

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION



CAUSE NO: FSD 55 of 2020 ( ASCJ )

IN THE MATTER SECTION 94 OF THE COMPANIES LAW (2020 REVISION)  
AND IN THE MATTER OF UNIVERSAL ENTERPRISES LTD.



WINDING UP PETITION

To the Grand Court

The humble petition of Sandra Holding Ltd., with a registered office at Walkers Corporate Limited, Cayman Corporate Centre, 27 Hospital Road, George Town, Grand Cayman, Cayman Islands (the "Petitioner"), shows that:-

**The Company**

1. Universal Enterprises Ltd. (the "**Company**") is a Cayman Islands exempted company established under the laws of the Cayman Islands on 1 September 1983 with registration number 12581. The Company was incorporated with the name M.S.S. Holding Ltd., and changed its name to Universal Enterprises Ltd. by special resolution on 27 January 1987.
2. The registered office of the Company is situated at Harneys Fiduciary (Cayman) Limited, PO Box 10240, 4<sup>th</sup> Floor, Harbour Place, 103 South Church Street, George Town, Grand Cayman, Cayman Islands.
3. The Company's Memorandum of Association provides that the objects for which the Company was established include: (a) to carry on the business of an investment company and to act as promoters and entrepreneurs, and to carry on all kinds of investment, financial, commercial, mercantile, trading and other operations; (b) to carry on the business of realtors, developers, consultants, estate agents or managers, builders, contractors, engineers, manufacturers, dealers in or vendors of all types of property including services; (c) to purchase, sell and deal with real and personal property and rights of all kinds; and (d) to engage in or carry on any other lawful trade, business or enterprise.
4. The authorised share capital of the Company is US\$900,000.00 divided into 9,000 shares of a nominal or par value of US\$100.00 each.

5. The Company was established as an investment vehicle for six brothers: Hamad MUSAAD Al Saleh, Dawud MUSAAD Al Saleh, Nuri MUSAAD Al Saleh, Mohamad MUSAAD Al Saleh, Foad MUSAAD Al Saleh and Fawzi MUSAAD Al Saleh (collectively, the "**Al Saleh brothers**"). The Al Saleh brothers are Kuwaiti citizens and established the Company for the purposes of making investments in the United States of America.
6. Each of the Al Saleh brothers incorporated an exempted Cayman Islands company for the purposes of holding their shares in the Company (collectively, the "**HoldCos**"), as follows:
  - (a) Hamad MUSAAD Al Saleh – Basma Holding Ltd;
  - (b) Dawud MUSAAD Al Saleh – Zahra Holding Ltd;
  - (c) Nuri MUSAAD Al Saleh – Sandra Holding Ltd (i.e. the Petitioner);
  - (d) Mohamad MUSAAD Al Saleh – Maigh Holding Ltd;
  - (e) Foad MUSAAD Al Saleh – Lojean Holding Ltd; and
  - (f) Fawzi MUSAAD Al Saleh – Yasmine Holding Ltd.
7. When the Company was established, the intention was that each of the Al Saleh Brothers would own 13.1% of the shares in the Company through the HoldCos, and the remaining 21.4% of the shares in the Company would be held by nominee shareholders but would be transferred to the six shareholders on a pro rata basis on demand.
8. On 12 February 1987, the Company, each of the HoldCos and Fawzi MUSAAD Al Saleh ("**Fawzi**"), in his individual capacity, entered into a Shareholder Agreement (the "**Shareholder Agreement**"). The Shareholder Agreement defines the HoldCos as "the Shareholders" and states that the Shareholders own all of the issued and outstanding shares of the Company.

#### **The Petitioner's Interest in the Company**

9. The Petitioner is a Cayman Islands exempted company established under the laws of the Cayman Islands on 13 August 1986 with registration number 24910.
10. The Petitioner does not have access to the Company's current Register of Members and does not therefore know the current shareholdings in the Company. The Petitioner, however, believes that it holds at least 250.166 shares in the Company, as set out in an extract from the Company's Register of Members (referred to below) and a letter from the Company's United States legal counsel, Messrs Hale and Dorr LLP, to Arthur Andersen LLP dated 9 February 1998 (the "**Letter**"), which was copied to the Petitioner's sole director, Nuri MUSAAD Al Saleh ("**Nuri**"). In the Letter, Hale and Dorr LLP stated that: "...*Sandra Holding Ltd. owns 250.166 shares of the*

*capital stock of Universal Enterprises Ltd., which represent 13.0103% of the total 1,922.83 shares currently outstanding...".*

11. The Petitioner sought to redeem its shares in the Company in or around 1996 or 1997, but the redemption was not completed. On or around 11 April 2001, the Petitioner filed a Complaint for Declaratory Judgment in the Superior Court of the Commonwealth of Massachusetts, Norfolk, SS (Civil Action #01 00587) (the "**Complaint**"), seeking a declaration that the Petitioner is the owner of 250.166 shares of the Company and that no redemption had occurred. On 25 June 2001, the Petitioner and the Company entered an Agreement for Judgment (the "**Agreement for Judgment**") which confirmed that the Petitioner is the holder of 250.166 shares in the Company, that the redemption request was withdrawn and that the Shareholder Agreement remained in full force and effect.
12. The most recent copy of the Company's complete Register of Members in the Petitioner's possession was certified as a true and correct copy of the original Register of Members by the Company's former registered office provider, Trident Trust (Company) Limited on 23 September 2008 (the "**2008 Share Register**").
13. The 2008 Share Register provides that the Al Saleh Brothers were each issued with shares in their own names (rather than in the names of the HoldCos) on 6 December 1984 and 27 August 1985, but that the shares were subsequently converted to bearer shares on 24 June 1986. The 2008 Share Register provides that prior to the conversion to bearer shares each of the Al Saleh Brothers held a total of 370 shares in the Company, with the exception of Fawzi who held a total of 749 shares.
14. The 2008 Share Register goes on to provide that some of the bearer shares were redeemed on 2 April 1987; specifically, it provides that 119.834 of each holding of 370 shares which were formerly registered in the names of each of the five Al Saleh Brothers except Fawzi were redeemed on 2 April 1987. As a result of the redemption, each of the five Al Saleh Brothers (except Fawzi) would have been beneficially entitled to 250.166 shares in the Company (i.e. 370 shares minus 119.834 shares), which is the same number of shares referred to in the Letter.
15. The 2008 Share Register, however, shows that as of 23 September 2008, all of the issued shares in the Company were bearer shares and that the HoldCos never actually held shares in the Company. It is the Petitioner's case that each of the HoldCos owns 13.1% of the shares in the Company, as set out in the Letter from the Company's United States counsel confirming that the Petitioner held 250.166 shares in the Company on 9 February 1998, and consistently with the Shareholder Agreement which states that the HoldCos own all of the issued and outstanding shares of the Company.
16. The Company was required to convert the bearer shares into registered shares before 13 July 2016 pursuant to section 231A. of the Companies Law (2020 Revision) (the "**Companies Law**"),

which provides that: "*Notwithstanding any provision in this Law a company incorporated under this Law shall – (a) not issue shares in bearer form after 13th May, 2016; and (b) cause bearer shares issued by the company to be converted to registered shares before 13th July, 2016.*" Section 231A. was enacted by section 5 of the Companies (Amendment) Law, 2016 on 13 May 2016.

17. In or around 2016 or 2017, the Petitioner received an extract from the Company's Register of Members, which states that the Petitioner holds 250.166 shares in the Company. The extract provides that on 2 July 2016, the Petitioner received an allotment of 250.166 ordinary shares in the Company, as a result of the "*conversion of Bearer shares from certificates 46 and 51 to Registered shares*". The Petitioner's Cayman Islands attorneys wrote to the Company on 24 February 2020 to request confirmation of the number of shares in the Company which are currently registered in the Petitioner's name, but the Company has not responded to that request.

#### **Breach of the Shareholder Agreement**

18. As noted in paragraph 8 above, the Petitioner entered into the Shareholder Agreement with the Company, the other HoldCos and Fawzi on 12 February 1987. Pursuant to the terms of the Shareholder Agreement, the HoldCos agreed to entrust Fawzi with control of the Company, by *inter alia* appointing him as Managing Director and Chief Executive Officer of the Company and giving him the power to designate four out of seven directors of the Company. Paragraph 3 of the Shareholder Agreement states that "*... The Board of Directors shall be set at seven in number and shall not be changed unless by an affirmative vote of 75% of the issued and outstanding shares of the Company*".
19. The most recent copy of the Company's Register of Directors in the Petitioner's possession was certified as a true and correct copy of the original Register of Directors by the Company's former registered office provider, Trident Trust (Company) Limited on 23 September 2008 (the "**2008 Directors Register**").
20. The 2008 Directors Register provides that Fawzi is the Company's Managing Director, and the Company only had two other directors, namely 'Abdul Aziz S. A. Al Saleh' and 'Tareq M. Al Saleh', in breach of the requirement in the Shareholder Agreement that there be a board of seven directors.
21. Searches performed at the Cayman Islands Registrar of Companies on 19 February 2020 confirm that Fawzi is the Company's Managing Director and CEO, but that the two other directors of the Company, 'Abdulaziz Al Saleh' and 'Tareq Al Saleh', ceased to be directors on 1 September 2010.
22. Fawzi is therefore in sole control of the Company as the Company's sole director, in breach of the terms of the Shareholder Agreement which require a seven person board of directors.

### **Breaches of the Articles of Association**

23. The most recent copy of the Company's Articles of Association in the Petitioner's possession are the Company's original Articles of Association dated 1 September 1983, which were filed with the Registrar of Companies in the Company's former name, M.S.S. Holding Ltd. (the "**Articles**").
24. Article 114 of the Articles is in the following terms:
- "114. The Directors shall from time to time cause to be prepared and to be laid before the Company in general meeting profit and loss accounts, balance sheets, group accounts (if any) and such other reports and accounts as may be required by law."*
25. In breach of Article 114, Fawzi (the Company's sole director) has failed to hold any general meetings and, despite the Petitioner's repeated requests, has failed to provide the Company's shareholders with profit and loss accounts, balance sheets or group accounts for over 20 years.
26. Article 96 of the Articles is in the following terms:
- "96. The office of a Director shall be vacated: ...*
- (c) If he dies, becomes bankrupt or makes any arrangement or composition with his creditors generally;"*
27. On or around 28 May 2002, Fawzi was declared bankrupt in Kuwait, and the Kuwait Investment Authority was appointed as his bankruptcy administrator. In breach of Article 96, Fawzi failed to vacate his office as a director of the Company.

### **Transfer of Company assets and the need for an investigation**

28. The Petitioner has recently discovered that, in or around 2014, Fawzi and/or his son, Ahmad Fawzi Al Saleh ("**Ahmad**"), orchestrated two related-party transactions which involved the purported sale of tens of millions of dollars' worth of the Company's assets to ASPTC (PTC) Limited ("**ASPTC**") in ASPTC's role as trustee of The Budhi Trust (the "**Trust**").
29. The Petitioner has obtained a copy of the Deed of Trust in respect of the Trust dated 28 June 2013 (the "**Deed of Trust**"). The Deed of Trust states that Fawzi was the settlor of the Trust, and that Fawzi, Ahmad and Ahmad's sister, Yasmine Al Saleh ("**Yasmine**"), are the beneficiaries of the Trust. The Deed of Trust was signed by Fawzi both as settlor and on behalf of ASPTC. Fawzi therefore also controls ASPTC. This discovery, coupled with Fawzi's refusal to provide the Petitioner with information regarding the Company's finances, has caused the Petitioner considerable concern, not least because it has not received any dividends or distributions from the Company following the sales.

30. In September 2018, the Petitioner issued an application for discovery against Fawzi, Ahmad and others in the United States District Court for the District of Massachusetts (Case No. 18-mc-91406-PBS), pursuant to 28 U.S.C. § 1782 ("**s.1782**"). As a result of depositions ordered by the District Court, the Petitioner learned that:
- (a) On 12 September 2014, one of the Company's wholly-owned subsidiaries, Seapuit Holdings Ltd. ("**Seapuit**"), agreed to sell substantially all of its assets (including all of the issued shares in its British Virgin Islands incorporated subsidiaries, Ditmars Limited, Candlewood Capital Limited and Corinthian Ventures Limited) to ASPTC as trustee of the Trust, for consideration of US\$24,850,122; and
  - (b) On 31 December 2015, the Company agreed to sell all of the shares in another of its wholly-owned subsidiaries, Metinic Ventures Limited ("**Meticinic**"), to ASPTC as trustee of the Trust for cash consideration of US\$18,782,250 and the purchaser's assumption of liabilities totalling US\$2,890,245.
31. As a result of the s.1782 application, the Petitioner has also learned that, on or around 17 February 2017, the Company and Quabbin Capital Inc. engaged KPMG LLP to review the sale of Seapuit's assets and the sale of Metinic. The Company's engagement letter with KPMG dated 17 February 2017 provides that KPMG were to be provided with various Appendices, which they would be required to review and agree with the purchase prices in the agreements to sell the Seapuit assets and the Metinic shares. KPMG duly prepared a report dated 17 March 2017 (the "**KPMG Report**") and, at Schedules A and B to the KPMG report, listed a number of wire transfers which purportedly related to the Seapuit and Metinic sales.
32. Two concerning points arise from the KPMG report: first, the wire transfers identified by KPMG as relating to the Seapuit transaction were all made between March 2011 and August 2013 and thus pre-dated the Seapuit transaction by at least a year; and, second, over half of the wire transfers listed in Schedule B which purportedly related to the Metinic transaction were made in 2014 – at least a year prior to the Metinic sale. Additionally, most of the wire transfers in Schedule A occurred before ASPTC was incorporated on 24 April 2013 and before the Trust was settled by Fawzi on 28 June 2013.
33. Without waiving any privilege, the Petitioner's United States counsel, Messrs Akin Gump Strauss Hauer & Feld LLP, have advised the Petitioner that Mr John Snow of Quabbin Capital Inc. was deposed following the s.1782 application, and had no explanation for the prior wire transfers. Mr Snow testified that he had received no documentation explaining what the wire transfers were for, and had merely relied on Fawzi's and/or Ahmad's explanation after the fact that they related to the Seapuit and Metinic sales.
34. It is therefore the Petitioner's case that Fawzi, in breach of his fiduciary duties as sole director of the Company, caused the Company to transfer over US\$43.6 million worth of the Company's

assets to the Trust, of which Fawzi and his children (and not the other Al Saleh Brothers) are beneficiaries, for no consideration. In a transparent attempt to conceal his fraud and breaches of fiduciary duty, Fawzi compiled a list of historic wire transfers to attempt to show that the Trust did in fact pay the Company for the assets.

35. As a result of all of the issues outlined above, the Petitioner has lost all confidence in Fawzi's ability properly to manage the Company and its assets, and considers that the Company may have claims against Fawzi, Ahmed, ASPTC, the Trust and/or Yasmine to recover its assets.
36. In a final attempt to avoid the need to present this Winding Up Petition, the Petitioner instructed its Cayman Islands attorneys to write to the Company on 24 February 2020, to raise the issues outlined above and to request that the Company provide information and explanations. Specifically, the Petitioner asked the Company to provide it with the following information within 14 days of the date of the letter:
  - (a) The Company's profit and loss accounts, balance sheets, and group accounts from inception to date, in accordance with Article 114 of the Articles;
  - (b) Full information regarding the purported sale of Seapuit's assets in September 2014, including all contemporaneous correspondence, bank statements, wire transfer instructions and documents dating back to the first wire transfer dated 28 March 2011 listed in Schedule A of the KPMG Report;
  - (c) An explanation as to how ASPTC as trustee of the Trust was able to make payments for the Seapuit assets before it was incorporated and before the Trust was established;
  - (d) Full information regarding the purported sale of Metinic in December 2015, including all contemporaneous correspondence, bank statements, wire transfer instructions and documents dating back to the first wire transfer dated 10 February 2014 listed in Schedule B of the KPMG Report; and
  - (e) Bank statements and any other documents which show how the purported proceeds from the Seapuit and Metinic sales were applied, used or transferred.
37. On 9 March 2020, Fawzi responded to the Petitioner's attorneys but failed to provide any of the requested information or explanations. Instead Fawzi merely asserted that the Petitioner's claims and allegations are "*not only baseless and unsubstantiated as being obvious [sic] fallacious*" and referred to the Shareholder Agreement.
38. In view of the facts set out in paragraphs 18 to 37 above, the Petitioner considers that there is a need for an independent insolvency practitioner to be appointed to investigate:

- (a) the sale of the Seapuit assets to ASPTC as trustee of the Trust, for consideration of US\$24,850,122 on 12 September 2014;
- (b) the sale of the shares in Metinic to ASPTC as trustee of the Trust for cash consideration of US\$18,782,250 and the purchaser's assumption of liabilities totalling US\$2,890,245 on 31 December 2015;
- (c) the consideration, if any, paid for the Seapuit assets and the Metinic shares, and what has become of any such consideration;
- (d) the availability of claims against current and former directors of the Company;
- (e) the availability of claims against Fawzi, Ahmed, ASPTC, the Trust, Yasmine and/or any other third parties who may have received the Company's assets; and
- (f) the current financial circumstances of the Company.

39. In the premises it is just and equitable for the Company to be wound up.

Your Petitioner therefore humbly prays that:-

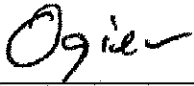
- (1) The Company be wound up in accordance with section 92(e) the Companies Law.
- (2) Eleanor Fisher of EY Cayman Ltd., 62 Forum Lane, Camana Bay, PO Box 510, Grand Cayman KY1-1106, Cayman Islands, and Hani Bishara of Ernst & Young Middle East, 28th Floor, Al Saqr Business Tower, Sheikh Zayed Road, Dubai, United Arab Emirates be appointed as joint official liquidators of the Company to act jointly and severally (the "**Official Liquidators**").
- (3) The Registered office of the Company be moved to EY Cayman Ltd., 62 Forum Lane, Camana Bay, PO Box 510, Grand Cayman KY1-1106, Cayman Islands, Cayman Islands.
- (4) The Official Liquidators be authorised to act jointly and severally in their capacity as liquidators of the Company.
- (5) The Official Liquidators shall not be required to give security for their appointment.
- (6) The Official Liquidators be authorised to exercise within and outside the Cayman Islands any of the powers conferred on them by the Court pursuant to section 110(2) and Part II of the Third Schedule of the Companies Law without further sanction or intervention of the Court.
- (7) The Official Liquidators be authorised to carry out any act or exercise any power considered by them to be necessary or desirable in connection with the liquidation of the Company and the winding-up of its affairs and to prevent the dissipation of the assets of the Company and its subsidiaries in any jurisdiction.

- (8) The Official Liquidators be authorised to take any such action as may be necessary or desirable to obtain recognition of the Official Liquidators and/or their appointment in any other relevant jurisdiction and to make applications to the courts of such purpose.
- (9) The Official Liquidators have the power to appoint agents in the Cayman Islands, Kuwait, the United States of America and elsewhere to do any business contemplated by the winding up order which they are unable to do themselves or which can more conveniently be done by an agent.
- (10) The Official Liquidators be authorised: (i) to take control of such of the direct and/or indirect subsidiaries of the Company (the "**Subsidiaries**") and/or joint ventures, investments, associated companies, businesses or other entities in which the Company holds an interest (collectively, the "**Associated Companies**" and, together with the Company and the Subsidiaries, the "**Group**"), in each case wherever located, as the Official Liquidators shall think fit; (ii) to call or cause to be called such meetings of such Subsidiaries and/or Associated Companies and/or to sign such resolutions (in accordance with the provisions of any relevant constitutional or related documentation of such companies) and take such other steps, including applications to appropriate courts and/or regulators, as the Official Liquidators shall consider necessary to appoint or remove directors, legal representatives, officers and/or managers to or from such Subsidiaries and/or Associated Companies, and in each case take such steps as are necessary to cause the registered agents (or other equivalent corporate administrators) of such Subsidiaries or Associated Companies to give effect to the changes to the boards of directors, legal representatives, officers and/or managers of such companies or entities, including (without limitation) effecting changes to the company registers of such Subsidiaries or Associated Companies as may be deemed appropriate by the Official Liquidators; and/or (iii) to take such other action in relation to all such Subsidiaries or Associated Companies as the Official Liquidators shall think fit for the purpose of protecting the assets and managing the affairs of the Company (which, for the avoidance of doubt, shall include the assets and affairs of the Subsidiaries and Associated Companies).
- (11) The Official Liquidators be at liberty to appoint counsel, attorneys, and/or any other 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 Company.
- (12) The remuneration and expenses of the Official Liquidators shall be paid out of the assets of the Company.
- (13) The Official Liquidators be at liberty to apply generally to the Court to make such orders for regulating the future conduct of the affairs of the Company as the Court shall see fit.
- (14) Such further or other relief be granted as the Court deems appropriate.

(15) The Petitioner's costs of and incidental to the Petition shall be paid forthwith out of the assets of the Company on an indemnity basis.

AND your Petitioner will ever pray etc.

Dated the 8<sup>th</sup> day of April 2020



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**NOTE:** This petition is intended to be served on the Company.

## NOTICE OF HEARING

TAKE NOTICE THAT the hearing of this petition will take place at the Law Courts, George Town, Grand Cayman, on 2020 at 10:00am.

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, Grand Cayman, KYI-1106, telephone 345 949 4296.