

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO. FSD: 264 OF 2020 [ASCJ]

IN THE MATTER OF THE COMPANIES LAW (2020 REVISION)
IN THE MATTER OF SECTION 24(5)(e) OF THE INSURANCE LAW, 2010
AND IN THE MATTER OF PREMIER ASSURANCE GROUP SPC LTD.
(IN CONTROLLERSHIP)

WINDING UP PETITION



TO THE GRAND COURT of the Cayman Islands, Financial Services Division

The humble petition of the Cayman Islands Monetary Authority (the "Authority", "CIMA" or the "Petitioner") of SIX Cricket Square, Shedden Road, Grand Cayman KY1-1001, Cayman Islands shows that: -

Preamble

1. The Authority, as the statutory body created by the Monetary Authority Law (2020 Revision) and responsible for the regulation and supervision of financial services business carried on in or from within the Cayman Islands, is seeking a winding up order in respect of **PREMIER ASSURANCE GROUP SPC LTD.** ("PAG" or "the Company") pursuant to section 94(1)(d) of the Companies Law (2020 Revision) (the "Companies Law") (subject to section 94(4) of the Companies Law) and section 24(5)(e) of the Insurance Law, 2010 (as amended) (the "Insurance Law" or "IL"), due to PAG's (and its segregated portfolios') solvency position and breaches of the IL.

Premier Assurance Group SPC Ltd.

2. The Company was registered as an exempted segregated portfolio company under the provisions of the Companies Law with registration number 270105 on 29 June 2012. The Company's registered office is at Lainston International Management, Ltd., PO Box 31298, Sussex House, Elgin Avenue, Grand Cayman KY1-1206, Cayman Islands.

3. The Company is the holder of an unrestricted Class 'B' Insurer's Licence granted by the Authority on 4 July 2012 pursuant to section 4 (3) of the then Insurance Law (2008 Revision). The Company has since had its licence converted to a Class B (iii) under section 4 (3) (b)(iii) of the new Insurance Law 2010.
4. Based upon information available to the Authority the current directors of the Company are Jorge Eduardo Falcon ("Mr. Falcon"), Leonardo Cornide ("Mr. Cornide"), Luis J. Lauredo and Alcides Isidoro Avila.
5. The Company is a wholly owned subsidiary of Premier Assurance Group LLC. ("*Premier LLC*") and its ultimate parent company is Beast Capital LLC. ("*Beast*"). Mr. Cornide and Mr. Falcon are the founding directors and ultimate beneficial shareholders (the "Founders") of the Company. The Founders each hold a 50% beneficial interest in PAG and Premier LLC. through their ownership of Beast.
6. The Company has two segregated portfolios ("SPs"), Premier Assurance Segregated Portfolio ("PASP") (formerly WEA International Trust) and Global Assurance Segregated Portfolio ("GASP"). Both SPs were formed on 13 September 2012. PASP offers unit-linked life insurance products to plan participants through Premier Trust which is registered in the British Virgin Islands ("BVI") while GASP underwrites health insurance products through PA Global Trust, which is also registered in the Cayman Islands.
7. The insurance products of these segregated portfolios are offered globally but are not sold to citizens or residents of the United States of America or the Cayman Islands. 70% of PAG's business by volume is generated from Latin America, with the balance being generated from the Caribbean (other than the Cayman Islands), Europe and Asia.
8. At the time of licensing, the auditor of PAG was BDO Cayman Ltd. ("BDO") whilst Captiva Managers (Cayman) Ltd. ("Captiva") was the insurance manager. BDO and Captiva have now ceased providing services to PAG as of the 30 September 2019 and 1 November 2019 respectively. Lainston International Management, Ltd. ("Lainston") have been subsequently appointed insurance manager of the Licensee on 1 November 2019 whilst RSM (Cayman) Ltd. ("the Auditors") was appointed on 9 January 2020.
9. PAG also operates a licensed branch in Labuan, Malaysia. The consent of the Authority to open this foreign branch was sought and granted on 20 November 2014.

Triggers to the Authority's Regulatory Concerns and Regulatory Enforcement Action

10. Throughout 2019 and 2020 and after considering PAG's actions there were a number of events that triggered the Authority's regulatory concerns which resulted in enforcement action, the appointment of Controllers and the decision to present this petition. The main triggering events in relation to the Company are outlined below.

10.1 *The Actions of the Founders - Cornide and Falcon*

- (a) On 25 September 2019 the United States Securities and Exchange Commission ("SEC") settled cease-and-desist proceedings against Mr. Cornide and Mr. Falcon as a result of their business dealings and activities with PAG. The SEC concluded in their investigation (under reference File No. 3- 19511) that the Founders violated Section 206(2) of the Investment Advisers Act of 1940 ("IAA"). Without admitting or denying the SEC's findings, the Founders consented to a Cease-and-Desist order and agreed to pay collective disgorgement and interest of over \$7 million and a civil penalty of \$100,000 each. The SEC ordered Mr. Cornide to pay \$3,161,032.19 and Mr. Falcon to pay \$4,904,908.27 as disgorgement, accrued interest and a civil penalty.
- (b) On 25 September 2019, the SEC issued an Order in relation to File Ref No. 3 -19511 (the "Order"). In the Order, the SEC stated that the Founders were using investor funds to obtain personal loans and failed to disclose their personal interest in transactions in which they used additional investor funds. Specifically, the Order found that Cornide and Falcon acted as investment advisers to PAG and advised PAG to invest up to 25% of its investment reserves in a note with Silverback Capital Partners ("SBCP") which is also owned and controlled by Cornide and Falcon. SBCP went on to make personal loans to Cornide and Falcon of over \$7 million from funds borrowed from PAG.
- (c) Additionally, the Order stated that as Cornide and Falcon own PAG's holding company, Premier LLC as well as SBCP, whilst also providing investment advice to PAG, they did in fact have a conflict of interest in recommending PAG invest in the note with SBCP. As investment advisers, Cornide and Falcon failed to comply with their fiduciary duty to their client, PAG, including a duty to disclose all material conflicts.
- (d) The Authority were not informed by Mr. Cornide or Mr. Falcon of the initial SEC investigation that resulted in the Order until questioned about it on 25 June 2019 by the Authority.

10.2 *Solvency & Management of GASP*

- (a) As the Authority had concerns regarding the solvency of GASP, they imposed a requirement that PAG had to file quarterly management accounts as part of its enhanced regulatory

supervision. Following the enhanced regulatory supervision, on 10 April 2019 the Authority directed PAG to; (i) Cease-and-Desist from writing new business to GASP; (ii) inject sufficient new capital into GASP to establish and maintain the required level of solvency of GASP by 7 May 2019.

- (b) The directors of PAG informed the Authority that PAG would inject capital of US \$1,000,000 into GASP in order to move it towards a solvent position by the end of the following week, which would have been the 12 May 2019. PAG did not ever inject the additional US \$1,000,000 of capital into GASP and the directors did not ever confirm to the Authority either directly or through their Insurance Manager that they had done so.
- (c) On 3 August 2020, the Authority received the audited financial statements of GASP from the new Auditors for the financial year ending 31 December 2019 ("FYE 2019"). According to the financial statements, GASP had a capital deficit of US\$9,808,265 as at 31 December 2019. The joint controllers and auditors have both concluded that GASP is unable to pay its debts pursuant to sections 92 (e) and 93 (c) of the Companies Law (2020 Revision).
- (d) PAG's own management accounts showed that the deficit had increased to US\$15,025,789 as at 31 March 2020. PAG admitted in a letter to the Joint Controllers dated 12 October 2020, that outlined a proposed new arrangement between PASP and the PASP Plan Participants that, "*GASP was insolvent and must be wound down in an orderly manner.*"
- (e) The Authority have received an increasing number of complaints from GASP's policy holders and brokers over the delayed settlement of claims.

10.3 **Solvency & Management of PASP**

- (a) The Joint Controllers and the quarterly financial reports provided by PAG to the Authority show that PASP is balance sheet insolvent. On 3 August 2020, the Authority received PASP's audited financial statements for FYE 2019. The financial statements did depict PASP as solvent with shareholder equity of \$14,150,462. The financial statements however contained a "*Disclaimer of Opinion*" in which the Auditor stated that they had not obtained sufficient appropriate audit evidence to provide a basis for an audit opinion on the financial statements. The basis for the Auditor's Disclaimer of Opinion were stated as:
 - (i) The adverse economic impact of COVID-19 being included in the projection of loss reserves in the financial statements;

- (ii) PASP using an unapproved Discounted Cash Flow (“DCF”) methodology to formulate its loss reserves.
- (b) Additionally, the Auditors included an *Emphases of Matters* paragraph in PASP’s audited financial statements in which it highlighted, *inter alia*, that the auditor could not obtain sufficient assurance as to the recoverability of receivable assets of c. \$10,000,000 on the balance sheet.
- (c) The Auditors further informed the Authority that the Founders were attempting to sell PASP and had invited expressions of interest.
- (d) The Auditors further advised the Authority in an e-mail dated 29 July 2020 that the DCF understated PASPs loss reserves and total liabilities by US \$16.7M.
- (e) Based on the *Disclaimer of Opinion* and the *Emphases of Matters* in the audited financial statements for FYE 2019, the Authority concluded that PASP would fail to meet its capital requirements if adjustments were made to the financial statements in line with the observations of the auditor.

10.4 Solvency & Management of PAG

- (a) Some of PAG’s assets were diverted from PAG to questionable investments, which included a number of loans to affiliated companies, including Silverback Investments LLC. (“SBI”), Silverback Ventures LLC (“SBV”) and Silverback Capital Partners (“SBCP”). Promissory notes were issued that eventually provided for a maximum lending of US\$20 million from PASP on 10 May 2017 and US\$3.5 million from GASP on 31 July 2016 to these affiliated entities.
- (b) As a result of the above, when taken in conjunction with the actions of the Founders and subsequent SEC Order and that the directors were preparing to dissipate the remaining assets of PAG and sell PASP, there is a real risk of serious harm to the policy holders / plan participants and creditors the Authority considered further action.

Regulatory Considerations

- 11. The regulatory considerations for the appointment of the Joint Controllers included the Company’s protracted history of non-compliance with the IL, the financial statements of PAG, GASP and PASP received in 2020 and the Auditors’ observations, evidence, statements and comments. When all of this information was taken together, it revealed that the directors and / or PAG had:

- (1) manipulated financial statements by understating reserves and overstating assets (contrary to section 37 (i) of the IL);
- (2) operated an insolvent segregated portfolio (GASP) which is struggling to pay its claims (contrary to section 8(4)(a) of the IL);
- (3) been in the process of relocating the book of business currently written by GASP to another jurisdiction (contrary to section 8(1)(a) of the IL);
- (4) been attempting or were in the process of selling PASP without informing the Authority or obtaining their prior approval (contrary to section 31 of the IL);
- (5) were in breach of the Authority's Cease and Desist Order (contrary to section 23 (1) of the IL);
- (6) not conducted the direction and management of the business in a fit and proper manner as evidenced by items 1 - 5 above (contrary to section 24(1)(f) of the IL).

Appointment of the Controllers

- 12 Based on the above, evidence cited within the affidavit in support and verifying this petition and all relevant factors and information, on 3 September 2020, the Authority exercised its powers pursuant to section 24(2)(h) of the IL and resolved to appoint Controllers, at the expense of the Company, to assume control of the Company's affairs.
- 13 Pursuant to section 24(1) of the IL, the Authority was of the opinion that PAG was or appeared likely to become unable to meet its obligations as they fell due; was carrying on business in a manner detrimental to public interest and to the interest of its creditors and policyholders / plan participants; had contravened the Law; the direction and management of the Company had not been conducted in a fit and proper manner; and that its ultimate beneficial owners, Jorge Eduardo Falcon and Leonardo Cornide were not fit and proper persons to hold the position of a director of a licensee.
- 14 On 14 September 2020, the Authority appointed Messrs. Jeffrey Stower and Jason Robinson of KPMG (Cayman) as Joint Controllers of PAG.

Cayman Islands Proceedings

- 15 On 17 September 2020, the Joint Controllers obtained confirmation of their section 24(2)(h) IL statutory powers in an Order of the Grand Court made on 21 September 2020.

US Proceedings

16 On 22 September 2020 in the United States Bankruptcy Court, Southern District of Florida (“the US Court”) the Controllers obtained recognition of their appointment and the Cayman Proceedings as a foreign main proceeding or in the alternative as a foreign non-main proceeding, pursuant to section 1515 of the United States Bankruptcy Code. In addition, the Joint Controllers also obtained provisional relief in the form of a Temporary Restraining Order (“TRO”), and thereafter, a preliminary injunction, in respect of the PAG’s assets, thereby protecting the Company, its plan-participants / policyholders and its creditors from the irreparable harm that would occur should the Company’s assets be left unprotected and vulnerable to dissipation before a final ruling on the petition for recognition. The TRO was initially valid to 5 October 2020 before being extended to the 28 October 2020, whereupon the Joint Controllers may now petition the Court for an extension.

Joint Controllers’ Additional Actions

17 The Joint Controllers have confirmed that all of PAG’s bank and investments accounts in the US have been frozen pursuant to the terms of the TRO issued by US Court. The Joint Controllers are currently liaising with some of these institutions to formally transfer control of these accounts to the Joint Controllers.

18 Following their appointment and confirmation by the Courts the Joint Controllers had preserved some of the documents and records of PAG by making forensic copies of computer data located at PAG’s offices and in PAG’s cloud storage facility.

Joint Controllers’ Written Notices

19 On 28 September 2020, the Joint Controllers issued written notices to the respective plan-participants of PASP and GASP notifying them of their appointment as Joint Controllers as well as advising:

- (a) GASP’s policyholders / plan-participants that it appeared GASP held insufficient assets to pay its liabilities, including policyholder claims and recommended that policyholders seek alternative health insurance coverage and cease making further premium payments; and
- (b) PASP’s policyholders / plan-participants that the Joint Controllers were working with the management to understand the Company’s affairs.

The Controllers’ First Interim Report (the “Interim Report”)

20 The Joint Controllers submitted their final interim report to the Authority on 22 October 2020 and their preliminary views regarding the financial state of PAG are summarised below:

- (1) PASP is balance sheet insolvent and is estimated to have a potential shortfall of between c.US\$22.1 million and c.US\$28.9 million.
- (2) GASP is unable to meet its debts as they fall due. There is estimated to be a shortfall of between c. US\$7.9 million and c.US\$8.2 million.
- (3) The Joint Controllers' view is that the Core is also balance sheet insolvent with an estimated shortfall of between US\$0.8 million and US\$1 million.
- (4) In addition to the above, the Company has committed a number of regulatory breaches (as outlined in paragraph 10.4(b) and 14 above) which include breaches of the Insurance Law.
- (5) PAG's long term business was to transfer PASP's business to another entity. PASP had started migrating PASP's policies (3221 policies in total) to a new Puerto Rican structure known as Premier Assurance Puerto Rico ("PAPR"). Some c. US\$ 37 million of the assets of PASP have already been transferred to the parent company of PAG, Premier. The Joint Controllers have been advised that 3,221 policies with a value date of 15 June 2020 and a net cash surrender value of US\$43,529,621 have also already been transferred to PAPR.

21 Based on the findings of the Joint Controllers as of the date of their First Interim Report, they went on to recommend that:

- (1) The Authority present a winding up petition seeking the winding up of the Company pursuant to Section 24(5)(e) of the Insurance Law as that such action would be in the best interests of the creditors of the Company including the policyholders / plan-participants of the respective segregated portfolios.
- (2) The Joint Controllers should file an application seeking their appointment as JPLs of PAG in the interim period to, inter alia, explore the available options to either sell or transfer the business of PASP including exploring PAGs proposal to transfer PASP's book of business to PAPR.
- (3) The appointment of JPLs in the interim period in order to maintain continuity of the control of PAG and ensure the assets located in the United States remain secure.

Decision of the Authority to the Wind-Up the Company

- 22 Based on the totality of evidence, including the First Interim Controllers' Report, and events that had occurred involving PAG, on 24 October 2020 the Executive Committee of the Board of Directors of the Authority resolved, *inter alia*, pursuant to section 24(5)(e) of the IL, to: (i) apply to the Grand Court for an order that PAG be wound up and for the appointment of JOLs.
- 23 The effective date of the revocation of the Licence will be concomitant with the date of appointment of the JOLs.

Grounds upon which relief is sought:

- 24 This petition is presented pursuant to section 94(1)(d) of the Companies Law (subject to section 94(4) of the Companies Law) and 17(6)(d) of the IL.
- 25 Under section 94(1)(d) of the Companies Law, a winding-up petition may be presented by the Authority subject to section 94(4) of the Companies Law and pursuant to the regulatory laws.
- 26 Section 94(4) of the Companies Law states that a winding-up petition may be presented by the Authority in respect of any company which is carrying on regulated business in the Islands upon the grounds that it is not duly licensed to do so under the regulatory laws; or for any other reason as provided under the regulatory laws or any other law.
- 27 The "regulatory laws" are defined in section 2 of the Companies Law to include the IL. Under section 24(5) (e) of the IL, the Authority has the power upon receipt of a report from the Controllers to revoke the Licence of the Company and to apply to the Court for an order that the Company be wound up, in which case the provisions of the Companies Law relating to the winding up of a company shall apply.
- 28 The Executive Committee of the Board of Directors of the Authority, after due consideration and having passed the necessary resolutions, have invoked their power under section 24(5) of the IL to revoke the Licence and apply to the Court for the winding up of the Company.
- 29 The Authority has demonstrated through its own findings and the subsequent findings of the Controllers (that it appointed) that there are sufficient grounds for the use of its enforcement powers and to bring this petition for the relief sought and as prayed below.
- 30 The Company has been provided with ample opportunity to rectify the regulatory breaches of the IL and are aware of the Authority's intention to present this petition. It is therefore respectfully submitted

that the Authority has met its requirements under the Companies Law and the Companies Winding-Up Rules, 2018 (“CWR”).

31 As such, the Company should be wound up as:

- (a) There is a substantial risk that it is or will soon become insolvent; and/or
- (b) it has contravened the Insurance Law; and it
- (c) would therefore be just and equitable to do so.

Nomination of Joint Official Liquidators

32 Mr. Jeffrey Stower and Mr. Jason Robinson of KPMG (Cayman Islands), insolvency practitioners and accountants situated at Tower SIX, Cricket Square, Grand Cayman, KY1-1106. Cayman Islands, are nominated to be appointed as Joint Official Liquidators of PAG and have expressed their willingness and consent to act in offering their services as qualified insolvency practitioners, as evidenced by their affidavits, filed in accordance with the CWR.

33 Having been appointed Controllers since 14 September 2020, Mr. Jeffrey Stower and Mr. Jason Robinson both have spent considerable time and energy familiarising themselves with PAG, carried out extensive preliminary investigations into the operations of the Company and started considering whether parts of the business are suitable for a sale considering offers. It is respectfully submitted that both nominees are best placed to continue to assume control over the affairs of PAG when it is in liquidation.

YOUR PETITIONER THEREFORE HUMBLY PRAYS as follows:

1. Premier Assurance Group SPC. Ltd. (the “**Company**”) be wound up by the Court pursuant to Part V of the Companies Law (2020 Revision) (the “**Companies Law**”);
2. Mr. Jeffrey Stower and Mr. Jason Robinson of KPMG (Cayman Islands), insolvency practitioners and accountants at Tower SIX, Cricket Square, George Town, Grand Cayman, the Cayman Islands, KY1-1001 be appointed as Joint Official Liquidators of the Company (the “**JOLs**”);
3. The JOLs shall not be required to give security for their appointment;
4. The JOLs are authorised to act jointly and severely;
5. The JOLs shall be authorised to take such steps as may be necessary or expedient for the protection of the Company's assets, and for that purpose may exercise any of the powers within and outside the

Cayman Islands as specified in Part II of the Third Schedule to the Companies Law without further sanction of the Court;

6. The JOLs shall also be authorised to exercise the power:
 - (i) To carry on the business of the Company so far as is necessary for its beneficial winding up;
 - (ii) To engage staff (whether or not as employees of the Company) to assist them in the performance of their functions;
 - (iii) To appoint agents, Cayman Islands attorneys, United States attorneys, English solicitors and counsel or attorneys in any other jurisdiction where the Company has or may have assets, or as they may consider necessary to advise and assist them in the performance of their duties and to remunerate them for their reasonable fees and reasonable expenses out of the assets of the Company as an expense of the liquidation; and to commence, bring or defend and to take any such steps as the JOLs may consider appropriate in respect of all actions or legal proceedings, anywhere in the world, either in their own name for and on behalf of the Company or in the name of the Company on its behalf;
7. The JOLs' remuneration and expenses be paid out of the assets of the Company in accordance with section 109 of the Companies Law, the Insolvency Practitioners' Regulations, 2018 and Order 20 of the Companies Winding Up Rules, 2018;
8. The JOLs be at liberty to meet all disbursements reasonably incurred with the performance of their functions;
9. The JOLs be at liberty to and do pay their agents, employees, attorneys, solicitors and whomsoever else they may employ or instruct, remuneration and costs, 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 expenses of the winding up;
10. No suit, action or other proceedings, including criminal proceedings, shall be proceeded with or commenced against the Company except with the leave of the Court pursuant to section 97 of the Companies Law;
11. No disposition of the Company's property, by or with the authority of the JOLs in the carrying out of their duties and functions and the exercise of their powers, shall be avoided by virtue of section 99 of the Companies Law;
12. The JOLs shall provide to the Petitioner copies of all reports and information filed with this Court;
13. The costs of the Petitioner and of the Controllers be paid from the assets of the Company pursuant to Order 20 rule 1(1)(a) of the Companies Winding Up Rules, 2018, to be taxed on the indemnity basis if not agreed and, in respect of the Controllers' remuneration and expenses, only following approval by the Petitioner; and
14. Such other orders and directions may be made as the Court thinks fit.

Dated the 26th day of October 2020



**LEGAL COUNSEL FOR & ON BEHALF OF THE
CAYMAN ISLANDS MONETARY AUTHORITY**

NOTE: It is intended that this Petition is served on the Joint Controllers, Shareholders and Directors of Premier Assurance Group SPC Ltd.

This Petition is presented & filed by the Cayman Islands Monetary Authority whose address for service is The Legal Division, Tower SIX Cricket Square, Shedden Road, Elizabethan Square, P.O. Box 10052, Grand Cayman KY1-1001, Cayman Islands.

NOTICE OF HEARING

TAKE NOTICE THAT the hearing of this Petition will take place at the Law Courts, George Town, Grand Cayman on ____ day of _____ 2020 at ____ a.m./p.m.

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 P.O. Box 495, Grand Cayman, KYI-1106, telephone +1 345-949-4296.