

In the matter of The Venezuela Restaurant Sector Fund, Ltd.

And in the matter of the Companies Law (2002 Second Revision)



PETITION

To the Grand Court of the Cayman Islands



The Petition of Prince Assets LDC ("Prince"), whose registered office is at Third Floor, Harbour Centre, Grand Cayman, Cayman Islands, Glacier Latin America Ltd. ("Glacier"), whose registered office is at Tropic Isle Building, Road Town, Tortola, British Virgin Islands, and Shining Sea Ltd. ("Shining Sea"), whose registered office is at Bermuda Commercial Bank Bldg., 44 Church Street, Hamilton HM 12, Bermuda.

1. The Venezuela Restaurant Sector Fund, Ltd. ("the Fund") was incorporated on 15 July 1997 under the Companies Law (Revised) as an exempted company limited by shares.
2. The registered office of the Fund is at P.O. Box 265, Walker House, Mary Street, George Town, Grand Cayman.
3. The capital of the Fund is US\$50,000.00 divided into 1 million Class A shares of US\$0.01 each and 4 million Class B shares of US\$0.01 each.
4. Of the Class A shares, 495,746 have been issued and are fully paid up. The issued Class A shares are registered in the names of the sponsors of the Fund, Nexus Investment Partners, Inc., Berkshire Trading AVV and FLT Properties ("the Sponsors"). Class A shares carry a right to vote at general meetings of the Fund and the right to participate in the assets of the Fund in a winding up.

5. Of the Class B shares, 1,044,089 have been issued and are fully paid up. 595,584, that is, 56.6% of the issued Class B shares, are registered in the names of the Petitioners. Class B shares carry the right to participate in the assets of the Fund in a winding up but not, subject to certain specific exceptions, the right to vote at general meetings. Class B shares are not freely transferable and the holders thereof have no right to redeem. The total amount invested by the Petitioners in the Fund is US\$6,926,296.
6. The objects for which the Fund was established are unrestricted. However, by a Confidential Information Memorandum (the "Confidential Memorandum") dated 22 October 1997, the Sponsors stated that its investment objective was "long-term capital appreciation through the investment of the Fund's assets in majority or significant minority equity stakes in corporations owning and operating restaurants and restaurant franchises as well as other related investments in the restaurant sector" mainly, but not exclusively, in Venezuela. The Fund's initial, and only significant, investment was the acquisition of a 65.42% interest in Wenco Investors Inc. ("Wenco"), a BVI company, which indirectly owns the Wendy's International so-called master franchise for Venezuela. Such interest was acquired from the Sponsors in October 1997 in consideration of the issue of 415,833 Class A shares. The President of Wenco, Andres Eloy Garcia, is the beneficial owner of Berkshire Trading AVV, one of the Sponsors.
7. The Fund Manager is Nexus Partners, Ltd. ("Nexus"), an affiliate of Nexus Investment Partners, Inc., one of the Sponsors. Pursuant to the terms of a Fund Management Agreement dated 22 October 1997 and made between the Fund and Nexus, Nexus received management fees calculated at an annual rate of 1.75% of the total subscription proceeds invested in the Fund. Currently, Nexus receives an annual management fee of approximately US\$300,000.
8. There are currently six directors of the Fund, of whom five are officers or affiliates of the Sponsors. Pursuant to the terms upon which Prince and Glacier respectively subscribed for their Class B shares, they each became entitled to nominate a director of the Fund. Prince nominated David Mayer who resigned as a director in December 1999 and has

not been replaced. Glacier nominated Alberto Peisach who is the sixth director of the Fund.

9. By virtue of its interest in Wenco, the Fund has the right, pursuant to the Memorandum of Association of Wenco, to appoint five out of its seven directors. Thus, in the premises, the Sponsors control the Fund and, through the Fund, Wenco.
10.
 - (1) Article 10 of the Fund's Memorandum of Association provides that the duration of the Fund is 6 years from the Initial Subscription Date (as defined in the Fund's Articles of Association) subject to extension by the directors for two additional one year terms "to allow the orderly liquidation of the [Fund's] investments". The Fund's Articles do not define the Initial Subscription Date but the Confidential Memorandum states that "the offering of Shares will commence on or about October 22, 1997".
 - (2) Article 133 (a) provides that "after the end of the Investment Period, [the Fund], the Directors and the Fund Manager will begin liquidating the [Fund's] investments and distributing the net proceeds to Shareholders". Article 2 defines the Investment Period as 5 years beginning on the Initial Closing Date. Article 2 defines the Initial Closing Date as "on or about 31 October 1997 or such other day as the Fund Manager at his discretion declares the final day of the Initial Subscription Period for the purchase of Class B Shares". Prince's initial subscription was made on 12 December 1997. The Petitioners therefore infer that Nexus declared the Initial Closing Date to be some later date.
 - (3) In the premises, the time when the Fund should begin liquidating its investments is unlikely to be later than 31 December 2002.
11. It is the Petitioners' case that the Fund ought now to be wound up for the following reasons:

- (1) Despite the matters pleaded in paragraph 10, the Fund has failed to address the manner in which its investments should be liquidated or to make any proposals to the Class B Shareholders (including the Petitioners) in relation thereto;
- (2) Given that the Fund's investment in Wenco is its only significant investment, the Fund no longer serves any useful purpose;
- (3) The Fund Manager has been reduced in original staff so that only one member of its management at the time of the investment by the Petitioners and as described in the Confidential Memorandum is currently employed on behalf of the Fund so that any justification for paying a management fee to Nexus for professional level service has been eliminated.
- (4) The Fund has failed to provide adequate financial and other information to the Petitioners despite promising to do so and despite repeated requests for such information by the Petitioners;
- (5) Generally, the Fund has been operated, and continues to be operated, for the benefit of the Sponsors and their affiliates without reference to the interests of the Petitioners and other Class B Shareholders.

12. In the circumstances, it is just and equitable that the Fund should be wound up.

The Petitioners therefore pray as follows:

- (1) That the Venezuela Restaurant Sector Fund, Ltd. may be wound up by the Court under the provisions of the Companies Law (2002 Second Revision);
- (2) That such other order may be made as the Court thinks fit.

