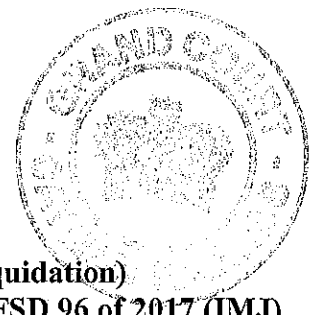


**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION**



**IN THE MATTER OF EXTEN INVESTMENT FUND (In Official Liquidation)
Cause No.: FSD 96 of 2017 (IMJ)**

**AND
IN THE MATTER OF MARKETVIEW GLOBAL FUND (In Official Liquidation)
Cause No.: FSD 97 of 2017 (IMJ)**

**AND
IN THE MATTER OF MARKETVIEW MANAGEMENT (In Voluntary Liquidation)
Cause No.: FSD 98 of 2017 (IMJ)**

**AND
IN THE MATTER OF DYNAMIC CORE CAPITAL (In Voluntary Liquidation)
Cause No.: FSD 99 of 2017 (IMJ)**

IN CHAMBERS

Before: The Hon. Justice Ingrid Mangatal

**Costs Ruling dealt with by way of Post Hearing Written Submissions dated 14 July 2017,
provided by Maples and Calder on behalf of the Petitioner and by Loeb Smith on behalf of
the Voluntary Liquidator.**

Draft Ruling on Costs Delivered: 18 July 2017

Final Ruling Delivered: 24 July 2017

RULING ON COSTS

1. The Court has been provided with written skeleton submissions on behalf of the Petitioner as well as the Voluntary Liquidator ("*the VL*") in respect of costs.
2. At the hearing of the Petitions, the Court accepted the Petitioner's submissions in relation to both the standing issues and on the exercise of the Court's discretion, see unreported Ruling delivered 23 June 2017. In Cause Nos. FSD 96 of 2017 and FSD 97 of 2017, the Court made Deferral and Supervision Orders in respect of the Funds and in Cause Nos. FSD 98 of 2017 and FSD 99 of 2017, the Court made Deferral Orders in respect of the Managers.

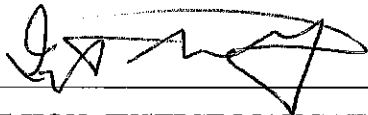
3. Mr. Stockdale, on behalf of the Petitioner, submits that for the Supervision Orders, the rules on costs are set out in O. 24, r. 8 of the *Companies Winding Up Rules* 2008 (as amended) (the “*CWR*”). The general rule is that a party which successfully presents a creditor’s petition for a supervision order under *CWR* O. 15, r. 3 (as here) should have its costs paid out of the assets of the company on the indemnity basis. The Court may depart from that rule where there are exceptional and special circumstances which justify making some other order.
4. For the Deferral Orders, *CWR* O. 24 does not provide guidance as to the approach which the Court should take in awarding costs. (Notwithstanding that, *CWR* O 24 r. 7(2) defines “*Liquidation proceedings*” as including any petition presented under Part V of the *Companies Law (2016 Revision)* (the “*Law*”). Accordingly, submits Mr. Stockdale, those costs fall to be determined according to the Court’s discretion.
5. The Petitioner seeks the payment of 30% of its costs by the VL on the standard basis, representing the additional costs that it incurred as a result of the VL’s misconceived opposition to the Petitions. For the balance of the Petitioner’s costs, it seeks that the costs be paid on the indemnity basis from the assets of the companies as an expense of the official or voluntary liquidations, as appropriate.
6. Mr. Smith, on behalf of the VL reminded the Court that in respect of the deferral applications, the Petitioner’s position after the Court’s Ruling on 2 June 2017, was that it would only be seeking to recover the portion of its costs which exceeded the costs which would have been incurred had the Petitions not been opposed by the VL. Further, that in other words, all costs incurred in preparing for and attending the hearing would be assumed by the Petitioner. He submitted that the Petitioner should pay substantially all costs in these proceedings to be subject to taxation, where not agreed within 14 days.
7. In my judgment, the Petitioner would be responsible for its own costs of preparing for and attending the deferral hearings. That is because it was for the Petitioner to establish that it was a person who appeared to the Court to be interested in such a deferral. The deferral order is an order for the Petitioner’s benefit. It requires the exercise of a discretion, and requires the Court to delay the date of dissolution, provided for under s.151 of *the Law*. The Petitioner’s interest may or may not ultimately prevail. In my

view, there is therefore no general position of entitlement on a deferral application, for the Petitioner's costs to be paid out of the assets of the Company. The Petitioner would ordinarily therefore be responsible for its own costs. In this instance, however, the deferral applications were opposed by the VL, but the Petitioner succeeded. In my view, in so far as the VL, by taking the position he did, increased the length of, and costs attendant on these hearings, he should in my view bear a portion of the Petitioners' costs. I am satisfied that 30% is a fair and reasonable proportion. Therefore, in FSD 98 of 2017 and FSD 99 of 2017, the appropriate order is that 30% of the costs of the Petitioner of and incidental to the Petition, be paid by the VL without recourse to the assets of the Company, such costs to be taxed on the standard basis, if not agreed.

8. As regards FSD 96 of 2017 and FSD 97 of 2017, where the Supervision Orders were made, I am satisfied that the VL's posture did increase the length of and the costs attendant on the hearings, These factors constitute exceptional and special circumstances.

The appropriate order is that the costs be as follows:

- (a) 30% of the costs of the Petitioner of and incidental to the Petition be paid by the VL without recourse to the assets of the Company, such costs to be taxed on the standard basis, if not agreed; and
- (b) In respect of the costs of the Petitioner incidental to the Supervision Order, 70% out of the assets of the Company as an expense of the official liquidation, such costs to be taxed on the indemnity basis, if not agreed.



**THE HON. JUSTICE MANGATAL
JUDGE OF THE GRAND COURT**

