



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 PORTON CAPITAL INC

AND IN THE MATTER OF PORTON CAPITAL LIMITED

PETITION

TO: The Grand Court of the Cayman Islands

THE HUMBLE PETITION of Enigma Diagnostics Limited (in Liquidation) (the **Petitioner**), of 110 Cannon Street, London EC4Y 6EU, shows that:

Background

Porton Capital Inc

1. Porton Capital Inc (**PCI**) was incorporated and registered (registration no.149603) on 30 May 2005 under the Companies Act. The last registered address of PCI was FFP (Cayman) Limited, 2nd Floor, Harbour Centre, 42 North Church Street, George Town, Grand Cayman, KY1-9006.
2. On 15 May 2017, PCI was placed into voluntary liquidation. Andrew Childe and Trudy-Ann Scott of FFP Limited were appointed as joint voluntary liquidators (the **JVLs**).

3. PCI was dissolved on 28 February 2018.

Porton Capital Limited

4. Porton Capital Limited (**PCL**) was incorporated and registered (registration no. 137365) on 28 June 2004 under the Companies Act. The last registered address of PCL was FFP (Cayman) Limited, 2nd Floor, Harbour Centre, 42 North Church Street, George Town, Grand Cayman, KY1-9006. PCL was said to act as investment manager to PCI.
5. PCL was placed into voluntary liquidation on 15 May 2017. Andrew Childe and Trudy-Ann Scott of FFP Limited, were appointed as JVLs.
6. PCL was dissolved on 13 March 2018.

The Porton Group

7. PCI and PCL (together the **Porton Companies**) together with, *inter alia*, Porton Capital Technology Funds (**PCTF**) (formerly called Circus Capital Technology) a Cayman Islands exempted Company and P-KSA SPV, make up the Porton Group, a "venture capital investment advisory group" founded by Mr Harvey Boulter.
8. Mr Boulter has, at all material times, represented that he was the founder, chairman and CEO of Porton Group and the sole beneficial owner. Further, Mr Boulter has represented that he was, at all material times, a director of the Porton Companies. Mr Andrew Hegarty has represented that he has been a director of at least some Porton Group entities since 2006.

The Petitioner

9. The Petitioner is a private limited company (company number 05114005) incorporated in the United Kingdom on 27 April 2004, which was put into voluntary liquidation on 3 March 2017. Ms Katherine Merry, of PEM Accountants, was appointed voluntary liquidator on the same date.
10. On 19 February 2018, Ms Merry was replaced as voluntary liquidator and Paul David Allen

and Geoffrey Carton-Kelly of FRP Advisory Trading Limited (the **Enigma JLS**) were appointed on the same date.

11. The Petitioner's principal activities were (a) the manufacturing of medical diagnostic instruments and cartridges for sale to customers in Europe, and (b) the ongoing development of future assays and associated integration and development of instruments appropriate for sale into Europe and other territories.
12. Mr Harvey Boulter was a director of the Petitioner from 13 August 2004 to 9 December 2004, and then again from 8 October 2007 to 15 August 2019. Mr Andrew Hegarty was a director of the Petitioner from 7 September 2012.
13. Various entities within the Porton Group, including, but not limited to, PCI and PCTF, were registered shareholders in the Petitioner.

The Enigma Investment Scheme

14. The Petitioner sought investment to support its activities. Funds were raised pursuant to arrangements with the Porton Group.
15. It is averred that the Porton Group or its agents targeted investors across the globe predominantly, but not exclusively, in the Middle East and South East Asia.
16. Investors were provided with an application form issued by the Porton Companies' solicitors, DLA Piper UK LLP (**DLA**) in which investors were advised that PCI was offering for purchase Preference Shares in the Petitioner at an advertised price per share (the **Enigma Shares**). Investors completing the application form irrevocably applied to purchase the Enigma Shares at a stated share price. Pursuant to the application form, the Enigma Shares were to be held by PCI as nominee.
17. 131 of the c 1,400 application forms held by the Enigma JLS stated that DLA would receive investment funds on behalf of PCI and "*transfer those funds to Enigma Diagnostics Limited.*" It is alleged that, in fact, all (or at least many) investors were led to believe that the funds received by DLA would be paid to the Petitioner for the purchase by PCI of Enigma Shares, and that PCI would then issue "back to back nominee certificates" to the relevant investor.

18. The Enigma JLS, upon appointment, commenced an investigation into the Enigma Investment Scheme to determine whether all or any of the investment funds received by DLA on behalf of the Porton Companies had been transferred to the Petitioner.
19. The Enigma JLS, upon review of the application forms, discovered that the Enigma Shares were being sold by PCI at prices that appear in many cases to have been considerably higher than those at which they had been procured from the Petitioner. The Enigma JLS, therefore, inferred that in such cases Mr Boulter must have procured the issuance of the Enigma Shares to the Porton Companies at a significant discount.
20. In furtherance of their investigation the Enigma JLS were, on 13 December 2019, granted an order from the High Court in England requiring DLA to disclose client account ledgers evidencing (a) all payments received by DLA from those applying to acquire from or through PCI and/or PCL any interest(s) in the Enigma Shares; and (b) the recipient(s) to which any such funds received were distributed by DLA (the **Client Ledger Disclosure**).
21. The Client Ledger Disclosure revealed about £240 million of payments into four client accounts of DLA, one for PCL and three for PCI (the **Client Account**) between 27 March 2006 and 8 January 2015.
22. The Client Accounts were comprised of payments described as *"Enigma Investments – Credits (From Investors)"* totaling about £106 million. It is averred that these payments represent the payments made by investors for what investors understood to be the purchase of the Enigma Shares.
23. Of this £106 million only £42 million was transferred to the Petitioner, described as *"Enigma Investments – Debits (Payments to Enigma)"*.
24. Of the remaining £198 million (£240 million less the £42 million paid to the Petitioner):
 - a. c.£54 million was transferred to the Porton Group or related entities, with payments variously described as either *"Commissions"* or *"Investments"*;

- b. c.£105 million was transferred either to Mr Boulter, individuals associated with Mr Boulter, or companies of which Mr Boulter appears to be or have been the ultimate beneficial owner and/or controller;
 - c. c.£4 million was comprised of payments described as “*Commissions – Enigma Diagnostics Limited*”;
 - d. c.£1 million was comprised of payments described as “*Dividends*” to companies with which Mr Boulter appears to be associated; and
 - e. the balance of c.£34 million of payments was applied for a wide range of purposes, including payments described as being made at Mr Boulter’s request, for example, to a British supercar manufacturer, and payments to Mr Boulter personally.
25. It follows that only c.40% of the funds received into the Client Accounts from investors were transferred to the Petitioner while the balance was transferred out variously to the Porton Companies, to Mr Boulter and to other recipients with no apparent connection to the Enigma Investment Scheme.

Causes of Action

26. In light of the foregoing, the Petitioner has potential causes of action against Mr Boulter for breaches of fiduciary duty pursuant to ss.171-182 of the UK Companies Act 2006 or before the coming into force of the same, similar duties in equity and under section 317 of the Companies Act 1985, in each case arising out of his role as a director of the Petitioner. Further, the Petitioner may have claims against the Porton Companies for, inter alia, dishonest assistance, knowing receipt and unlawful means conspiracy.
27. The investors in the Enigma Investment Scheme may have potential causes of action against the Porton Companies for, inter alia, breach of contract, misrepresentation and breach of trust. The Porton Companies have potential causes of action against Mr Boulter for, inter alia, breach of fiduciary duty together with potential claims against third parties including, but not limited to, DLA.

Solvency

28. It is to be inferred from the evidence that the Porton Companies did not retain significant monies or assets. It follows that where the Porton Companies had engaged in conduct giving rise to the causes of action as pleaded above, the Porton Companies were not in a position to declare that they were able to pay their debts in full together with the prescribed rate of interest within twelve months of the commencement of the winding up.

Fraud in the Voluntary Liquidation

29. Pursuant to s.124(1) of the Companies Act a voluntary liquidation shall continue under the supervision of the Court unless, within twenty-eight days of the commencement of the liquidation, the directors have signed a declaration of solvency.
30. Pursuant to s.124(2) of the Companies Act, a declaration of solvency means a declaration to the effect that a full enquiry into a company's affairs has been made and, to the best of the directors' knowledge and belief, a company will be able to pay its debts in full together with the prescribed rate of interest within twelve months of the commencement of the winding up.
31. Given the voluntary liquidation of the Porton Companies was not continued under the supervision of the Court, it must be inferred that two declarations of solvency were sworn by the directors of the Porton Companies.
32. It is averred that no director, having conducted a full enquiry into the Porton Companies affairs and in particular the Enigma Investment Scheme, could have had reasonable grounds for the opinion that the Porton Companies would be able to pay their debts in full, together with the prescribed rate of interest, within twelve months of the commencement of the winding up.
33. Mr Boulter, a director and the controlling mind of the Porton Companies and a director of the Petitioner would, without further enquiry, have known that the directors of the Porton Companies did not have reasonable grounds to sign the declarations of solvency.
34. Further, all the directors of the Porton Companies would on, or shortly after, 26 July 2016,

have known they did not have reasonable grounds to sign the declarations of solvency. On 26 July 2016 Rosenblatts, a London firm of solicitors, advised DLA by letter (i) that they represented 151 Claimants in respect of the misapplication of monies sent to the Client Account for PCI and (ii) had issued a claim form in respect of those monies.

35. Had the director or directors not acted in breach of their duties under s.124 of the Companies Act, the liquidation of the Porton Companies would have continued under Court supervision. Accordingly, an Official Liquidator would have been empowered to investigate the reasons for the failure of the Porton Companies and the potential claims against the Porton Companies under the authority of the Court.
36. Finally had one or more of the directors at any stage during the voluntary liquidation, corrected the omissions made in the declaration of solvency, the JVLs would have made an application pursuant to s.131 Companies Act for a supervision order with the consequences set out at paragraph 35 above.
37. In the circumstances a fraud has been committed in the liquidation and, in circumstances where, but for that fraud, a Court supervised liquidation would have allowed a comprehensive investigation into the Enigma Investment Scheme and the claims arising and ensured that creditors' rights were properly protected, it is averred that the Porton Companies should be restored to the register of companies and wound up under the supervision of the Court.

THE PETITIONER THEREFORE PRAYS:

- (1) The deemed dissolution of the Porton Companies is declared void;
- (2) The Porton Companies are restored to the Register of Companies;
- (3) The liquidation of the Porton Companies continues under the supervision of the Court;
- (4) The Porton Companies be deemed to have continued in existence as if they had not been struck off;

- (5) The property vested in the Minister for Financial Services and Commerce be restored to the Porton Companies on the Porton Companies' restoration to the Register of Companies;
- (6) Gordon MacRae and Elizabeth Mackay of Kalo (Cayman) Limited, 2nd Floor, 38 Market Street, Suite 4208, Canella Court, Camana Bay, Grand Cayman, KY1-9006, Cayman Islands, together with Paul David Allen, of FRP Advisory Trading Limited, 110 Cannon Street, London, EC4N 6EU, be appointed as joint official liquidators of the Porton Companies (JOLs);
- (7) The JOLs have the power to act jointly and severally;
- (8) The JOLs shall not be required to give security for their appointment;
- (9) The JOLs be authorised to take any such action as may be necessary or desirable to obtain recognition of the JOLs and/or their appointment in any other relevant jurisdiction and to make application to the courts of such jurisdictions for that purpose;
- (10) The JOLs be authorised to execute all of the powers set out in section 110(2)(b) of the Companies Act and Part II of the Third Schedule thereof, without further sanction of this Honourable Court;
- (11) The JOLs be authorised to execute all of the powers set out in section 110(2)(a) of the Companies Act and Part I of the Third Schedule thereof, provided sanction of this Honourable Court is obtained;
- (12) No suit, action or other proceeding shall be proceeded with or commenced against the Porton Companies except with the leave of the Court and subject to such terms as the Court may impose;
- (13) No disposition of property of the Porton Companies by or with the authority of the JOLs in carrying out their duties and functions and exercise of their powers under this Order shall be voided by virtue of section 99 of the Companies Act;

- (14) The JOLs be at liberty to appoint such counsel, attorneys, 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 for the same;
- (15) The remuneration and expenses of the JOLs shall be paid out of the assets of the Porton Companies in accordance with Part III of the Insolvency Practitioners' Regulations 2018 and Order 20 of the CWR;
- (16) 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 Porton Companies as an expense of the liquidation;
- (17) The JOLs be at liberty to apply generally to the Court to make such orders for regulating the future conduct of the affairs of the Porton Companies as the Court shall see fit;
- (18) The costs of and incidental to the Petition be paid forthwith out of the assets of the Porton Companies as an expense of the liquidation;
- (19) Such further or other relief be granted as the Court deems appropriate.

AND your Petitioner will ever pray.

DATED this 29th July 2021

FILED this July 2021



MOURANT OZANNES
Attorneys for the Petitioner

NOTE: This petition is intended to be served upon:

1. The Registrar of Companies
2. PCI at its last known registered office
3. PCL at its last known registered office
4. Attorney General

This Petition was presented by Mourant Ozannes, attorneys for the Petitioner, whose address for service is 94 Solaris Avenue, Camana Bay, Grand Cayman, KY1-1108, Cayman Islands.