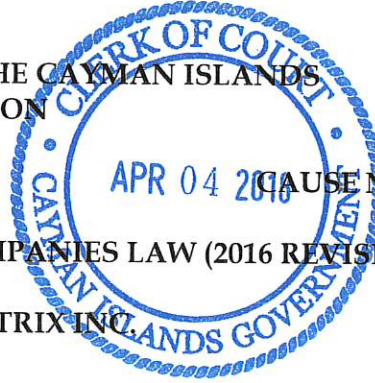


IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION



CAUSE NO: FSD 55 OF 2018 (CJAS)

IN THE MATTER OF THE COMPANIES LAW (2016 REVISION)

AND IN THE MATTER OF MATRIX INC



To the Grand Court

WINDING UP PETITION

The humble creditor's petition of Heathcliff Trading S.A. (**Heathcliff**) c/o Panasuisse Legal, Office One Building, 50<sup>th</sup> and 58<sup>th</sup> Streets, Obarrio, Panama City, Panama shows that :-

**A. Preamble**

1. Heathcliff, in its capacity as a creditor, presents this petition in relation to Matrix Inc. (**Matrix**) pursuant to section 94(1)(b) of the Companies Law (2016 Revision) (the **Law**).
2. Matrix is a company incorporated under the laws of the Cayman Islands, having its registered office at 31 The Strand, 46 Canal Point Drive, Grand Cayman, Cayman Islands. Matrix was formed on 5 March 1981 and registered on 9 March 1981.
3. Matrix has not satisfied an arbitral award made against it (section 93(b) of the Law) and/or has neglected to pay the sum set out in a demand dated 18 January 2018 (section 93(a) of the Law). Therefore, Matrix is unable to pay its debts within the meaning of section 92(d) of the Law and is insolvent. On that basis, Heathcliff presents this petition together with a proposed appointment of joint official liquidators.

**B. Background to the debt**

4. The history of the debt owed to Heathcliff by Matrix is set out in more detail in the affidavit of Mr Gerrit Straub sworn on 19 March 2018 in support of this petition. The important underlying documents such as the final arbitral award dated 14 March 2017 and the official translation of the judgment of the Swiss Federal Supreme Court dated 8 January 2018 are exhibited to Mr Straub's evidence.
5. In summary, under the terms of a sale and purchase agreement between Matrix and Heathcliff dated 6 September 2014 (the **Original SPA**), Matrix agreed to sell 500.48gr of Selenium 74 (**Se74**). According to the Original SPA, the consideration payable by Heathcliff for the purchase of the Se74 was CHF 9,333,582.00 (c. USD 10 million).

6. The consideration payable was subsequently increased by an additional CHF 5,653,799.00 (c. USD 6 million) pursuant to an additional agreement dated 26 September 2014 (the **Additional Agreement**). Therefore, the total price payable by Heathcliff for the Se74 was CHF 14,987,381.00 (c. USD 16 million).

**C. Arbitral Award**

7. The nature and terms of the agreement(s) between Heathcliff and Matrix became the subject of a dispute referred to arbitration in Geneva, Switzerland. Matrix filed its Notice of Arbitration on 23 April 2015 and sought to enforce payment under the Original SPA and Additional SPA.
8. Heathcliff asserted in response that it was deceived by Matrix as to: (i) the value of the Se74; (ii) the fact that the same Se74 was the object of criminal proceedings brought by a third party in which it had been contended that the Se74 had no value; and (iii) the nature of the contract into which Matrix wanted to enter. Accordingly, *inter alia*, Heathcliff argued that it was not bound by the Original SPA and/or Additional SPA.
9. In a reasoned arbitral award dated 14 March 2017, the sole arbitrator ruled that the Original SPA and Additional SPA are not binding and enforceable, held that Heathcliff and Matrix must consequently be put back in the position they were in before their execution, and ordered Matrix to pay Heathcliff :
  - a. CHF 1,800,000.00; and
  - b. CHF 4,000,000.00.
10. Additionally, Matrix and Heathcliff were ordered jointly to instruct the Escrow Agent (as defined in the Original SPA and in the Additional Agreement) to release to Heathcliff the amount of CHF 1,666,865.00 and interest accrued since 29 September 2014; such joint instructions were to be made within 30 days of 14 March 2017 (i.e. the date of the arbitral award). In the absence of such joint instructions within the time limit, it was ordered that the arbitral award shall stand as a joint instruction made to the Escrow Agent.
11. Heathcliff was ordered to transfer, or procure to transfer, the Se74 to Matrix within 30 days of 14 March 2017.

**D. Supreme Court Decision**

12. Matrix appealed the determination of the sole arbitrator to the Swiss Federal Supreme Court and sought to obtain an annulment of the arbitral award on the

alleged basis that there had been a violation of Matrix's right to be heard. The presiding judge granted a stay pending the outcome of the appeal.

13. The appeal was dismissed and the suspension lifted on 8 January 2018 and is now final, binding and conclusive.

**E. Demand**

14. By a letter dated 18 January 2018 headed "Matrix Inc. v Heathcliff Trading SA - Claim Letter", Heathcliff demanded, based on the arbitral award and the Supreme Court decision, that Matrix pay:

- a. CHF 1,666,865.00 plus the interest generated by these funds held in the Escrow Account No. 30138 opened with Arner Bank since 29 September 2014, by instructing Arner Bank by January 19, 2018 to immediately release the amount held in the Escrow Account to Heathcliff Trading at Heathcliff's bank account;
- b. CHF 1,800,000;
- c. CHF 4,000,000; and
- d. CHF 308,322.35 (representing default interest of 5% p.a. applied to the principal outstanding sums above, as of 18 January 2018).

15. In the usual way, bank details and interest calculations were provided with the letter of demand.

16. More than a month has passed since Klein Rechtsanwälte AG (Swiss attorneys for Heathcliff) sent the demand by email and post to Python (Swiss attorneys for Matrix). No payment of the sum demanded has been made, and Matrix has made no proposals for the settlement of the sums specified in the arbitral award.

17. In the present circumstances, Matrix should be wound up as it is unable to pay its debts.

**YOUR PETITIONER THEREFORE HUMBLY PRAYS THAT:-**

- (1) Matrix be wound up by the Court in accordance with the Law.
- (2) David Martin Griffin and Andrew Morrison of FTI Consulting (Cayman) Limited, Suite 3212, 53 Market Street, Camana Bay, PO Box 30614, Grand Cayman KY1-1203, Cayman Islands be appointed as joint official liquidators of Matrix (the **Joint Official Liquidators**).
- (3) The Joint Official Liquidators not be required to give security for their appointment.
- (4) The Joint Official Liquidators be authorised to take such steps as may be necessary or expedient for the protection of Matrix's assets, and for that purpose they may exercise any of the powers specified in Part I and II of the Third Schedule to the Law, and for the avoidance of doubt such powers may be exercised within and outside the Cayman Islands. Specifically, but without prejudice to the generality of the foregoing, the Joint Official Liquidators shall have the powers to:
  - a. bring or defend any action or other legal proceeding in the name and on behalf of Matrix;
  - b. take possession of, collect and get in the property of Matrix and for that purpose to take all such proceedings as they consider necessary;
  - c. carry on the business of Matrix so far as may be necessary for the presentation of a compromise or arrangement to its creditors and/or its beneficial winding up;
  - d. sell any of Matrix'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;
  - e. raise or borrow money and grant securities therefor over the property of Matrix;
  - f. take any action as may be desirable to obtain recognition of their appointment in any relevant jurisdiction;
  - g. engage staff (whether or not as employees of Matrix) to assist them in the performance of their functions; and
  - h. engage attorneys and other professionally qualified persons to assist them in the performance of their functions.
- (5) The Joint Official Liquidators be authorised to act jointly and severally in their capacity as Joint Official Liquidators.
- (6) The Joint Official Liquidators be at liberty to apply for further directions concerning their functions and the exercise or proposed exercise of their powers.
- (7) No suit, action or other proceeding be proceeded with or commenced against Matrix except with leave of the Court and subject to such terms as the Court may impose.

- (8) The remuneration and expenses of the Joint Liquidators be paid out of the assets of Matrix.
- (9) The costs of and incidental to the Petition be paid out of the assets of Matrix as expenses within the liquidation.

And your Petitioner will ever pray etc.

Dated the 4<sup>th</sup> day of April 2018

Filed the 4<sup>th</sup> day of April 2018

Mourant Ozannes

Mourant Ozannes

Attorneys for the Petitioner

This PETITION is filed by Mourant Ozannes, Attorneys-at-Law for the Petitioner whose address for service is PO Box 1348, 4th Floor, 94 Solaris Avenue, Camana Bay, Grand Cayman KY1-1108

## NOTICE OF HEARING

**TAKE NOTICE THAT** the hearing of this Petition will take place at the Law Courts, George Town, Grand Cayman, Cayman Islands on *28 May 2018* at *10 am*.

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, George Town, Grand Cayman, KY1-1106, Cayman Islands