

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION



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CAUSE NO. FSD OF 2020

IN THE MATTER OF SECTION 131(b) OF THE COMPANIES LAW (2020 REVISION)  
AND IN THE MATTER OF TOF CAYMAN SPV (IN VOLUNTARY LIQUIDATION)



PETITION



To the Grand Court

The humble petition of IIG Trade Opportunities Fund N.V. shows that:-

**The Company**

1. Cayman TOF SPV (the **Company**) is a Cayman Islands exempted company incorporated on 2 February 2006 with registration number 161860.
2. The sole shareholder of the Company is IIG Trade Opportunities Fund N.V. (herein the **Petitioner or IIG TOF**) a limited liability company incorporated under the laws of Curaçao. IIG TOF was established as an open ended investment fund purportedly investing in short-term financial instruments issued in connection with trade finance transactions on a global basis, with a particular focus on the Latin American Market.
3. On 3 September 2019, the Joint Court of Justice of Aruba, Curaçao, Sint Maarten and of Bonaire, Sint Eustatius and Saba appointed Ms. Valerie P. Maria to serve as Trustee in Bankruptcy of IIG TOF (**Trustee in Bankruptcy**).
4. The current registered office of the Company is situated at c/- Trident Trust Company (Cayman) Limited, Fourth Floor, One Capital Place, P.O. Box 847, Grand Cayman, Cayman Islands KY1-1103.
5. The most recent version of the Company's Memorandum and Articles of Association was adopted on 2 February 2006.

6. The Company has an authorised share capital of US\$50,000 divided into 50,000 shares of US\$1.00 each.
7. The Company provides short-term international trade financing.
8. The Company's last issued financial statement, of which the Trustee in Bankruptcy is aware, was for the year ending 31 December 2010. The statement of financial position shows listed assets totalling \$195,535,070 and liabilities totalling \$75,596,331. The assets primarily consisted of short term trade related financing and receivables. Cash and cash equivalents totalled \$4,379,854. The liabilities include monies owing under a revolving credit facility with Inter-American Development Bank totalling \$75,000,000.
9. In addition, the financial statement for year ending 31 December 2010 shows that:
  - (a) the Company's portfolio of investment primarily included short term trade related financing including 86.04% in discount papers and 35.89% in fixed rate advances;
  - (b) the Company had US\$119,938,739 of redeemable share capital classified as shareholder's equity, comprising of paid-in capital in the amount of \$113,076,164 and retained earnings in the amount of \$6,862,574. The Company's objectives in managing the redeemable share capital was to ensure a stable strong base to maximise returns all investors, and to manage liquidity risk arising from redemptions;
  - (c) the Company's investment income was \$21,218,681 derived primarily from interest on debt instruments;
  - (d) on 3 May 2007, the Company entered into a trade finance revolving credit facility agreement with Inter-American Development Bank for the amount of US\$75 million to finance eligible trade finance transactions;
  - (e) the International Investment Group LLC (**IIG**) served as the Company's investment adviser with respect to all investments and received a monthly management fee and a quarterly performance fee. The management fee and performance fees were being paid and accounted for by IIG TOF, the Company's parent company; and
  - (f) the Company has investments in debt instruments under various trade finance credit facilities in which other investment funds, also managed by IIG, may also invest.
10. The Petitioner is unaware of the current financial status of the Company.

### **Commencement of Voluntary Liquidation**

11. On 30 March 2020, resolutions were passed by the sole shareholder of the Company, including:
  - (a) that the business and affairs of the Company be voluntarily wound-up and that Geoffrey Varga and Mark Longbottom be appointed as Joint Voluntary Liquidators (the "**Voluntary Liquidators**") of the Company.
  - (b) an ordinary resolution that the Voluntary Liquidators be authorised to do any act or thing considered by the Voluntary Liquidators to be necessary or desirable in connection with the liquidation of the Company and the winding up of its affairs; and
  - (c) an ordinary resolution that in accordance with Order 13, Rule 9 of the Companies Winding Up Rules 2018 (as amended) the basis of the Voluntary Liquidators' remuneration (in respect of any actions taken pursuant to the foregoing resolution) shall be based on a time and material basis.
12. In the premises:
  - (a) the Company duly resolved by special resolution that it be wound up voluntarily, pursuant to section 116(c) of the Law; and
  - (d) the voluntary winding up of the Company is deemed to have commenced on 30 March 2020, pursuant to section 117(1) of the Law.
13. On 31 March 2020, the Joint Voluntary Liquidators filed consents to act as Joint Voluntary Liquidators of the Company with the Registrar of Companies pursuant to section 119(3) of the Law.

### **Petitioner's concerns about the affairs of the Company: IIG Fraud**

14. The Trustee in Bankruptcy has serious concerns about the conduct of the Company's affairs by its investment advisor and considers that it is appropriate for the voluntary liquidation of the Company continue under the Court's supervision as this will facilitate a more effective, economic or expeditious liquidation of the Company in the interests of its stakeholders. The basis for such concerns are described below.
15. The appointment of the Trustee in Bankruptcy was precipitated by financial difficulty experienced by IIG TOF for a number of years. On 17 December 2015, IIG TOF's board of directors resolved to suspend paying investor redemption requests. That resolution led Aggregator Solutions PLC, one of IIG TOF's investors, to file an involuntary petition before the

Curaçao Court to place IIG TOF into bankruptcy for its failure to redeem Aggregator's shares. On 3 September 2019, the Curaçao Court of Appeal ruled in favour of Aggregator and entered a judgment declaring IIG TOF bankrupt and appointing the Trustee in Bankruptcy.

16. Prior to its liquidation, IIG TOF was managed by IIG. As referred to above, IIG also acted as the investment adviser of the Company. The principals of IIG were David Hu and Martin Silver (**IIG Principals**). Messrs Hu and Silver were both directors of the Company at some points in time.
17. Bankruptcy proceedings in Curaçao are intended to facilitate the liquidation of the debtor's assets for distribution among its creditors. In this regard and in addition to the statutory duties imposed on the Trustee in Bankruptcy under the laws of Curacao, the Trustee in Bankruptcy:
  - (a) Is currently investigating the affairs of the Petitioner, including the IIG fraud described below in respect of which the Petitioner and the Company appear to have been victims;
  - (b) Submitted a verified petition for recognition of the Curaçao liquidation as a "foreign main proceeding" and for additional relief under the United States Bankruptcy Code with the United States Bankruptcy Court (**Chapter 15 Petition**); and
  - (c) Obtained provisional relief upon filing the Chapter 15 Petition in circumstances where such relief was urgently required to protect the assets of the Petitioner and the interests of the Petitioner's creditors;
18. IIG also managed two Cayman based trade funds, IIG Global Trade Finance Fund Ltd (**GTFF**) and IIG Structured Trade Finance Fund Ltd (**STFF**).
19. Alexander Lawson and Christopher Kennedy were appointed the Joint Official Liquidators of GTFF on 23 October 2019 and STFF on 31 January 2020.
20. On 21 November 2019, the Securities and Exchange Commission (**SEC**) filed a complaint against IIG alleging that, through its principals namely Messrs Silver and Hu, IIG engaged in a string of frauds to cover up tens of millions of dollars in losses in bad debts and keep its investment advisory business afloat (**the SEC Complaint**). Specifically, the SEC Complaint alleges that:
  - (a) IIG engaged in a practice of hiding losses in the IIG TOF portfolio by overvaluing troubled loans and replacing defaulted loans with fake "performing" loan assets. When

it was necessary to create liquidity, including to meet redemption requests, IIG would sell the overvalued and/or fictitious loans to new investors and use the proceeds to generate the necessary liquidity required to pay off earlier investors;

- (b) IIG serves as the investment adviser to several private investment funds, including IIG TOF, and GTFF and STFF, and in that capacity, selects and manages their investments, principally in trade finance loans. IIG had \$373 million in assets under management;
- (c) IIG also advised an open-end mutual fund marketed to retail investors (the "**Retail Fund**") and selected trade finance loans for the Retail Fund's portfolio. In or about March 2017, one of the loans IIG had recommended had defaulted on a \$6 million payment. Concerned that the default would lead the Retail Fund to end the advisory relationship, IIG used funds from an account under its control to make the defaulted payment, making it appear that the borrower was creditworthy and current in its payments. To plug the \$6 million hole it had created in the other account, IIG sold the Retail Fund a new "fake" \$6 million loan and used those funds to reimburse the account it had raided to make the earlier payment to the Retail Fund;
- (d) As new losses arose or as the fictitious loans matured, IIG would remove them from the IIG TOF portfolio and replace them with additional substituted loans;
- (e) IIG succeeded in generating interest in a new private fund, GTFF, on the part of a foreign investor which agreed to invest \$70 million as an anchor investor in the new fund;
- (f) Later that same year, an investor asked IIG to create another fund, STFF, to facilitate an additional \$130 million investment. IIG caused STFF to acquire approximately \$10 million in fake substitute loans and "panama loans" from the TOF funds and another entity;
- (g) IIG received inflated management and performance fees as result of these purported manipulations; and
- (h) Messrs Hu and Silver "directed" and "spearheaded" the conduct alleged in the SEC Complaint.

21. Specifically, in respect of Messrs Hu and Silver, the SEC Complaint alleged that they engaged in deceptive acts to hide losses in IIG's portfolio, prop up liquidity and manufacture loans. For example, they were alleged to have grossly overstated the value of defaulted loans in the IIG TOF portfolio to conceal its losses in the fund. When it became untenable to carry the defaulted loans on IIG TOF's books, Messrs Hu and Silver allegedly replaced the defaulted loans with fake substituted loans purportedly extended to borrowers operating in industries controlled by a business associate of IIG.
  
22. In particular, the SEC Complaint further alleges that Messrs Hu and Silver:
  - (a) They directed that documentation be created to evidence the substituted loans for audit purposes;
  - (b) They arranged for purported borrowers to provide confirmations of fake debts to auditors;
  - (c) Fearing that existing investors would flee the fund and that ongoing fundraising efforts would suffer if the loss were disclosed, they decided to conceal the loss and knowingly erroneously valued the loan at par plus accrued interest on IIG TOF's books;
  - (d) In order to help meet the liquidity needs, and to continue to conceal IIG TOF's losses, one of the IIG Principals spearheaded an effort to securitize the IIG TOF loan portfolio;
  - (e) One of the IIG Principals caused GTFF to purchase approximately \$28 million in loans and failed to disclose a dispute concerning those loans; and
  - (f) One of the IIG Principals caused STFF to acquire \$25 million in disputed loans.
  
23. On 26 November 2019, the United States District Court for the Southern District of New York entered a partial judgment against IIG, which IIG consented to. The partial judgment:
  - (a) Restrains and enjoins IIG from future violations of the Securities Exchange Act;
  - (b) Imposes a preliminary freeze over the assets of IIG;
  - (c) Orders IIG to pay civil monetary penalties and disgorgement of ill-gotten gains;
  - (d) Revokes IIG's adviser registration with the SEC; and

- (e) Orders a litigation stay on any lawsuits involving IIG or its assets pending a final determination by the Court of the amount of monetary relief owed by IIG.
24. IIG also agreed that it will be precluded from arguing that it did not violate the federal securities laws as alleged in the SEC Complaint, that it may not challenge the validity of the judgment and that solely for the purposes of such motion, the allegations of the SEC Complaint shall be accepted as deemed true by the Court.
25. On 30 March 2020, the United States District Court for the Southern District of New York entered a final judgment against IIG (again, to which IIG consented). The final consent judgment provides:
- (a) IIG is permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 by using any means or instrumentality of interstate commerce, or of mails, or of any facility of any national securities exchange in connection with the purchase or sale of any security;
  - (b) IIG is permanently restrained and enjoined from engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;
  - (c) IIG is permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:
    - i. to employ any device, scheme, or artifice to defraud;
    - ii. to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statement made, in light of the circumstances under which they were made, not misleading; or
    - iii. to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.
  - (d) IIG is liable for disgorgement in the amount of US\$30,890,453.96, representing profits gained as a result of the conduct alleged in the SEC Complaint, together with prejudgment interest thereon in the amount of US\$4,340,325.46, for a total of

US\$35,230,779.42. IIG is required to satisfy this obligation by paying US\$35,230,779.42 to the Securities and Exchange Commission within 30 days after entry of the Judgment.

#### **Requirements for Court Supervision**

26. The Petitioner considers that the supervision of this Honourable Court will facilitate a more effective, economic or expeditious liquidation of the Company in the interests of the contributories and creditors in accordance with section 131(b) of the Companies Law. The reasons for having a court-supervised process will:

- (a) Allow the liquidators to carry out a comprehensive and independent investigation into the Company's affairs;
- (b) Provide the liquidators with power to apply to the Court for an order to examine any relevant person for the purpose of investigating the Company's affairs;
- (c) Provide the liquidators with power to apply to the Court to compel any relevant person to transfer or deliver up to the liquidators any property or documents belonging to the Company;
- (d) Given the cross border nature of the Company's liquidation, enable the liquidators to obtain the recognition and assistance of foreign jurisdictions should the same prove advisable or necessary for the discharge of their duties ;
- (e) Allow for independent adjudication by officers of the court of any debts sought to be proved in the liquidation of the Company; and
- (f) Assist in the orderly realisation and distribution of the Company's assets.

#### **Consent to appointment as Official Liquidators**

27. The Voluntary Liquidators are qualified insolvency practitioners and consent to their appointment as Joint Official Liquidators of the Company.

#### **Conclusion**

28. In the premises, the Petitioner seeks an order pursuant to section 131(b) of the Law that the voluntary liquidation of the Company continue under the supervision of the Court and that the Voluntary Liquidators be appointed as Joint Official Liquidators of the Company.

**Your Petitioner therefore humbly prays that**

- 1 Pursuant to section 131(b) of the Companies Law (2020 Revision), the liquidation of the Company be continued under the supervision of the Court.
- 2 The Joint Voluntary Liquidators be appointed Joint Official Liquidators of the Company (JOLs) and have the power to act jointly and severally.
- 3 The JOLs are not required to give security of their appointment.
- 4 The JOLs shall be authorised to do any acts or things considered by them to be necessary or desirable in connection with the dissolution of the Company and the winding up of its affairs.
- 5 In addition to all of their powers, the JOLs have the following powers provided for in part 1 of the Third Schedule to the Companies Law (2018 Revision) and may exercise such powers without further sanction of the Court:
  - (a) Power to carry on the business of the Company so far as may be necessary for its beneficial winding up.
  - (b) Power to pay any class of creditors in full.
  - (c) Power to deal with all questions in any way relating to or affecting the assets or the winding up of the Company, 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.
  - (d) Power to sell any of the company'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) Power to raise or borrow money and grant securities therefor over the property of the company.
  - (f) Power to engage staff (whether or not as employees of the Company) to assist them in the performance of his functions.
  - (g) Power to engage attorneys and other professionally qualified persons, whether in the Cayman Islands or elsewhere as they consider necessary to assist them in the performance of their functions.
- 6 The JOLs are entitled to receive remuneration for their services by reference to time properly given by them and their staff in attending to matters arising in the winding up, and that the hourly rates and the amount of such remuneration be determined in accordance with the Law, the Companies Winding Up Rules 2018 and the Insolvency Practitioners Regulations 2008.

- 7 No disposition of the Company's property by or with the authority of the JOLs in carrying out their duties and functions and the exercise of their powers under any Order granted pursuant to this Petition shall be voided by virtue of section 99 of the Companies Law.
- 8 Subject to section 109(2) of the Companies Law (as amended) and the Insolvency Practitioner's Regulations, 2018 (as amended), the JOLs be authorised to render and pay all invoices out of the assets of the Company for their own remuneration.
- 9 The JOLs be at liberty to meet all disbursements reasonably incurred in connection with the performance of their duties and, for the avoidance of doubt, all such payments shall be made as and when they fall due out of the assets of the Company as an expense of the liquidation.
- 10 There be liberty to apply generally.
- 11 The Petitioner's costs of this Petition shall be paid out of the assets of the Company as an expense of the liquidation.
- 12 Any further order that the Court deems fit.

Dated the 31<sup>st</sup> day of March 2020



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Attorneys for the Petitioner