



IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 24 OF 2021 (RPJ)

IN THE MATTER OF THE COMPANIES ACT (2021 REVISION)

AND IN THE MATTER OF BAF LATAM CREDIT FUND

WINDING UP ORDER

UPON the reamended Winding Up Petition of BNP Paribas Securities Services, Luxembourg Branch, whose registered office is 60, Avenue J.F. Kennedy, L-1855 Luxembourg, Grand-Duchy of Luxembourg) (the "**Petitioner**") presented on 28 January 2021 (as amended by order of this Court dated 25 March 2021 and as reamended by order of this Court dated 6 September 2021) (the "**Petition**").

AND UPON reading the First Affidavit of Brigitte Posch sworn on 25 January 2021; the First Affidavit of Jeffrey Stower sworn on 26 January 2021; the First Affidavit of Jason Robinson sworn on 26 January 2021; the Second Affidavit of Brigitte Posch sworn on 12 February 2021; the Third Affidavit of Brigitte Posch sworn on 25 February 2021; the Second Affidavit of Jeffrey Stower sworn on 29 March 2021; the Second Affidavit of Jason



Robinson sworn on 29 March 2021; the First Affidavit of Carlos Valladares sworn on 9 April 2021; the Second Affidavit of Carlos Valladares sworn on 27 April 2021; the First Affidavit of Candela Girardi sworn on 27 April 2021; the Third Affidavit of Carlos Valladares sworn on 7 May 2021; the Fourth Affidavit of Brigitte Posch sworn on 19 May 2021; the Fifth Affidavit of Brigitte Posch sworn on 6 September 2021; the Fourth Affidavit of Carlos Valladares sworn on 20 September 2021; the Sixth Affidavit of Brigitte Posch sworn on 4 October 2021; the Third Affidavit of Jeffrey Stower sworn on 21 October 2021; and the Third Affidavit of Jason Robinson sworn on 21 October 2021, and in each case the exhibits thereto.

AND UPON hearing the oral evidence of Ms Brigitte Posch; Ms Candela Girardi; and Mr Carlos Valladares.

AND UPON hearing Leading Counsel for the Petitioner and Counsel for the Fund (as defined below)

IT IS ORDERED THAT:

1. BAF Latam Credit Fund (the "**Fund**") be wound up pursuant to section 92(e)¹ of the Companies Act (2021 Revision) (the "**Companies Act**").
2. Mr Jeffrey Stower and Mr Jason Robinson of KPMG, of SIX Cricket Square, 282 Shedden Rd, George Town, Cayman Islands, be appointed as joint official liquidators of the Fund (the "**JOLs**").
3. The JOLs shall not be required to give security for their appointment.

¹ The text of which is set out at Appendix 1 hereto.



4. The JOLs have the power to act jointly and severally in their capacity as liquidators of the Fund.
5. The JOLs be authorised to do any acts or things considered by them to be necessary or desirable in connection with the dissolution of the Fund and the winding up of its affairs, including but not limited to obtaining recognition of the JOLs and/or their appointment and/or powers (or comparable relief) in any other relevant jurisdiction and to make applications to the courts of such jurisdictions for that purpose.
6. In addition to the powers set out in Part II of the Third Schedule to the Companies Act², the JOLs be authorised to exercise those powers set out in Part 1 of the Third Schedule to the Companies Act that are identified herein³, and Section 110(2) of the Companies Act⁴ without further sanction of the Court.
7. Without limitation to the generality of the foregoing, the JOLs be authorised and be granted leave to:
 - (a) bring or defend any action or other legal proceeding in the name and on behalf of the Fund and to engage attorneys for such purposes in order to secure the assets of the Fund;

² The text of which is set out at Appendix 2 hereto.

³ Such powers have been extracted from Part 1 of the Third Schedule to the Companies Act and are listed at Appendix 3 hereto.

⁴ The text of which is set out at Appendix 4 hereto.



- (b) take all action required consistent with applicable law to carry on the business of the Fund so far as may be necessary for its beneficial winding up;
- (c) exercise the rights to which a registered holder of any shares or securities registered in the name of the Fund, or to which an owner or any shares or securities held by or on behalf of the Fund (whether as principal or as agent), is entitled including, but without prejudice to the generality of the foregoing power, the right to receive dividends and the benefits of other corporate actions in relation to such shares or other securities; the right to attend meetings and to exercise any voting power pertaining to such shares or other securities and to direct nominees of the Fund in whose name shares or other securities beneficially owned by the Fund are registered to exercise all or any such rights as the JOLs shall direct;
- (d) take such steps as may be necessary in order to take control of such of the direct and/or indirect subsidiaries (the "**Subsidiaries**") of the Fund, and/or joint ventures, investment, associated companies, business or other entities (together, the "**Associated Companies**") in which the Fund holds an interest (or such shares of such Subsidiaries and/or Associated Companies as are owned directly or indirectly by the Fund), in each case wherever located (together, the "**Group**"), as the JOLs shall think fit; and/or 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 JOLs 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 and/or Associated Companies to give effect to the changes to the boards of directors, legal representatives, officers and/or managers or 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 JOLs; and/or to take such other action in relation to all such Subsidiaries or Associated Companies as the JOLs shall think fit for the purpose of protecting the assets of the Fund and managing the affairs of the Fund (which, for the avoidance of doubt, shall include the assets and affairs of the Subsidiaries and Associated Companies);

- (e) take such steps as may be necessary in order to grant and/or revoke powers of authority to act on behalf of the Fund and, subject to subparagraph (d) above, the Subsidiaries and/or Associated Companies, including in connection with such purposes the naming and appointment of local representatives and the appointment and/or removal of local representatives to/from any corporate registries to act on behalf of the Fund, any Subsidiaries and/or any Associated Companies, in Argentina, Uruguay, the Netherlands or any other jurisdiction;
- (f) open and operate bank accounts in the name of the Fund or in their own name on behalf of the Fund in the Cayman Islands or elsewhere; and
- (g) communicate on the Fund's behalf with regulators, as appropriate.



8. No disposition of the property of the Fund by or with the authority of the JOLs in carrying out their duties and functions and the exercise of their power under any Order granted pursuant to the Petition shall be voided by virtue of Section 99 of the Companies Act⁵.
9. The JOLs be at liberty to appoint such attorneys, counsel and 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 in accordance with Order 25 of the Companies Winding Up Rules, 2018 (as amended).
10. Subject to Section 109(2) of the Companies Act and the Insolvency Practitioners' Regulations 2008 (as amended), the JOLs be authorised to render and pay invoices out of the assets of the Fund for their own remuneration.
11. No suit, action or other proceeding shall be proceeded with or commenced against the Fund except with the leave of the Court pursuant to Section 97 of the Companies Act⁶ and subject to such terms as this Court may impose.
12. 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 Fund as an expense of the liquidation.

⁵ The text of which is set out in Appendix 5 hereto.

⁶ The text of which is set out in Appendix 6 hereto.

13. The Petitioner's costs of and incidental to the Petition shall be paid forthwith out of the assets of the Fund as an expense of the liquidation, such costs to be taxed on an indemnity basis if not agreed with the JOLs.
14. The JOLs be at liberty to apply generally.

DATED the 20th day of December 2021

FILED the 20th day of December 2021



**THE HONOURABLE JUSTICE PARKER
JUDGE OF THE GRAND COURT**

This **ORDER** was filed by Walkers, Attorneys at Law for the Petitioner, whose address for service is care of said Attorneys at Law, 190 Elgin Avenue, George Town, Grand Cayman, KY1-9001.

APPENDIX 1

SECTION 92 (e) OF THE COMPANIES ACT

"92. *Winding Up by the Court*

A company may be wound up by the Court if –

[...]

(e) the Court is of opinion that it is just and equitable that the company should be wound up."

APPENDIX 2

PART II OF THE THIRD SCHEDULE TO THE COMPANIES ACT

"Powers exercisable without sanction

1. *The power to take possession of, collect and get in the property of the company and for that purpose to take all such proceedings as that person considers necessary.*
2. *The power to do all acts and execute, in the name and on behalf of the company, all deeds, receipts and other documents and for that purpose to use, when necessary, the company seal.*
3. *The power to prove, rank and claim in the bankruptcy, insolvency or sequestration of any contributory for any balance against that person's estate, and to receive dividends in the bankruptcy, insolvency or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent and rateably with the other separate creditors.*
4. *The power to draw, accept, make and indorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with the respect of the company's liability as if the bill or note had been drawn, accepted, made or indorsed by or on behalf of the company in the course of its business.*
5. *The power to promote a scheme of arrangement pursuant to section 86.*
6. *The power to convene meetings of creditors and contributories.*
7. *The power to do all other things incidental to the exercise of that person's powers."*

APPENDIX 3

PART I OF THE THIRD SCHEDULE TO THE COMPANIES ACT

"Powers exercisable with sanction

1. *Power to bring or defend any action or other legal proceeding in the name and on behalf of the company.*
2. *Power to carry on the business of the company so far as may be necessary for its beneficial winding up.*
3. [Omitted]
4. *Power to pay any class of creditors in full.*
5. [Omitted]
6. [Omitted]
7. *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.*
8. *The 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.*
9. [Omitted]
10. *The power to engage staff (whether or not as employees of the company) to assist that person in the performance of that person's functions.*
11. *The power to engage attorneys and other professionally qualified persons to assist that person in the performance of that person's functions."*

APPENDIX 4

SECTION 110(2) OF THE COMPANIES ACT

"110. *Function and powers of official liquidators*

[...]

(2) *The official liquidator may —*

- (a) *with the sanction of the Court, exercise any of the powers specified in Part I of Schedule 3; and*
- (b) *with or without that sanction, exercise any of the general powers specified in Part II of Schedule 3."*

APPENDIX 5

SECTION 99 OF THE COMPANIES ACT

"99. *Avoidance of property dispositions, etc.*

When a winding up order has been made, any disposition of the company's property and any transfer of shares or alteration in the status of the company's members made after the commencement of the winding up is, unless the Court otherwise orders, void."

APPENDIX 6

SECTION 97 OF THE COMPANIES ACT

"97. *Avoidance of attachments and stay of proceedings*

(1) *When a winding up order is made or a provisional liquidator is appointed, 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 and subject to such terms as the Court may impose.*

(2) *When a winding up order has been made, any attachment, distress or execution put in force against the estate or effects of the company after the commencement of the winding up is void."*