

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO: FSD OF 2024 ( )

IN THE MATTER OF THE PARTNERSHIP ACT (2013 REVISION) AND THE EXEMPTED LIMITED PARTNERSHIP ACT (2021 REVISION) AND THE COMPANIES ACT (2023 REVISION)



THE MATTER OF NOVALPINA VISION LP

EN

RBC TRUSTEES (JERSEY) LIMITED

SURVIVOR BY MERGER OF RBC TRUST COMPANY (GUERNSEY) LIMITED)

(AS TRUSTEE FOR THE CLARENDON TRUST)

Petitioner

AND

NOVALPINA VISION LP

Respondent

---

WINDING UP PETITION

---

To: The Grand Court

THE HUMBLE PETITION of RBC Trustees (Jersey) Limited ("Petitioner") (survivor by merger of RBC Trust Company (Guernsey) Limited ("RBC Guernsey")), as trustee of

This Petition was filed by Carey Olsen, attorneys-at-law for the Petitioner, whose address for service is Level 1, Willow House, Cricket Square, Grand Cayman, Cayman Islands KY1-1001 (Ref: 1032373.0538).

Clarendon Trust, a limited partner of Novalpina Vision LP ("**Respondent**" or "**Partnership**") shows that:

### **The Partnership**

1. The Respondent is a Cayman Islands exempted limited partnership registered on 20 September 2019 pursuant to the Exempted Limited Partnership Act (as amended) ("**ELP Act**") with registration number 103612. The current registered office of the Partnership is at Maples Corporate Services Limited, P.O. Box 309, Ugland House, South Church Street, George Town, Grand Cayman, KY1-1104, Cayman Islands.
2. The general partner of the Partnership is Novalpina Vision GP Limited ("**General Partner**"), a Cayman Islands exempted limited company whose registered address is the same as that of the Respondent and which is registered under number 355448.
3. The purpose of the Partnership is to undertake investment activities as part of the so-called "Project Vision", namely, to hold certain privately traded shares in anticipation of their potential appreciation. The currently applicable limited partnership agreement is the Third Amended and Restated Limited Partnership Agreement dated 21 April 2023 ("**ELP Agreement**"). Unless defined otherwise, capitalised term in this petition have the meaning given to them in the ELP Agreement.
4. The Petitioner believes that the Partnership is solvent and that upon liquidation there will be a surplus for the limited partners.

### **The Petitioner**

5. The Petitioner is a Bailiwick of Jersey company registered under the Companies (Jersey) Law 1991 with registration number 11033, with its registered address at Gaspé House, 66-72 Esplanade, St Helier, Jersey, JE2 3QT. The Petitioner is the

This Petition was filed by Carey Olsen, attorneys-at-law for the Petitioner, whose address for service is Level 1, Willow House, Cricket Square, Grand Cayman, Cayman Islands KY1-1001 (Ref: 1032373.0538).

survivor merged company of a merger between it and RBC Guernsey. Until its merger into the Petitioner on 10 April 2024, RBC Guernsey was a company registered in the Island of Guernsey with registered number 8028. The legal effect of the merger is that RBC Guernsey continues into the survivor Petitioner, so that all property, rights and obligations of RBC Guernsey continue as the property, rights and obligations of the Petitioner.

6. The Petitioner is part of the private client wealth management and fiduciary services business of RBC Trust Company (International) Limited. More generally, it is part of the Royal Bank of Canada group of companies.
7. The Petitioner is regulated by the Jersey Financial Services Commission as a trust company business.
8. Until its merger into and continuation as the Petitioner, RBC Guernsey was also part of the Royal Bank of Canada group of companies and part of its private client wealth management and fiduciary services business. RBC Guernsey was regulated by the Guernsey Financial Services Commission. For convenience, unless the distinction is material, this petition will refer to the Petitioner and RBC Guernsey simply as "Petitioner".
9. The Petitioner brings this petition in its capacity as trustee of a Guernsey law governed trust known as the Clarendon Trust (**Trust**). As a regulated entity, the Petitioner also conducts all appropriate compliance due diligence on its underlying clients. Mrs Yana Peel is the settlor and sole beneficiary of the Trust. Her husband, Mr Stephen Peel is the reserved advisor.
10. In or around November 2019, the Petitioner subscribed for a US\$ 2,800,000 limited partnership interest in the Respondent in the circumstances more fully set out below.

This Petition was filed by Carey Olsen, attorneys-at-law for the Petitioner, whose address for service is Level 1, Willow House, Cricket Square, Grand Cayman, Cayman Islands KY1-1001 (Ref: 1032373.0538).

**The Petitioner's subscription and its relevant background**

11. The Partnership and the General Partner are part of a wider group of affiliated businesses ("**Novalpina Group**"). The Novalpina Group was founded in 2017 by three individuals: Mr Peel, Mr Stefan Kowski, and Mr Bastian Lueken. Mrs Peel also has invested in certain Novalpina Group companies. As at the time of the Petitioner's investment in the Partnership in November 2019, Mr Kowski (whose contemporaneous knowledge is to be imputed to the General Partner and to the Partnership) was well aware of the identities, the source of funds, and the source of wealth of Mr and Mrs Peel. A search of corporate records shows that, as at the date of this petition, Mr Kowski is one of the General Partner's directors.
12. Clause 3.1 of the ELP Agreement provided that the General Partner was to procure that certain other Novalpina Group entities or any of their Associates were to invest an aggregate of at least US\$ 5 million in the Partnership by way of a Sponsor Subscription (such subscribers defined as Special Limited Partners and Exempt Investors in the ELP Agreement). The purpose of the Sponsor Subscription was to demonstrate to third-party limited partners Novalpina Group's commitment to the Partnership's business strategy.
13. In or around 15 October 2019, a Novalpina Group employee acting on behalf of the General Partner (for the Partnership) emailed to Mr Peel the Partnership's promotional and subscription documentation "*for Clarendon Trust*" (i.e., the Trust). Following further email correspondence between Mr Peel and Novalpina Group employees acting on behalf of the General Partner, one of them confirmed to Mr Peel that "*Clarendon [i.e., the Trust] will come directly in the main fund*" and will be part of the Exempt Investor US\$ 5 million commitment pursuant to clause 3.1 of the ELP Agreement.
14. Thereafter, further email correspondence took place concerning the Petitioner's proposed subscription to the Partnership between Novalpina Group employees acting on behalf of the General Partner, the Petitioner, and at least one of Mr Peel

This Petition was filed by Carey Olsen, attorneys-at-law for the Petitioner, whose address for service is Level 1, Willow House, Cricket Square, Grand Cayman, Cayman Islands KY1-1001 (Ref: 1032373.0538).

or Mrs Peel (collectively, "**Pre-Subscription Correspondence**"). The Pre-Subscription Correspondence expressly recorded that the investment would be made by the Petitioner as trustee for the Trust and that the investment funds would be settled on the Trust by Mrs Peel.

15. Among other matters, the precise form of the subscription agreement was discussed between the General Partner and the Petitioner (with Mrs Peel in copy) in the Pre-Subscription Correspondence. A version of the subscription agreement circulated on behalf of the Partnership on 22 October 2019 expressly identified Mrs Peel as the beneficial owner for whom the Petitioner would hold the limited partnership interest beneficially. Subsequently, having taken advice, the Petitioner reached the view that, notwithstanding that Mrs Peel would settle the funds for the investment on the Trust, it would be incorrect to identify her as beneficial owner in the subscription agreement. On 24 October 2019, the Petitioner explained this to the Partnership when circulating a duly amended draft subscription agreement (with Mrs Peel in copy) and requested that the Partnership cause its legal advisors to review the agreement and confirm if the form had been correctly completed and whether any further client due diligence materials were required.
16. On 24 October 2019, the Partnership responded to the Petitioner thanking the Petitioner for the aforementioned explanations, stating that the Partnership's onshore legal advisors had no comments and that the Partnership was now awaiting comments from its then Cayman Islands advisors.
17. Later on 24 October 2019, the Partnership emailed the Petitioner passing on comments on the draft subscription agreement from the Partnership's then Cayman Islands advisors. The comments from the Partnership's Cayman Islands advisors included the following observation: "*AML/KYC team: We have no further comments or requests.*" This was in circumstances where the Partnership solicited the investment out of the Trust as one of the mandatory Sponsor Subscriptions and was expressly on notice that Mrs Peel was settling the funds on the Trust and

This Petition was filed by Carey Olsen, attorneys-at-law for the Petitioner, whose address for service is Level 1, Willow House, Cricket Square, Grand Cayman, Cayman Islands KY1-1001 (Ref: 1032373.0538).

that the Petitioner would use those funds to purchase the limited partnership interest in the Partnership. The same email also included the following request from the Partnership's Cayman Islands advisors for a change to the draft subscription agreement: "*we would treat [the Petitioner] as the account holder for AEOI purposes so the self cert should be completed in the name of this entity*".

18. On 25 October 2019, the Petitioner emailed a duly amended copy of the draft subscription agreement to the Partnership, implementing the changes to self-certification requested by the Partnership's Cayman Islands advisors.
19. Later on 25 October 2019, the Petitioner executed the subscription agreement to subscribe for a US\$2,800,000 partnership interest in the Respondent ("**Petitioner Subscription**") in the form in which it was approved by the Respondent and by the Respondent's Cayman Islands advisors ("**Subscription Agreement**"). The Subscription Agreement expressly stated on its face that the Petitioner subscribed "*as trustee of the Clarendon Trust*" but (in line with the communications pleaded above) did not record Mrs Peel as a beneficial owner (albeit the KYC questionnaire enclosed with the Subscription Agreement still expressly stated that the investment was made with moneys settled on the Trust by Mrs Peel). Thus, as described above, the Partnership was aware from the Pre-Subscription Correspondence that the subscription funds were settled on the Trust by Mrs Peel. On 26 November 2019, the General Partner endorsed the Subscription Agreement as accepted on that date.
20. In the premises, at the time the General Partner accepted the Petitioner's Subscription Agreement on 26 November 2019, the General Partner:
  - (a) specifically solicited the investment of the Trust moneys into the Partnership via the Petitioner Subscription in email exchanges with Mr Peel;

This Petition was filed by Carey Olsen, attorneys-at-law for the Petitioner, whose address for service is Level 1, Willow House, Cricket Square, Grand Cayman, Cayman Islands KY1-1001 (Ref: 1032373.0538).

- (b) expressly designated the Petitioner as an Exempt Investor for the purposes of clause 3.1 of the ELP Agreement, from which it follows by necessary implication that the Petitioner Subscription was deemed by the General Partner to be a Sponsor Subscription, and, pursuant to the relevant defined terms in the ELP Agreement, the Petitioner itself was regarded by the General Partner as an Associate of certain Novalpina Group companies (namely, Novalpina Capital LLP and Novalpina Capital Management International LLP), which designation (since the Petitioner is not itself affiliated with those Novalpina Group companies) is only consistent with the General Partner being aware of the role of Mr and Mrs Peel;
- (c) would have been aware that the funds paid to it pursuant to the Subscription Agreement originated from Mrs Peel;
- (d) would have been aware of the identity of Mrs Peel, her source of funds, and her source of wealth; and
- (e) in the words of its Cayman Islands advisors had "*no further comments or requests*" from its "*AML/KYC team*".

In the premises, not only was the General Partner aware in 2019 of Mrs Peel's involvement, but in fact the General Partner specifically solicited the Trust investment as a way to meet its obligation under clause 3.1 of the ELP Agreement to procure a minimum level of Sponsor Subscriptions. This is important context for the General Partner's subsequent conduct.

21. During more than four years between the Closing Date of 26 November 2019 and 22 April 2024, the Partnership did not raise any queries about the *bona fides* of the Petitioner's investment, whether generally or in relation to Mrs Peel's identity or source of funds.

This Petition was filed by Carey Olsen, attorneys-at-law for the Petitioner, whose address for service is Level 1, Willow House, Cricket Square, Grand Cayman, Cayman Islands KY1-1001 (Ref: 1032373.0538).

22. In the meantime, a widely publicised corporate power struggle over the control of the Novalpina Group developed between Mr Peel on the one hand and Mr Kowski and Mr Lueken on the other. Eventually Mr Peel was forced out of the Novalpina Group by Mr Kowski and Mr Lueken. Subsequent events have to be viewed against this background of personal conflict between the then controllers of the General Partner and Mrs Peel's husband.

#### **Subsequent events**

23. On 22 April 2024, the Partnership (via its Cayman Islands attorneys, who were different than the advisors that advised the Partnership in 2019) wrote to RBC Guernsey asserting that the General Partner was "*conducting due diligence review of this investment*". The letter was addressed to RBC Guernsey notwithstanding that the Petitioner had informed the Partnership on 13 November 2023 of its impending merger into the Petitioner and that on 15 February 2024 the Partnership confirmed by email from its administrator that the limited partner account was changed to the Petitioner's name. The letter also demanded, among other things, that the Petitioner should confirm the accuracy of the beneficial ownership statements in the Subscription Agreement as well as provide evidence of the source of funds, notwithstanding that the beneficial ownership position had been the subject of the Pre-Subscription Correspondence and the source of funds was well known to the Partnership.
24. Nevertheless, over several rounds of correspondence, the Petitioner (via its Cayman Islands attorneys) provided to the Partnership detailed explanations of the position (already known to the Partnership) together with approximately 500 pages of relevant documents.
25. Despite this, on 30 August 2024, the Partnership wrote to the Petitioner insisting that it has determined that the Petitioner's investment was a "*higher risk scenario*" requiring "*enhanced due diligence*" and that the due diligence provided so far was insufficient. On this basis, the Partnership insisted on receiving extensive further

This Petition was filed by Carey Olsen, attorneys-at-law for the Petitioner, whose address for service is Level 1, Willow House, Cricket Square, Grand Cayman, Cayman Islands KY1-1001 (Ref: 1032373.0538).

financial and other due diligence information on both Mrs Peel and Mr Peel, with a view to establishing not just the source of funds of Mrs Peel for making the investment, but also the wider source of wealth of both Mrs Peel and Mr Peel. The Partnership's letter characterised this as a "*final request*" and reserved rights under clauses 14 and 17 of the ELP Agreement, which clauses broadly provide the General Partner with certain discretions in respect of Limited Partners that are purported to be in default of certain information provision obligations.

26. On 20 September 2024, the Petitioner provided the Partnership with further extensive financial and other information on Mrs Peel, including her US and UK tax returns for 2022 and 2023 respectively, the Petitioner's own due diligence file on Mrs Peel, and certain other private financial documentation showing Mrs Peel's source of funds and source of wealth. In this letter the Petitioner warned the General Partner that, notwithstanding the voluminous additional information it was enclosing with the letter in good faith, given the context outlined in the preceding paragraphs, the Petitioner was growing concerned that the General Partner's purported "*due diligence review*" was not being conducted in good faith and for a proper purpose, but was rather a bad faith and/or improper exercise of the General Partner's powers aimed at prejudicing the Petitioner's interests as a Limited Partner in the Partnership as part of continuing hostilities between the General Partner's controller and Mr Peel. The letter warned that further threats of adverse action against the Petitioner's interests based on baselessly extensive demands for due diligence will risk precipitating justifiable loss of faith and confidence by the Petitioner in the probity of the General Partner.
27. On 5 November 2024, the Partnership responded by letter to the Petitioner. On the central issue of the grounds on which the General Partner has made a determination that the Petitioner's investment was "*higher risk*" and required the application of "*enhanced due diligence*", the letter stated that the General Partner reached this determination, because, allegedly, during its due diligence review the General Partner "*discovered*" that the Petitioner misrepresented in the

This Petition was filed by Carey Olsen, attorneys-at-law for the Petitioner, whose address for service is Level 1, Willow House, Cricket Square, Grand Cayman, Cayman Islands KY1-1001 (Ref: 1032373.0538).

Subscription Agreement that it was investing for itself beneficially and not as a nominee for Mrs Peel ("**Alleged Misrepresentation**"). This Alleged Misrepresentation purportedly entitled the General Partner to investigate not just the identity of Mrs Peel and specific source of funds for the subscription itself, but to also open up a wide-ranging enquiry into the entire source of wealth of both Mr and Mrs Peel.

28. The letter went on to state, among other things, that unless the Petitioner provided further voluminous due diligence information on the source of wealth of both Mr and Mrs Peel by 29 November 2024, the Petitioner's limited partner interest would be transferred into an "*alternative investment vehicle*", namely, Novalpina Vision LLC ("**Novalpina LLC**"), a Cayman Islands limited liability company established on 25 July 2024. The letter enclosed a copy of the limited liability company agreement of Novalpina LLC ("**LLC Agreement**").
29. Finally, the letter noted that other allegedly non-compliant limited partners had already been transferred into Novalpina LLC and that the term of the Partnership (which was due to expire on 26 November 2024) had been extended to 26 November 2026.
30. If and when the Petitioner's limited partnership interest is transferred to Novalpina LLC, the Petitioner will be at risk of expropriation of its investment. The LLC Agreement contains several provisions that will ostensibly permit Novalpina LLC to press the same groundless due diligence demands against the Petitioner and, if they are not satisfied, expropriate the Petitioner's limited partnership interest for no consideration:
  - (a) Clause 16.1.1 of the LLC Agreement permits Novalpina LLC's managing member (Northbay Capital Investments Ltd ("**Northbay**") – a company controlled by Mr. Kowski, who the corporate searches show is, as at the date of this petition, one of Northbay's directors) to compulsorily transfer

This Petition was filed by Carey Olsen, attorneys-at-law for the Petitioner, whose address for service is Level 1, Willow House, Cricket Square, Grand Cayman, Cayman Islands KY1-1001 (Ref: 1032373.0538).

the Petitioner's interest to any person (including an associate of Northbay itself) for payment of US\$1.

- (b) Clause 16.1.4 of the LLC Agreement permits Northbay to reduce, eliminate or forfeit the Petitioner's interest and any of the Petitioner's rights.
- (c) Clause 16.1.5 of the LLC Agreement permits Northbay to force the Petitioner to withdraw from Novalpina LLC for US\$1.

31. Since receiving the 5 November 2024 letter, the Petitioner has become aware that at least one other limited partner in the Partnership, namely, Jumbo Star Asia Limited ("**Jumbo Star**") has already been expropriated under clause 16.1.1 of the LLC Agreement. Jumbo Star has informed the Petitioner by letter that on 12 August 2024 its limited partnership interest was transferred to Novalpina LLC. Less than a month later, on 11 September 2024, Jumbo Star was categorised as a Defaulting Member (within the meaning of that term in the LLC Agreement) and Northbay exercised its powers under clause 16.1.1 of the LLC Agreement to compulsorily transfer Jumbo Star's interest in Novalpina LLC, such that Jumbo Star is no longer a member of Novalpina LLC.

**Petitioner has justifiably lost trust and confidence in the management of the General Partner**

32. In all the circumstances set out above and summarised below, the Petitioner has suffered a justifiable loss of trust and confidence in the General Partner's management of the Partnership:
- (a) The General Partner's intended exercise of its discretions under the ELP Agreement to transfer the Petitioner's limited partnership interest to Novalpina LLC is premised on the Petitioner's alleged failure to meet its information provision requirements under the ELP Agreement in the context of the General Partner's "*due diligence exercise*".

This Petition was filed by Carey Olsen, attorneys-at-law for the Petitioner, whose address for service is Level 1, Willow House, Cricket Square, Grand Cayman, Cayman Islands KY1-1001 (Ref: 1032373.0538).

- (b) The additional information demanded by the General Partner is justified by it on the basis that it is entitled to apply "*enhanced due diligence*" to the Petitioner, because it has reclassified the Petitioner's investment from "*low risk*" in 2019 to "*high risk*" in 2024.
- (c) The risk reclassification is purportedly justified on the basis that during its purported 2024 "*due diligence exercise*" the General Partner apparently "*discovered*" the Alleged Misrepresentation supposedly made by the Petitioner in 2019.
- (d) However, for the reasons pleaded above, the General Partner was always, including at the time of the Petitioner's entry into the Subscription Agreement in 2019, aware of the information which it now claims was withheld from it and supposedly constitutes the Alleged Misrepresentation.
- (e) Indeed, the General Partner specifically procured the Petitioner Subscription as a Sponsor Subscription and, therefore, proceeded on the basis that the Petitioner was an Affiliate of certain Novalpina Group companies, which was only possible on the basis that the General Partner knew of Mr and Mrs Peel's involvement.
- (f) Moreover, as pleaded above, in 2019 the General Partner's own then Cayman Islands advisors (i) approved the changes that were made in the final Subscription Agreement; and (ii) confirmed that there were no further KYC/AML queries. Given that the Petitioner invested in the Partnership only once – in 2019 – if the Partnership and the Partnership's then advisors were satisfied with the source of funds information then, there can be no *bona fide* reason for the Partnership to be dissatisfied with it now.
- (g) In the premises, it is reasonable to infer that the General Partner's resort to confecting the Alleged Misrepresentation to justify reclassifying the

This Petition was filed by Carey Olsen, attorneys-at-law for the Petitioner, whose address for service is Level 1, Willow House, Cricket Square, Grand Cayman, Cayman Islands KY1-1001 (Ref: 1032373.0538).

Petitioner from "*low risk*" to "*high risk*" is a contrivance by the General Partner.

- (h) The reclassification purportedly allows the General Partner to apply "*enhanced due diligence*" and demand from the Petitioner not just identification and source of funds information (which was already satisfied in 2019 and provided further in 2024), but also the wholly unnecessary "*source of wealth*" information on both Mr Peel and Mrs Peel for many years.
- (i) This information is clearly unnecessary not only because there has been no Alleged Misrepresentation and so no *bona fide* justification for reclassifying the Petitioner from "*low risk*" to "*high risk*", but also because there have been no further investments by the Petitioner in the Respondent since 2019.
- (j) Failure to accede to these baseless requests is then used to justify transferring the Petitioner's limited partnership interest in the Partnership into Novalpina LLC, where the General Partner's affiliates can then expropriate it for no consideration under clause 16.1.1 (or other clause) of the LLC Agreement. This has already happened to at least one other limited partner – Jumbo Star - and the Petitioner has reasonable grounds to believe that it will be similarly expropriated.
- (k) While this scheme allows the General Partner and its affiliates to expropriate limited partners' interests in the Partnership, it does nothing to address any genuine anti-money laundering concerns:
  - (i) First, to the extent that any limited partnership interest may have (hypothetically) been acquired with tainted funds or by an investor (or on behalf of a beneficiary) that violates any relevant regulations, interposing Novalpina LLC between that limited partnership interest

This Petition was filed by Carey Olsen, attorneys-at-law for the Petitioner, whose address for service is Level 1, Willow House, Cricket Square, Grand Cayman, Cayman Islands KY1-1001 (Ref: 1032373.0538).

(which remains within the Partnership) and its former direct owner (and any beneficial owner) neither removes the hypothetically tainted funds from the Partnership nor changes the fact that the supposedly problematic beneficiary still remains the ultimate beneficial owner of the funds.

(ii) Second, transferring a former limited partner's interest in Novalpina LLC to an affiliate of Northbay (or indeed anyone else) for a dollar under clause 16.1.1 of the LLC Agreement still leaves the supposedly problematic funds within the Partnership.

(l) The above factors must also be seen against the historic background of corporate conflict between Mr Kowski (who controls the General Partner) and Mr Peel (whose wife, Mrs Peel, settled the relevant funds on the Trust for the Petitioner Subscription in the Partnership).

33. In the premises, the Petitioner has formed a genuine and justifiable belief that the General Partner lacks probity in its management of the Partnership. Being a regulated entity itself, the Petitioner understands the importance of anti-money laundering regulations and due diligence. However, it is not the proper purpose of the anti-money laundering regime or the related ELP Agreement powers to facilitate expropriation of investor funds.

34. The General Partner has weaponised the anti-money laundering regime for its own private purposes, confecting baseless allegations of Alleged Misrepresentation in relation to matters which it not only knew about at the relevant time, but which were in fact vetted by the General Partner's own then Cayman Islands advisors. Accordingly, the General Partner is using its powers and discretions under the ELP Agreement in bad faith and for the improper purpose of expropriating the Petitioner and, it would appear, certain other limited partners.

This Petition was filed by Carey Olsen, attorneys-at-law for the Petitioner, whose address for service is Level 1, Willow House, Cricket Square, Grand Cayman, Cayman Islands KY1-1001 (Ref: 1032373.0538).

**Grounds for winding up**

35. In the circumstances and on the basis of the facts set out above, the Petitioner seeks an Order that the Partnership be dissolved or wound up in accordance with Section 3 of the ELP Act and Section 35(e) of the Partnership Act or, in the alternative, pursuant to Section 36(3) of the ELP Act and Section 92(e) of the Companies Act on the following grounds:

*Ground 1: Petitioner' justified loss of confidence arising from the lack of probity in the General Partner's conduct in relation to the purported "due diligence exercise" and expropriatory treatment of limited partner interests*

36. There is a lack of probity in the conduct of the General Partner regarding the purported "*due diligence exercise*", giving rise to serious concerns by the Petitioner and a justified loss of confidence in the General Partner:

- (a) The General Partner is attempting to justify the exercise of its discretionary powers to demand enhanced due diligence against the Petitioner on the basis of an Alleged Misrepresentation which the General Partner knows is no misrepresentation at all.
- (b) The General Partner has established a separate corporate structure – Novalpina LLC – whose constitution ostensibly permits expropriating limited partners for the benefit of the General Partner's affiliates and is using the purported due diligence exercise to transfer supposedly defaulting limited partners from the Partnership into that expropriation vehicle.
- (c) The General Partner has already expropriated at least one other limited partner – Jumbo Star – in this manner.
- (d) The General Partner has expressly threatened to deal with the Petitioner in this manner.

This Petition was filed by Carey Olsen, attorneys-at-law for the Petitioner, whose address for service is Level 1, Willow House, Cricket Square, Grand Cayman, Cayman Islands KY1-1001 (Ref: 1032373.0538).

37. Accordingly, the Petitioner has justifiably lost faith and confidence in the probity of the General Partner for the following two distinct reasons:
- (a) The General Partner is purporting and/or intending to exercise its powers and discretions under clauses 14 and/or 17 of the ELP Agreement to the detriment of the Petitioner based on purported rationale (e.g., the Alleged Misrepresentation) which the General Partner knows to be baseless and/or irrational and, therefore, the Petitioner believes that the General Partner's exercise or intended exercise of those powers and/or discretions is irrational and/or in bad faith and/or for improper purpose (namely, for the purpose of settling personal scores between the General Partner's controller, Mr Kowski, on the one hand and Mrs Peel's husband, Mr Peel, on the other).
  - (b) Even if, which is denied, the General Partner's exercise or intended exercise of said powers and discretions is well-founded and *bona fide* and not for the improper purpose pleaded in the preceding paragraph, it is in any event for the further and separate improper purpose of expropriating the Petitioner's investment, which is to be inferred from the terms of the LLC Agreement and from the already completed expropriation of Jumbo Star.

Ground 2: Need for an independent investigation into the Partnership's affairs

38. For the reasons stated in Ground 1, there is an evident need for a proper, independent investigation into the Partnership's affairs.
39. An independent liquidator should investigate the conduct of the General Partner in relation to the "*due diligence*" exercise, including in relation to those limited partners who have already been transferred from the Partnership into Novalpina LLC, including any who were subsequently expropriated under clause 16.1 of the LLC Agreement (or otherwise).

This Petition was filed by Carey Olsen, attorneys-at-law for the Petitioner, whose address for service is Level 1, Willow House, Cricket Square, Grand Cayman, Cayman Islands KY1-1001 (Ref: 1032373.0538).

40. In the circumstances outlined above, it is just and equitable to wind up the Partnership and to place it under the control of independent official liquidators.
41. Further, given that the Partnership's term is due to expire in approximately two years' time in any event (and cannot now be extended again), official liquidators would be well placed to wind down its affairs and the order the Petitioner proposes will authorise the official liquidators to carry on the business of the Partnership to the extent it will be beneficial for the liquidation. The Partnership should be wound down by independent official liquidators rather than a General Partner in whose probity the Petitioner has justifiably lost trust and confidence.

#### **Nomination of joint official liquidators**

The Petitioner nominates Russell Smith and Declan Magennis, both of BDO CRI (Cayman) Ltd, for appointment as joint official liquidators of the Partnership.

This Petition was filed by Carey Olsen, attorneys-at-law for the Petitioner, whose address for service is Level 1, Willow House, Cricket Square, Grand Cayman, Cayman Islands KY1-1001 (Ref: 1032373.0538).

**YOUR PETITIONER THEREFORE HUMBLY PRAYS THAT:**

1. The Partnership be dissolved or wound up in accordance with Section 3 of the ELP Act and Section 35(e) of the Partnership Act or, in the alternative, Section 36(3) of the ELP Act and Section 92(e) of the Companies Act.
2. Russell Smith and Declan Magennis, both of BDO CRI (Cayman) Ltd, 191 Elgin Avenue, Lvl 3 Century Yard, Cricket Square, Grand Cayman, Cayman Islands, KY1-1205, be appointed as the joint official liquidators of the Partnership (the "**Liquidators**") as follows:
  - (a) the Liquidators shall not be required to give security for their appointment;
  - (b) the Liquidators are appointed, and the Liquidators shall have the power to act jointly and severally in their capacity as joint liquidators of the Partnership;
  - (c) in addition to their powers prescribed in Part II of the Third Schedule to the Companies Act which are exercisable without sanction of this Court, the Liquidators shall be authorised to exercise, on a joint and several basis, the following powers without further sanction or intervention from the Court:
    - i. the power to bring or defend any action or other legal proceeding in the name and on behalf of the Partnership in any jurisdiction that they consider necessary;
    - ii. control and otherwise deal with all existing bank accounts in the name of the Partnership and to open new bank accounts in the name of the Partnership;
    - iii. carry on the business of the Partnership so far as the Liquidators consider necessary for its beneficial winding up;
    - iv. dispose of any property of the Partnership to a person who is or was related to the Partnership;

This Petition was filed by Carey Olsen, attorneys-at-law for the Petitioner, whose address for service is Level 1, Willow House, Cricket Square, Grand Cayman, Cayman Islands KY1-1001 (Ref: 1032373.0538).

- v. make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim (present or future, certain or contingent, ascertained or sounding only in damages) against the Partnership or for which the Partnership may be rendered liable;
- vi. compromise on such terms as may be agreed all debts and liabilities capable of resulting in debts, and all claims (present or future, certain or contingent, ascertained or sounding only in damages) subsisting, or supposed to subsist between the Partnership and a limited partner or alleged limited partner or other debtor or person apprehending liability to the Partnership;
- vii. deal with all questions in any way relating to or affecting the assets or the winding up of the Partnership, to take any security for the discharge of any such call, debt, liability or claim and to give a complete discharge in respect of it;
- viii. sell any of the Partnership's property by public auction or private contract with power to transfer the whole of it to any person or to sell the same in parcels;
- ix. engage staff (whether or not as employees of the Partnership and whether located in the Cayman Islands or elsewhere) as the Liquidators consider necessary to assist them in the performance of their duties, on such terms as the Liquidators may think fit, and to remunerate them out of the assets the Partnership as an expense of the official liquidation;
- x. engage counsel, attorneys, and/or other professional advisors (whether in the Cayman Islands or elsewhere) as the Liquidators consider necessary to assist them in the performance of their duties, on such terms as the Liquidators may think fit, and to remunerate them out of the assets the Partnership as an expense of the official liquidation;

This Petition was filed by Carey Olsen, attorneys-at-law for the Petitioner, whose address for service is Level 1, Willow House, Cricket Square, Grand Cayman, Cayman Islands KY1-1001 (Ref. 1032373.0538).

- xi. control and otherwise deal with, in the name and on behalf of the Partnership, any extant court proceedings issued in any jurisdiction;
- xii. pursue applications and/or proceedings in any other jurisdiction for recognition of the liquidation and/or their appointment and/or to obtain information they require to perform their duties;
- xiii. apply for further directions concerning their functions and the exercised or proposed exercise of their powers,

and for the avoidance of doubt, the powers bestowed on the Liquidators may be exercised by them within and outside the Cayman Islands;

- (d) No disposition of the Partnership's property by or with the authority of the Liquidators in carrying out their duties and functions and exercise of their powers shall be voided by virtue of Section 99 of the Companies Act;
- (e) The Liquidators shall have the authority and are directed to take possession of, collect and get in any property of the Partnership in the name of the Partnership and for that purpose to take any proceedings in any jurisdiction that they consider necessary;
- (f) The Liquidators' remuneration and expenses be paid out of the assets of the Company in accordance with the Companies Winding Up Rules 2018 and Part III of the Insolvency Practitioners' Regulations 2018;
- (g) The costs of the Petitioners be paid out of the assets of the Partnership as an expense of the liquidation, such costs to be taxed on the indemnity basis if not agreed with the Liquidators;
- (h) The Liquidators be at liberty to apply generally; and/or

This Petition was filed by Carey Olsen, attorneys-at-law for the Petitioner, whose address for service is Level 1, Willow House, Cricket Square, Grand Cayman, Cayman Islands KY1-1001 (Ref. 1032373.0538).

- (i) Such other relief be granted as the Court deems appropriate.

Dated this 29th day of November 2024



---

Carey Olsen

Attorneys for the Petitioner

**NOTE:** This petition is intended to be served on:

**Novalpina Vision LP**

Maples Corporate Services Limited, P.O. Box 309, Ugland House, South Church Street, George Town, Grand Cayman, KY1-1104, Cayman Islands

This Petition was filed by Carey Olsen, attorneys-at-law for the Petitioner, whose address for service is Level 1, Willow House, Cricket Square, Grand Cayman, Cayman Islands KY1-1001 (Ref: 1032373.0538).

**NOTICE OF HEARING**

**TAKE NOTICE THAT** the hearing of this petition will take place at the Law Courts, George Town, Grand Cayman on \_\_\_\_\_ 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, Grand Cayman, KY1-1106, telephone 345 949 4296.

This Petition was filed by Carey Olsen, attorneys-at-law for the Petitioner, whose address for service is Level 1, Willow House, Cricket Square, Grand Cayman, Cayman Islands KY1-1001 (Ref. 1032373.0538).