



IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO. FSD OF 2021 ()

IN THE MATTER OF THE COMPANIES ACT (2021 REVISION)

AND IN THE MATTER OF GINGER CAPITAL FUND SPC (IN VOLUNTARY LIQUIDATION)

PETITION

To the Grand Court

The humble petition of Jason Robinson and Jeffrey Stower of KPMG of P.O. Box 493, SIX Cricket Square, 282 Shedden Road, George Town, Grand Cayman KY1-1106, Cayman Islands, (the "**Petitioners**"), in their capacity as joint voluntary liquidators of Ginger Capital Fund SPC (in Voluntary Liquidation) (the "**Company**") shows that:-

Incorporation

- 1 The Company was incorporated in the Cayman Islands on 5 November 2003 with registration number 130260 and registered as a company limited by shares in the form of a segregated portfolio company pursuant to, and as defined in, the Companies Act (2021 Revision) (the "**Act**").

This Petition was presented by Ogier, Attorneys-at-Law for the Petitioner, whose address for service is:
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- 2 The current registered office of the Company is situated at KPMG, P.O. Box 493, SIX Cricket Square, 282 Shedden Road, George Town, Grand Cayman KY1-1106, Cayman Islands.
- 3 The objects for which the Company was established are unrestricted.
- 4 The Company has an authorised share capital of US\$50,000 divided into 100 Management Shares of US\$1.00 par value and 4,990,000 non-voting participating redeemable shares of US\$0.01 par value (the "**Redeemable Shares**"). There were two classes of Redeemable Shares corresponding to two separate portfolios in the Company.

Strike off

- 5 The Company was struck off the Register of Companies on 31 March 2010. The fact of the striking off was published in the Cayman Islands Gazette on 26 April 2010.
- 6 The Company was, at the time of the striking off, not carrying on business or in operation and, it was reasonably understood by the directors of the Company, had no assets or liabilities having realised its known assets, redeemed all of its Redeemable Shares on or before 1 September 2009 and, thereafter, paid all of its creditors.

Reinstatement

- 7 The directors of the Company were notified in 2019 that Deutsche Bank held a sum of money in excess of \$1 million for the benefit of the Company (the "**Deutsche Funds**").
- 8 The Company therefore applied to this Honourable Court, pursuant to an originating application dated 18 March 2020, for an order that the Company be restored to the Register of Companies for the primary purpose of facilitating the distribution of the net proceeds of the Deutsche Funds (after settlement of the Company's professional fees and expenses incurred in respect of the reinstatement) to the Company's shareholders that had been redeemed on 1 September 2009 (as the Deutsche Funds should have

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been included in the calculation of the redemption price) (the "**Redemption Creditors**") and any other creditors of the Company.

- 9 The Company was restored on 20 March 2020 pursuant to an order of this Honourable Court.

Commencement of voluntary winding up

- 10 On 19 March 2021, the shareholders holding voting non-participating management shares passed the following unanimous written resolutions:

- (a) a special resolution that the Company be voluntarily wound-up in accordance with the Act and that Jason Robinson and Jeffrey Stower both of KPMG, P.O. Box 493, SIX Cricket Square, 282 Shedden Road, George Town, Grand Cayman KY1-1106, Cayman Islands be appointed as joint voluntary liquidators of the Company (the "**Voluntary Liquidators**") for the purposes of such winding up;
- (b) an ordinary resolution that the directors of the Company, being Otto-Hans Nowak and Michael Wai-Kwong Chan (the "**Directors**") shall continue in office, although pursuant to section 119(5) of the Act, their powers cease except to the extent they are authorised to act by the Voluntary Liquidators; and
- (c) 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.

- 11 In the premises:

- (a) the Company duly resolved by special resolution that it be wound up voluntarily, pursuant to sections 90(b)(i) and 116(c) of the Act; and

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(b) the voluntary winding up of the Company is deemed to have commenced on 19 March 2021, pursuant to section 117(1) of the Act.

12 On 25 March 2021, the Petitioners filed consents to act as voluntary liquidators of the Company with the Registrar of Companies pursuant to section 119(3) of the Act.

No Declaration of Solvency

13 The Voluntary Liquidators did not receive a declaration of solvency in the prescribed form signed by the Directors by 16 April 2021, being 28 days from the commencement of the voluntary liquidation.

The Company's solvency

14 Based on information provided to the Petitioners by the Directors, the Company is of doubtful solvency given that, in summary, the Redemption Creditors, to the extent that they continue to exist, should now be treated as creditors of the Company for their pro rata share of the additional amounts that should have been declared as part of the final redemption price (i.e. the Deutsche Funds) for their Redeemable Shares.

15 Noting that the Company has incurred costs and expenses following its dissolution (including, but not limited to, the professional fees incurred in restoring the Company, the payment of the Voluntary Liquidators' fees and expenses and the settlement of the outstanding annual return fees in order to reinstate the Company), the Company will therefore likely be unable to pay the Redemption Creditors the full sums that are due to them.

16 In the premises, the Petitioners seek an order pursuant to section 124(1) of the Act that the liquidation of the Company continue under the supervision of the Court and that the Petitioners be appointed as Joint Official Liquidators (the "**JOLs**") of the Company.

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Consent to appointment as Official Liquidators

17 The Petitioners are qualified insolvency practitioners and consent to their appointment as JOLs.

Your Petitioners therefore humbly pray that:

- 1 The liquidation of the Company continue under the supervision of the Court.
- 2 Jeffrey Stower and Jason Robinson of KPMG, P.O. Box 493, SIX Cricket Square, 282 Shedden Road, George Town, Grand Cayman KY1-1106, Cayman Islands be appointed as JOLs and have the power to act jointly and severally.
- 3 The JOLs are not required to give security for their appointment.
- 4 In addition to all of their other powers, the JOLs have all of the powers set out in Part I and II of the Third Schedule to the Act, and may exercise such powers without the further sanction of the Court.
- 5 The JOLs be at liberty to appoint such attorneys, counsel and/or 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.
- 6 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 Act.
- 7 Subject to section 109(2) of the Act and the Insolvency Practitioner's Regulations, 2018, the JOLs be authorised to render and pay all invoices out of the assets of the Company for their own remuneration.
- 8 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.

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- 9 The costs of and incidental to this Petition be paid forthwith from the assets of the Company as an expense of the liquidation.
- 10 The JOLs be at liberty to apply generally.
- 11 Such further or other relief be granted as the Court deems appropriate.

AND your Petitioners will ever pray, etc.

Dated the 23rd day of April 2021



Ogier
Attorneys for the Petitioners

NOTE: This Petition is not intended to be served.

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