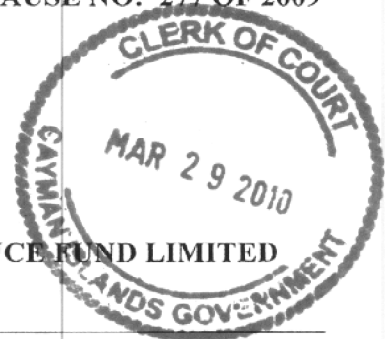


CAUSE NO: 277 OF 2009

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION
IN THE MATTER OF THE COMPANIES LAW
AND IN THE MATTER OF HERIOT AFRICAN TRADE FINANCE FUND LIMITED



RE AMENDED WINDING-UP PETITION



TO THE GRAND COURT

THE HUMBLE PETITION of **ARIS MULTI-STRATEGY LENDING FUND LIMITED** and **ARIS AFRICA FUND LIMITED**, Investors in the Company, of 152 West 57th Street, 19th Floor, New York NY-10019, United States of America and Deutsche Bank (Cayman) Limited (the Bare Trustee for the above Petitioners) of Boundary Hall, Cricket Square 171 Elgin Avenue, Grand Cayman, Cayman Islands.

The Parties

1. HERIOT AFRICAN TRADE FINANCE FUND LIMITED ("the Fund") was incorporated in the Cayman Islands on 17th April 2007, as an exempted company, to operate as an investment fund. The company number is 185789.
2. The registered office of the Fund is situated at Mourant, 3rd Floor, Harbour Centre, P.O. Box 1348, Grand Cayman KY-1108 The Dundee Bank, Waterfront Centre, 2nd Floor, 28 North Church Street, Grand Cayman, Cayman Islands.
3. The authorised share capital of the Fund is US\$50,000.00 divided into 5,000,000 Ordinary Shares of par value of US\$0.01 each. The Fund is regulated as a mutual fund

by the Cayman Islands Monetary Authority under the Mutual Funds Law (2007 Revision).

4. According to the December 2008 investor statements, ARIS Multi-Strategy Lending Fund Limited owns 15,886.8847 Shares which, as at 31st December 2008, were worth US\$16,927,375.54 and ARIS Africa Fund Limited owns 5,000 Shares which, as at 31st December 2008, were worth US\$5,375,828.50. No investor statements have been received, by the Petitioners, since the statement for December 2008.
5. The Petitioners own participatory, redeemable non-voting shares. The sole management voting shares, which are non-participatory, are held by Q&H Corporate Services Limited.

Objects of the Fund

6. The objects of the Fund, as listed in the Memorandum of Association, is to carry on the business of an investment company. Subscriptions were not accepted for those who were defined as US persons or the Cayman Islands public.
7. The Petitioners and other investors invested in the Fund pursuant to and in reliance on the Private Placement Memorandum, dated June 2007, ("the Memorandum"). It was stated, in the Memorandum, that the investment objective was a maximum return on capital, balanced with the risks associated with its investments. The primary object of the Fund was to invest in commodities and act as a provider of trade finance through its trading company named Heriot Trading Limited. The trading company was wholly owned by the Fund and acted as the principal trader in commodities and a provider of trade finance.
8. In the Summary of Offering at page B-8 of the Memorandum it was stated that the fund would invest primarily in African based trade finance and commodity opportunities and would aim to achieve superior returns in a managed risk environment. It further stated that the subscription proceeds would be utilised as collateral security to secure banking facilities in the form of documentary credits and short-term collateralised loans and other financial instruments related to the securing and execution of trade related transactions.

The facilities would be used to purchase commodities against orders from qualifying African commodity traders and to assist in the provision of trade finance for import and export related transactions. It further stated that the profits generated from these trading activities together with a number of other sources of fee income would constitute the trading profits of the Fund.

Product Focus

9. At page B-14 of the Memorandum the primary focus of the Fund was stated to be:-

“... the supply of commodities that demonstrate certain characteristics. These commodities are, on the whole, referred to as “softs”. Whilst the term “softs” is a well known and accepted term in the world commodity markets, generally referring to agricultural products, the Fund extends the definition to commodities with reference to their nature, liquidity, market volatility, branding, packaging and security of supply. Qualifying commodities are therefore homogeneous, non-branded, non-perishable, form part of a liquid in-country market, are easily transported, usually packaged in bulk and subject to a worldwide accepted quality standard or grading. These products generally tend to fall into the category of agricultural products.”

Prudential Risk Management

10. At Page B-18 of the Memorandum the following list of prudential risk management covenants were set out:-

“(a) The Investment Manager shall ensure that no single client exposure, secured or unsecured, shall exceed more than 25% of the total asset base of the Fund.

(b) The Investment Manager shall ensure financial exposure to any one commodity shall not exceed 30% of the total asset base of the Fund.

(c) *The Investment Manager shall ensure that the aggregate exposure to any one country shall not exceed 25% of the total asset base of the Fund.”*

11. In The Alternative Investment Management Association Limited’s Illustrative Questionnaire for Due Diligence which was completed by Stuart McArthur, one of the Directors of the Investment Advisor, on 25th May 2007, it stated at paragraph 1.7.5 that only liquid commodities would be traded. At paragraph 1.7.1, the country, client and commodity risk covenants set out at page B-18 of the Memorandum were included. At paragraph 12.3.2 it was stated that *“illiquid positions would be liquidated within 4 weeks”*.

Value of the Fund

12. According to the March 2009 Monthly Investors Update the total assets of the Fund were worth US\$82.59 million with a NAV per share of US\$1,404.60. According to the April 2009 Monthly Investors Update the total assets of the Fund were worth US\$82.73 million with a NAV per share of US\$1,405.30.

Management of the Fund

13. Derek Buntain and Sharon Lexa Lamb were appointed as Directors of the Fund. Heriot Investment Management (Cayman) Limited was appointed the Investment Manager of the Fund. The Investment Manager is responsible for managing the investment and the sale and re-investment of the Fund assets. John Pickles and Judith Wright were appointed as Directors of the Investment Manager.
14. The Investment Manager appointed an Investment Advisor, Heriot Commodity and Trade Finance (Pty) Limited, under an Investment Advisory Agreement, to provide recommendations and investment advice in relation to the management and administration of the assets of the Fund. The Investment Advisor is registered in the

Republic of South Africa with Gianfranco Cicogna and Stuart McArthur appointed as Directors.

15. Dundee Leeds Management Services (Cayman) Limited were appointed as Administrators and Deloitte & Touche were appointed as Auditors to the Fund.

Accounting

16. The Memorandum specifically states at pages B-21 and B-22 that the accounting period of the Fund will end on 31st March in each year and that copies of the audited financial statements of the Fund would be sent to all shareholders within 6 months of the end of each financial year, together with notices of Annual General Meetings of the shareholders. It also stated that the Fund would produce an unaudited, half-yearly interim report made up to 30th September in each year with copies of such reports to be distributed to each shareholder, at the latest, within 6 months of the end of the half-yearly period.

Recent Developments

20th March 2009 Letter

17. The Petitioners received an investor letter from the Fund on 20th March 2009. The letter advised that, in part due to the Madoff scandal, the Fund had received redemption requests for approximately 60% of the assets under management, and that the Fund had only 12% of their assets in cash at the present time.
18. The letter went on to state that prices, in China, for commodities had fallen at an “*unprecedented speed*”. This had led to losses for the counterparties. The letter also stated that the assets were “*relatively illiquid in nature*”.

19. The letter stated that the Directors had two choices. They could liquidate the Fund or suspend redemptions. The letter maintained that liquidation would lead to an “*unnecessary destruction in value*” as it would be hard to sell assets in the “*current environment*” which prevailed.
20. It was therefore stated that the Directors had decided to suspend determination of the NAV and the redemption of participating shares. The letter went on to say that a guide NAV would still be produced but it would only be for internal purposes. The letter stated that the Fund was identifying investment banks to help counterparties secure capital. The Fund was also helping potential new clients in India, China and Europe negotiate new contracts for the shipment of chrome and manganese. The letter attached a spreadsheet detailing the total assets of the Fund which showed that over US\$63 million worth of assets of the US\$82 million assets of the Fund were invested in mines in South Africa, and that around US\$58 million of the US\$82 million were invested in the manganese mines.

March 2009 Investors Update

21. The Petitioners received, on 28th April 2009, a Monthly Investors Update for March 2009. The update said that the stated value of mining assets would be frozen at current levels until an opinion could be obtained from the Investment Bankers who could estimate the fair value of those assets. The update also stated that the Fund had determined the NAV based on zero growth as it had not reviewed the Fund’s bank statements. The update said that the Investor Statements for January through March would be produced as soon as possible.
22. The update contained background in relation to the mining assets. It stated that an old manganese mine called Chambua, that had been shut down in 1970, had been re-opened on a limited scale as a result of the Fund financing manganese sales. The update stated that pre-export finance had also been provided to the Black Rock Macarthy mine. This mine went into production in October 2008.

23. The update further stated that between April and October 2008 the Fund provided export finance for a total of 168,000 metric tons of manganese, from the 2 mines, for export to China and India, representing a total value of around US\$43 million. Due to the financial crisis, however, the market for manganese froze, in October 2008, and 60,000 metric tons of manganese that were on route to China had to be sold for a loss of US\$10 million. The update explained that the loans to the mines, which had financed the trades, were now in default and that the Fund was in the process of converting these loans into equity. Once this process was completed the Fund would own majority stakes of approximately 90% in both mines.
24. The update went on to state that Turtle Bay (a boutique investment bank) had been appointed to manage the sale of the assets and to look into potential buyers. The update also stated that the Fund was trying to develop a joint venture with a local Ferro-Alloy producer to produce ferro manganese.

April 2009 Investors Update

25. On 29th May 2009 the Petitioners received the April Monthly Investors Update. This update stated that Turtle Bay was due to present a report on the disposal of the Fund's mining assets shortly. It also stated that a non-disclosure agreement had been signed with a major Japanese conglomerate and a large Chinese-African development fund in relation to the possible acquisition of the mining assets.
26. The update went on to say that the joint venture discussions to produce the ferro manganese were well advanced and that an increase in the manganese price was expected. The update also stated that the audit for the Fund should be signed off shortly.

Petitioner and Fund Correspondence

27. Jason Papastavrou, of the Petitioners, following the receipt of the March 2009 update and the news concerning the suspension of the NAV and redemptions, on 15th May 2009, e-mailed Sharon Lamb, one of the Directors of the Fund, requesting information about Deloitte and copies of the unaudited interim reports. He also asked for information regarding the risk management criteria in the Memorandum and why, apparently, the Fund's positions did not conform to the criteria. He asked for a response by 22nd May 2009. No response was received.
28. On 22nd May 2009 Jason Papastavrou and Apostolos Peristeris spoke to Gianfranco Cicogna and Stuart McArthur of the Investment Advisors. The conversation covered three main topics:-
- (a) **Audit** - the Investment Managers said that there had been no communication with the auditors for over 6 weeks but that they could provide a qualified opinion. They stated that the opinion could not be unqualified due to the US\$2 million worth of assets invested in the Gabon. They also promised to send on the semi-annual unaudited reports.
 - (b) **Risk Control/Concentration** - the Investment Managers agreed that the Fund had breached the terms of the Memorandum on the risk limits. They also said that they had employed Turtle Bay, the investment bank, to sell the mining assets.
 - (c) **Recent Actions** - the Investment Managers said that the cash held by the Fund may potentially be used to run the mine operations so that a sale could be effected. They said they would advise Jason Papastavrou of any developments before any action would be taken.
29. Jason Papastavrou sent an e-mail on 18th May 2009, to the Investment Advisors, where he made the following points amongst others:-

- (a) No draft audit had been received as yet.
- (b) He had received no information about the Deloitte partner conducting the audit.
- (c) He was concerned about the suspension of redemptions, the violation of the risk limits and the lack of an audit.

He therefore requested that the Fund appoint a Voluntary Liquidator. He recommended Geoff Varga of Kinetic Partners. He said that the Fund had already made it clear that it was liquidating its positions in any event.

- 30. On 19th May 2009 the Fund sent, to the Petitioners, the draft audit for the Fund from 1st July 2007 to 30th June 2008. It was evident that a great deal of the report was still in draft. The e-mail, attaching the draft audit, from the Deloitte Partner stated that he had only just provided his first round of comments on the financial statements.
- 31. Jason Papastavrou spoke to Gianfranco Cicogna and Stuart McArthur on 19th and 20th May 2009. The Directors of the Investment Advisor apologised for the lack of communication, and lack of an audit. When Jason Papastavrou suggested that a Voluntary Liquidator be appointed, the Directors of the Investment Advisor asked for an explanation as to what role the Liquidator would undertake.
- 32. On 28th May 2009 Jason Papastavrou again wrote to Gianfranco Cicogna and Stuart McArthur about the Petitioners' investment in the Fund. He stated that he recommended that the Investment Managers should remain, as advisors to the Fund, but that there should be professional oversight over their activities. He recommended that a Voluntary Liquidator be appointed, who would have the same powers as the Directors of the Fund, but who would still employ the Investment Managers. The Petitioners have received no response to this request.

Consequences of Recent Developments

33. It is clear that, at present, due to the decisions made by the Investment Managers and the Directors of the Fund, a considerable proportion of the assets of the Fund have been put at risk. Over 76% of the Fund's assets have been invested in highly illiquid mining assets, and there is no reliable valuation of these mining assets at present. The mining assets are 90% owned by the Fund, and there is no profitable market for the manganese that the mine produces. The most pressing concerns are as follows:-
- (a) In breach of the Memorandum, no audited accounts have been produced for the year 2007 to 2008, nor have any half-yearly unaudited accounts been supplied to the investors. In fact, no audits have been produced at all since the Fund was set up in June 2007, 2 years ago.
 - (b) It is understood that in breach of Section 8(1) of the Mutual Funds Law (2007 Revision), no audited accounts have been lodged at the Cayman Islands Monetary Authority within 6 months of the year end, i.e. by 30th September 2008, nor has any extension been sought or given.
 - (c) The Fund also breached the risk covenants set out in both the Memorandum and the Alternative Investment Management Association Limited's Illustrative Questionnaire for Due Diligence. Specifically it is clear that:-
 - (i) over 30% of the total asset base of the Fund has been invested in one commodity, i.e. manganese, which is a breach of the single commodity exposure criteria;
 - (ii) over 25% of the total asset base of the Fund has been invested in South Africa which is in breach of the country exposure criteria;

- (iii) over 25% of the total asset base of the Fund has been invested in one client, i.e. the Chambua mine, which is in breach of the single client exposure criteria.
 - (d) It is clear that the Fund invested in illiquid assets despite representations made at paragraphs 1.7.5 and 12.3.2 of the Alternative Investment Management Association Limited's Illustrative Questionnaire for Due Diligence where it stated, *inter alia*, that illiquid positions would be liquidated within 4 weeks.
 - (e) It is apparent from the product focus section in the Memorandum, that the focus of the Fund was meant to be agricultural products rather than the mining assets which are the bulk of the assets now held by the Fund.
 - (f) It is clear both from the conversations with the Petitioners and the March 2009 monthly update that the Fund now essentially owns the mines, i.e. Chambua and Black Rock, and intends to run them until a buyer can be found. The fact that the Fund now owns mining assets is clearly beyond the anticipated remit of the Fund which was set up as an investment fund. As admitted in the letter to Investors dated 20th March 2009 "*the Fund is not set up to manage mining businesses*".
34. The Fund has been mismanaged and that the Petitioners' investment in the Fund has been put at risk. It is also evident from the Fund and their advisors that they intend to liquidate the assets held by the Fund in any event.
35. The Directors and Investment Advisors have breached their duties in such a way that the Petitioners have justifiably no confidence in their management of the Fund. The investors in the Fund have a legitimate interest that the affairs of the Fund and the conduct of its directors should be investigated by an Independent Liquidator.
36. In the circumstances, it is just and equitable that the Fund be wound up. Alternatively, the Petitioners seek, further to Section 95(3) of the Companies Law (2007 Revision), an

Order that the Petitioners be allowed to appoint their own Director to the Fund Board and that this Director must give his or her permission for any disposal of Fund assets by the Fund or their advisors.

YOUR PETITIONERS THEREFORE HUMBLY PRAY THAT:

- (1) the Fund be wound up by the Court under the provisions of the Companies Law (2007 Revision);
- (2) Mr. Geoffrey E. Varga and Mark Longbottom of Kinetic Partners be appointed as Joint Official Liquidators of the Fund;
- (3) The Joint Official Liquidators are authorised jointly and severally to exercise any of the powers conferred on them by the Court pursuant to 110(2) and Parts I and II of the Third Schedule of the Companies Law (2007 Revision) without the further sanction or intervention of the Court;
- (4) the Joint Official Liquidators be authorised to do any act or things considered by them to be necessary or desirable in connection with the liquidation of the Fund and the winding up of its affairs and to prevent the dissipation of the Fund's assets;
- (5) the Joint Official Liquidators do file with the Clerk of the Court a report in writing of the position of and progress made with the winding up of the Fund with the realisation of the assets thereof and to any other matters connected to the winding up of the Fund, as the Court may direct;
- (6) the Joint Official Liquidators be at liberty to appoint counsel, attorneys, 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 and on such terms as they may think fit and to remunerate them out of the assets of the Fund;

- (7) the Joint Official Liquidators and their staff be remunerated out of the assets of the Fund at their usual customary rates;
- (8) the Joint Official Liquidators be at liberty to apply generally;
- (9) the costs of the Petition and the Petitioners be paid out of the assets of the Fund;
- (10) the Joint Official Liquidators to cause a copy of this Petition to be delivered to the Registrar of Companies;
- (11) such further or other relief be granted as this Court deems appropriate.

ALTERNATIVELY, further to Section 95(3) of the Companies Law (2007 Revision), the Court appoint Mr. Geoffrey E. as a Director of the Fund and order that his authorisation must be sought in order to effect any disposal of the Fund's assets.

RE RE-DATED the 29th day of March 2010



RITCH & CONOLLY
Attorneys-at-Law for the Petitioners

NOTE: It is intended to serve this Petition on the registered office of **HERIOT AFRICAN TRADE FINANCE FUND LIMITED** and the Registrar of Companies.

This Petition is presented by Ritch & Conolly, Attorneys-at-Law, PO Box 1994, Queensgate House, 113 South Church Street, George Town, Grand Cayman KY1-1104, Cayman Islands, for the Petitioners whose address for service is care of their said Attorneys-at-Law (Ref: AHP).

INDORSEMENT

This Petition having been presented to the Court on 5th June 2009 will be heard at the Grand Court of the Cayman Islands on 7th April 2010:

Date: 20010

Time: a.m.

(or as soon thereafter as the Petition may be heard)