**").
23. On 14 September 2017, the Company entered two deeds of substitution of guarantor between each of the Supplier, the Original Guarantor, the Customers and the Company, pursuant to which, the Company agreed, *inter alia*, to act (and continues to act) as guarantor in respect of the obligations of the Supplier to the Customers pursuant to the Occupational Lease / MSA.

The consequences of the Company's dissolution being effected on 22 July 2024

24. The Petitioner understands that the Company will seek a full release from its obligations as guarantor under the Lease and the Occupational Lease / MSA by entering into deeds of substitution, pursuant to which:

- (a) another entity in the CyrusOne group of companies (of which the Company forms a part) (the "**Group**") will provide a replacement guarantee; and
 - (b) the other parties will release the Company from its obligations.
- 25. Were the Company's dissolution to take effect without the Company being replaced as guarantor under the Lease and Occupational Lease / MSA, then:
 - (a) the Landlord would accrue the right to terminate the Lease; and
 - (b) the Customers would accrue the right to terminate the Occupational Lease / MSA.
- 26. In the event that the rights described in paragraph 25 were exercised by the Landlord and/or the Customers, the Company would suffer significant adverse financial and operational consequences, including in the case of termination of the Lease by the Landlord, the need for the Tenant (a member of the same corporate group as the Company) to vacate the subject property, from which it operates a data centre. The ensuing financial losses would also be significant, in light of the inevitable loss of revenue, probable damages claims brought by customers and counterparties, and cross-defaults triggered under agreements with funders and customers that would have a substantially detrimental impact on the affairs of the Group.

Request for the deferral of the dissolution of the Company

- 27. In view of the matters described herein, the Petitioner humbly requests that the dissolution of the Company, which would otherwise take effect on 22 July 2024, be deferred for a period of 6 months pursuant to sections 129 and 151(3) of the Companies Act, so as to allow the Company an opportunity to negotiate the terms of the deeds of substitution, whereby another company within the Group will assume the Company's liabilities *qua* guarantor to certain third party entities.

28. The Petitioner understands that the costs arising in respect of the Petition and the continuation of the Company will be borne by CyrusOne LP as holding company of all the operative entities within the Group.

Your Petitioner therefore humbly prays that:

1. The date at which the dissolution of the Company is to take effect be deferred from 22 July 2024 for a period of 6 months.
2. Such further or other orders or directions as the Court thinks fit.

AND YOUR PETITIONER WILL EVER PRAY ETC.

DATED the 18th day of July 2024

Walkers (Cayman) LLP

WALKERS (CAYMAN) LLP

Attorneys-at-Law for the Petitioner

This Petition is intended to be served on the Sole Shareholder at Suite 900, 2101 Cedar Springs Roads, Dallas, Texas 75201, United States of America.

This **PETITION** was presented by Walkers, Attorneys-at-Law for the Petitioner, whose address for service is care of its said Attorneys at 190 Elgin Avenue, George Town, Grand Cayman KY1-9001, Cayman Islands.