



**IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION**

**FSD CAUSE NO. 268 OF 2021 (DDJ)**

**IN THE MATTER OF THE COMPANIES ACT (2021 REVISION)**

**AND IN THE MATTER OF PRINCIPAL INVESTING FUND I LIMITED**

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**RE-AMENDED WINDING UP PETITION**

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To: The Grand Court of the Cayman Islands

The humble petition of Credit Suisse London Nominees Ltd acting by way of Mr Michael Pearson and Ms Trudy-Ann Scott of 2<sup>nd</sup> Floor, Harbour Centre, 42 North Church Street, George Town, Grand Cayman, Cayman Islands as Receivers over the shares held by the Petitioner in PRINCIPAL INVESTING FUND I LIMITED shows that:

**Introduction**

1. Principal Investing Fund I Limited (**Fund**) was incorporated on 13 July 2015 and commenced operations on 15 September 2015 under registration number 301886 as an exempted company with limited liability under the laws of the Cayman Islands. The Fund is a Private Fund authorised by CIMA with reference number 1723315. The registered office of the Fund is at Walkers Corporate Limited, 190 Elgin Avenue, George Town, Grand Cayman KY1-9008, Cayman Islands.
2. The Fund has an authorised share capital of US\$50,000, comprising:
  - (a) 100 Management Shares of US\$1 par value each;
  - (b) 47,799,000 Participating Shares of US\$0.001 par value each; and
  - (c) 101,000 Carry Shares of US\$0.001 par value each.

3. The principal investment objective for which the Fund was established is described at page 6 of the Confidential Offering Memorandum of the Fund dated July 2015 and is to:

*"... provide its Shareholders with significant capital appreciation through equity and quasi-equity investments in unquoted companies or entities and building new businesses and investing in existing companies in sectors where the Fund can add value and enhance returns."*

4. The Fund's investment manager is Floreat Principal Investment Management Limited (**Manager**). The Manager replaced Floreat Investment Management Limited as investment manager on 1 January 2019. However, as described further below the 'management' of the Fund should properly be considered to comprise the directors of the Fund, the Manager, the Floreat Principals (defined below) and the other Floreat (defined below) related or connect entities involved in the management and decision making of the Fund.

### The Petitioner

5. Credit Suisse London Nominees Ltd (**CSLN**) holds on behalf of Mr Chia Hsing Wang (**Mr Wang**) a total of 47,713.11 Participating Shares in the Fund (**Shares**) which were acquired in 2015. CSLN therefore has standing to bring this contributories winding up petition.
6. Pursuant to an Order of this Honourable Court dated 8 September 2021 (**Receivership Order**), Mr Michael Pearson and Ms Trudy-Ann Scott of FFP Cayman Limited were appointed jointly as receivers over the Shares (**Receivers**). This Petition is made by CSLN acting by the Receivers pursuant to the powers contained in the Receivership Order.
7. The Shares which are the subject matter of the Receivership Order are beneficially owned by Mr Wang and are held by CSLN which acts as his nominee through Mr Wang's relationship with Credit Suisse AG (**Credit Suisse**). Mr Wang sought and obtained the appointment of the Receivers in order to address the issues of serious wrongdoing by the Floreat Management (defined below) described below.
8. In addition to the Shares, Mr Wang beneficially owns substantial further shareholdings of participating shares in the Fund through similar nominee arrangements such that in total Mr Wang beneficially owns 100% of the participating shares in the Fund (**Mr Wang's Shares**). As such, Mr Wang is the sole substantial economic owner of the Fund.
9. Mr Wang's Shares are comprised of:

No	Share Class	Quantity	Registered Shareholder	Bank	Nominee Account
1.	Participating Shares – USD	34,080.79	Credit Suisse London Nominees Limited	Credit Suisse	Credit Suisse London Nominees Ltd
2.	Participating Shares – USD	13,632.32	Credit Suisse London Nominees Limited	Credit Suisse	Credit Suisse London Nominees Ltd

3.	Participating Shares – USD	34,080.79	Clearstream Banking S.A. AFS 104650	Julius Baer	Clearstream Cork, Clearstream Banking S.A. AFS 104650
4.	Participating Shares – USD	1,873.93	Clearstream Banking S.A. AFS 104650	Julius Baer	Clearstream Cork, Clearstream Banking S.A. AFS 104650
5.	Participating Shares – USD	2,808.50	Clearstream Banking S.A. AFS 190040	Rothschild	Clearstream Banking S.A. AFS 190040
6.	Participating Shares – USD	9,737.37	Clearstream Banking S.A. AFS 104602	Vontobel	SIX SIS AG, Olten Switzerland

### Summary of Grounds for the Petition

10. The Petitioner seeks a winding up of the Fund on just and equitable grounds and in particular, without limitation, on the basis that:
- (a) There has been a justifiable and irretrievable loss of confidence in the management of the Fund, being the Floreat Management (defined below), due to serious issues of mismanagement and wrongdoing, including a lack of probity and/or oppression.
  - (b) The Fund has been used as a device from its inception to wrongly exploit Mr Wang's assets. It was not formed with the principal purpose of generating investment returns as claimed, but was instead formed with the principal purpose of enabling the Floreat Management (defined below) and the Floreat Principals (defined below) to wrongly obtain access to Mr Wang's assets and then to charge fees and otherwise exploit those assets as their own.
  - (c) The Floreat Management (defined below) have utilised their absolute voting power to oppress the Petitioner and Mr Wang.
  - (d) The Fund is akin to a quasi-partnership, in which the Floreat Management (defined below) and the Floreat Principals (defined below) have purported to contribute their investment expertise whilst the Petitioner and Mr Wang have been made the sleeping partner who has contributed the capital. That quasi-partnership and the personal relationship on which it was founded has completely and irretrievably broken down such that it is not possible for the partners to continue their association.
  - (e) **In all the circumstances, and in any event, there is an urgent need for an independent investigation of the affairs of the Fund.**
11. To the best of the Petitioner's and Mr Wang's knowledge, the Fund is solvent and the Petitioner therefore has a tangible interest in the proceeds of the winding up of the Fund after the payment of creditors and the costs and expenses of any winding up.
12. The Shares are participating non-voting shares in the Fund. There is no contractual right or other ability to remove or change the composition of the Fund's board of directors or the

Manager. Therefore, the Petitioner's and Mr Wang's complaints can only properly be addressed through the appointment of independent official liquidators who will be able to wind up the Fund in accordance with the applicable laws. The Petitioner unequivocally seeks a winding up of the Fund as there is no other more suitable remedy to pursue.

13. By an Order of the BVI High Court on 26 August 2021, receivers were appointed over the shares in RAGOF (defined below) held by CSLN on Mr Wang's behalf for the purpose of commencing winding up proceedings in respect of RAGOF. Those receivers caused an application for the appointment of liquidators on the just and equitable basis to be commenced by CSLN, effectively mirroring these proceedings in relation to the Fund. Those receivers also sought and obtained on 1 September 2021 an Order of the BVI High Court appointing provisional liquidators over RAGOF.

### **Background**

#### *Mr Wang and Floreat*

14. Mr Wang is an ultra-high net worth individual, having been gifted by his father a substantial portfolio of assets (**Portfolio**).
15. Mr Wang, personally in December 2014, and then in January 2016 and December 2018 through corporate entities which he owns, entered into very extensive investment management and services agreements (together, the **Floreat Agreements**) with Floreat Merchant Banking Services Limited (**FMB**) and other related and/or affiliated entities in the Floreat Group of companies (together **Floreat**).
16. By way of the Floreat Agreements and other arrangements put in place by Floreat and ultimately the individuals behind Floreat – Mr James Charles Wilcox, Mr Hussam Otaibi and Mr Mutaz Otaibi - (together, the **Floreat Principals**), Floreat effectively assumed control of the management of Mr Wang's wealth and financial affairs from around the end of 2014.
17. Mr Wang developed a personal relationship with the Floreat Principals which he believed to be based on mutual trust and confidence. Mr Wang came to be very reliant on Floreat and the Floreat Principals for the management of his financial affairs.

#### *Mr Wang's investment in the Floreat Funds*

18. Pursuant to Floreat's advice and directions, Mr Wang has invested in at least four investment funds structured, managed and effectively controlled by Floreat, the Floreat Principals and entities which they own and control. These funds (together, the **Floreat Funds**) comprise three Cayman Islands CIMA regulated funds – being the Fund (**PIF**), Long View II Limited (**Long View**) and Global Fixed Income Fund I Limited (**GFIF**) (together, the **Cayman Funds**) - and a BVI domiciled fund, Real Assets (RA) Global Opportunity Fund I Limited (**RAGOF**).

19. The Floreat Funds were presented to Mr Wang as being well-established funds with a broad investor base some of whom were said to be known to him.
20. Unbeknown to Mr Wang until 2021 when he obtained the NPO Documents (defined below), Mr Wang is and was at all material times the sole or only substantial economic owner of three of the Floreat Funds, including the Fund, holding participating shares as follows:
  - (a) The Fund 100% holding
  - (b) Long View 100% holding
  - (c) RAGOF 97.2% holding
21. Further, in respect of GFIF, it would appear that:
  - (a) until 2019 Mr Wang held 95% of the participating shares;
  - (b) Mr Wang is the sole participating shareholder of Series 1, 3 and 5 shares;
  - (c) Series 7 and Series 8 shares were issued in 2019 and 2020 respectively. Mr Wang does not hold any of these shares; and
  - (d) these further share issues diluted Mr Wang's overall percentage holding of participating shares to 34%.
22. Mr Wang is therefore effectively the sole, or sole substantial, economic owner of three of the four Floreat Funds and until relatively recently was the sole substantial economic owner of the fourth fund, being GFIF, and remains the sole economic owner of the assets to which the Series 1, 3 and 5 shares in GFIF are attached to.
23. In all the circumstances, and particularly given that Mr Wang is the sole substantial investor in the Fund, it is averred that this is a relationship akin to a quasi-partnership, in which on the one hand Floreat and the Floreat Principals have purported to contribute their investment expertise whilst on the other Mr Wang has been the sleeping partner who has contributed the capital, has been established by conduct. In this regard, it is averred that Floreat and the Floreat Principals have been aware, and proceeded in the knowledge, of the true position all along.

*Floreat Management control of the Floreat Funds*

24. The Floreat Funds were structured, promoted, managed and effectively controlled by Floreat, the Floreat Principals and entities which they own and control. In this regard:
  - (a) The Floreat Funds receive fund management services from investment managers set up by Floreat and these investment managers are ultimately owned and controlled by the Floreat Principals or parties related or connected to them (**Floreat Investment Managers**).

- (b) Floreat entities also act as investment advisors to the Floreat Funds and these investment advisors are ultimately owned and controlled by the Floreat Principals or parties related or connected to them (**Floreat Investment Advisors**).
  - (c) The Floreat Funds' respective articles of association provide for: i) "management shares" which hold all of the shareholder voting rights in the fund, but which do not have a right to participate in profits; and ii) for various categories of "participating shares" which have rights to participate in profits, but which do not have any voting rights in the fund. The management shares are held by the Floreat Investment Managers or other entities ultimately owned and controlled by Floreat and the Floreat Principals.
25. There are numerous common directors and very close connections between the Floreat Funds, the Floreat Investment Managers and the Floreat Investment Advisors, to the extent that these entities are unusually interrelated. In particular:
- (a) Common directors of the Floreat Funds:
    - (i) Trinda Blackmore is a director of all of the funds;
    - (ii) Mutaz Otabi was a director of all the funds until his relatively recent resignations;
    - (iii) David Whitworth is a director of the Fund, GFIF and RAGOF;
    - (iv) Roger Priaulx is a director of the Fund and GFIF,
  - (b) Common directors and connections with Floreat Investment Managers:
    - (i) David Whitworth is a director of LVII Investment Management Limited (**Long View Investment Manager**) and Floreat Real Asset Investment Management Ltd (**RAGOF Investment Manager**) as well as being a director of the Fund, GFIF and RAGOF;
    - (ii) Nic Corsetti is a director of Floreat Global Fixed Income Management Limited (**GFIF Investment Manager**) and of the Manager as well as being a director of Long View;
    - (iii) Mark Fagan is a director the GFIF Investment Manager and the Manager.
  - (c) Common directors of Floreat Investment Advisors:
    - (i) Mutaz Otaibi is a director of Floreat Merchant Banking Limited, Floreat Principal Investing Limited, Floreat Wealth Management Limited and Floreat Real Estate Limited;

- (ii) Hussam Otaibi is a director of Floreat Merchant Banking Limited, Floreat Principal Investing Limited, Floreat Wealth Management Limited and Floreat Real Estate Limited; and
  - (iii) James Wilcox is a director of Floreat Merchant Banking Limited, Floreat Principal Investing Limited, Floreat Wealth Management Limited and Floreat Real Estate Limited.
- 26. Further, it is averred that the Floreat Principals have:
  - (a) worked to ensure that decisions in relation to the Floreat Funds are made in a way that maintains their full control; and
  - (b) controlled the information shared with the other directors of the various Floreat entities to ensure that their decisions are not challenged and in particular to obfuscate relevant information where decisions were being taken to further their own self-interest.
- 27. In the circumstances, whilst some of the directors of the Floreat Funds are professional directors, no real comfort can be taken from their involvement as:
  - (a) many decisions are being made at the investment advisor and/or investment manager level with no substantial involvement from the board of the relevant fund;
  - (b) the professional directors appear to have lengthy and/or deep commercial relationships with Floreat; and
  - (c) the structure of the management and operation of the Floreat Funds allows Floreat and the Floreat Principals to exercise very heavy control over the information that the directors receive in respect of the relevant fund.
- 28. Accordingly, it is averred that the Floreat Funds are effectively ultimately controlled the Floreat Principals and entities owned and/or controlled by them and that therefore the management of the Floreat Funds should properly be considered to comprise the Fund Directors, the Floreat Investment Managers (including the Manager), the Floreat Investment Advisors, other Floreat entities involved in the Floreat Funds and the Floreat Principals (together, the **Floreat Management**).
- 29. In the premises, it is averred that Mr Wang's investments in and relationship with each of the Floreat Funds cannot sensibly be considered in a vacuum from the other funds. In this regard, it is averred that wrongdoing in relation to any one of the Floreat Funds is a valid basis for, or, alternatively, good evidence to support a wholesale loss of trust and confidence in the Floreat Management in relation to all of the Floreat Funds.

**Mr Wang's initial concerns in relation to Floreat wrongdoing**

30. From around the start of 2015, Floreat had effectively assumed control of the management of substantially all of Mr Wang's investments and the administration of his financial affairs.
31. In or around mid-2020, Mr Wang raised various questions of Floreat in relation to the Floreat Funds, and sought an account from Floreat and, in particular, information about the Floreat Funds. Whilst some information was provided, the information was limited and Floreat failed to provide all the information properly requested by Mr Wang.
32. Mr Wang also sought the information via third parties, which culminated in the Floreat Principals threatening Mr Wang with serious financial consequences if he persisted in '*going behind their back*'. These threats could only sensibly be taken and were taken by Mr Wang to mean that the Floreat Principals would take steps to prevent him from accessing the assets held in the Floreat Funds or otherwise prejudice his position if he continued to try to seek information about their management and operation.

**FFP Reviews – serious issues with the management and operation of the Floreat Funds**

33. The information provided by Floreat included audited financial statements and offering memoranda relating to the Floreat Funds. Whilst Mr Wang had previously received some of the offering memoranda he does not believe that he had ever previously received any of the audited financial statements. Accordingly, and as a result of Floreat's unreasonable and suspicious behaviour in refusing to deal properly with the questions raised by Mr Wang, he instructed forensic accountants and financial advisers, FFP (Cayman) Limited (**FFP**), to review his investments in the Floreat Funds, including the audited financial statements and the offering memoranda (**FFP Review**).
34. The results of the FFP Review reported in March 2021 identified very serious issues with the management and operation of the Floreat Funds, including a number of related party transactions by which the Floreat Principals appeared to have used their control of the Floreat Funds to personally benefit themselves.
35. As a result of the apparent serious wrongdoing identified by the FFP Review, Mr Wang sought *Norwich Pharmacal* relief against Maples Fund Services (Cayman) Limited (**Maples**), being the fund administrator of all of the Floreat Funds. On 22 March 2021 the Grand Court made an Order for disclosure and Maples then on 21 April 2021 duly provided the documents in accordance with that order (**NPO Documents**).
36. Following receipt of the NPO Documents, FFP were instructed to conduct a further review of the management and operation of the Floreat Funds (**Further FFP Review**). The results of the Further FFP Review were reported in June 2021 and confirmed the existence of very serious issues with the management and operation of the Floreat Funds. The serious issues included: the Floreat Principals exploiting their control of the Floreat Funds to make the funds enter into transactions by which they personally received substantial benefits; and which were not in the

best interests of the funds; and concealing those transactions from Mr Wang. These issues are set out below.

### **Justifiable loss of confidence in the management of the Floreat Funds**

37. Pending discovery, the Petitioner and Mr Wang will rely on the following facts and matters as:  
a) justifying the loss of confidence in the management of the Floreat Funds; and/or b) constituting oppression and/or c) demonstrating that the Floreat Funds were not set up as genuine funds, but rather as devices to facilitate the wrongful exploitation of Mr Wang's assets; and/or d) as demonstrating the urgent need for an independent investigation of the Fund's affairs:

#### **37.1 Control of Floreat Funds – serious unmitigated conflicts of interest**

- (a) The Floreat Funds have been managed and operated in circumstances where serious conflicts of interest arise and there has been self-dealing by the use of the assets held in the Floreat Funds to finance projects and purchases in which Floreat and the Floreat Principals were personally interested and transactions which have personally benefitted Floreat and/or the Floreat Principals to a very substantial degree.
- (b) A number of directors of the Floreat Funds are or have also been directors of the Floreat Investment Managers, giving rise to serious concerns due to the obvious potential for conflicts of interest to arise from the fact that the common directors will have had competing duties to act in the best interests of each entity. This has led to substantial conflicts of interest, particularly as regards management fees charged of the funds by the Floreat Investment Managers.
- (c) The NPO documents do not show any proper attempt has been made to manage the conflicts of interest arising. In fact, it would appear that Floreat and the Floreat Principals have used their control of the Floreat Investment Advisors and Floreat Investment Managers to:
  - (i) take decisions in respect of related party transactions without the involvement of the relevant Floreat Fund; and
  - (ii) control the information regarding related party transactions provided to the relevant Floreat Fund.
- (d) The Floreat Principals' willingness to have themselves and entities which they control involved in the decision-making in respect of transactions in which they have substantial personal interest demonstrates a lack of probity.
- (e) In the circumstances, these serious conflicts of interest, combined with the favouring of the Floreat Principal's own interests, mean that the Floreat Management have not acted

in the best interests of the Floreat Funds and therefore have used their powers as directors for a purpose that is not for a proper purpose.

37.2 Springs Farm – acquisition and Deed of Indemnity not in best interests of RAGOF

- (a) RAGOF holds, through a wholly owned subsidiary Springs Farm Limited, an investment property known as “Springs Farm”, described in the RAGOF 2019 Audited Financial Statements (**RAGOF 2019 AFS**) as a 300 acre property in Berkshire, England (**Springs Farm**).
- (b) Mr Wang was led to believe by statements made by the Floreat Principals that Springs Farm was owned by the Otaibi family. Mr Wang has visited the Otaibi family at Springs Farm and knows it to be used by them as a place of residence. Prior to the FFP Review, Mr Wang was not aware that Springs Farm was in fact owned by RAGOF.
- (c) In 2014, RAGOF acquired Springs Farm via a purchase of the entire share capital in Claymore Group S.A. (**Claymore**) for GBP15 million worth of “Real Asset B Shares” issued in RAGOF of GBP10,000 each. It is unclear whether: a) the Floreat Principals or at least the Otaibi family, or parties related to them; or b) a client of Floreat’s, Sheikh Ghassan Ibrahim Shaker, whom they now describe as their ‘friend and mentor’, were the ultimate beneficial owners of Claymore and therefore ultimately received the benefit of the GBP15 million of Real Asset B Shares. RAGOF was made to agree the GBP15 million acquisition price notwithstanding that it had received an expert valuation at the time of the acquisition stating that the true market value of Springs Farm was GBP10 million. It is averred that there was no good reason for RAGOF to overpay by GBP5 million and that it was not in RAGOF’s interests to do so. It is further averred that by making RAGOF overpay the Floreat Management sought to obtain an advantage whether by assisting Sheikh Shaker or otherwise. ~~The true position is clouded as Floreat have put forward confusing and contradictory accounts regarding the identity of the vendors and the circumstances which led to RAGOF’s acquisition of Springs Farm. Floreat have asserted both that the Otaibi family transferred Springs Farm to RAGOF and, contrary to that position, that Springs Farm was in fact transferred to RAGOF by Floreat’s client, Sheikh Ghassan Ibrahim Shaker, pursuant to a share purchase agreement dated 8 April 2014.~~
- (d) At the same time that Springs Farm was acquired, RAGOF entered into a Deed of Indemnity dated 7 April 2014 (**Deed of Indemnity**), with Floreat Real Estate Limited (then known as Floreat Real Estate Jersey Limited) (**FRE Jersey**) and Hussam Otaibi (together, **Indemnifiers**).
- (e) Accordingly, at the time of the acquisition by RAGOF of Springs Farm, the counterparties to at least the Deed of Indemnity were parties connected to Floreat and the Floreat Principals giving rise to substantial conflicts of interest, with the personal interests of the

Floreat Principals being in direct conflict with the interests of RAGOF. Of particular concern is the fact that Hussam Otaibi appears to have simultaneously acted as:

- (i) a director of RAGOF determining whether to acquire the relevant shares (and thereby Springs Farm);
  - (ii) an indemnifier negotiating the terms of the Deed of Indemnity and his right to participate in any profits on a sale of Springs Farm; and
  - (iii) a director of RAGOF determining whether RAGOF should enter into the Deed of Indemnity.
- (f) These conflicts of interest gave rise to an obvious risk that the relevant agreements would likely not be in the best interests of RAGOF. These risks have in fact eventuated.
- (g) The Deed of Indemnity purported to protect the interests of RAGOF by providing an indemnity (**Indemnity**) from the Indemnifiers for all the costs associated with the property in exchange for a 50% share of the profits on sale of the property. In fact, the terms of the Deed of Indemnity were such that the Indemnifiers retained or obtained complete economic control of the property, including the ability to deny RAGOF any share of the profits on a sale of Springs Farm. In this regard:
- (i) Clause 3.2 of the Deed of Indemnity has the effect that the Indemnifiers' written consent was required for any sale prior to the third anniversary of the Deed of Indemnity being entered into, thereby meaning that they could veto any sale within that period.
  - (ii) Following the third anniversary, clause 3.3. gives the Indemnifiers an unfettered right to transfer Springs Farm to themselves or any third party at a price not less than the Indemnified Amount - i.e. what RAGOF has expended on Springs Farm without any allowance for profit.
- (h) The complete economic control given to the Indemnifiers by clauses 3.2 and 3.3, combined with the potential to deny RAGOF a share in the profits of the investment in Springs Farm, means that entering into the Springs Farm transaction and the Deed of Indemnity could not have been in the best interests of RAGOF. These transactions are particularly troubling given the clear conflicts of interest arising caused by Floreat and/or the Floreat Principals' presence on both sides of the transactions and the personal benefits received by the Floreat Principals both as Indemnifiers and as subsequent rent-free occupiers of the property. Through these transactions the Floreat Principals or their client appear to purport to contribute Springs Farm to RAGOF in exchange for GBP15 million of the Real Asset B Shares and to protect the interests of RAGOF through the Deed of Indemnity; whereas in fact the Floreat Principals as the Indemnifiers retained

or obtained the right to take all the economic benefits of RAGOF's investment themselves.

- (i) Mr Hussam Otaibi could not have failed to have known that the Deed of Indemnity was not in RAGOF's best interests but was in his own personal interests and the other directors of RAGOF either knew or should have known the same. In entering into the Deed of Indemnity on these terms the Floreat Management have shown a very serious lack of probity.
- (j) Whilst the Springs Farm transaction and the Deed Indemnity appear to have been entered into shortly before Mr Wang's first investments in RAGOF, they continue in place notwithstanding that (as described below) the Real Asset B Shares were redeemed in full long ago and notwithstanding that Mr Wang is the economic owner of approximately 97% of RAGOF.

### 37.3 Spring Farm – failure by RAGOF to claim under the Deed of Indemnity

- (a) RAGOF has ultimately funded the upfront costs and the very substantial development and operational costs associated with Springs Farm since its acquisition. *Some of these 'operation costs' were not legitimate expenses which should have been borne by RAGOF but were caused by Hussam Otaibi's occupation of Springs Farm.* Pursuant to clause 3.1 of the Deed of Indemnity, RAGOF has the right to make a call under the Indemnity for those costs at any time after the third anniversary of the agreement, being April 2017. This would effectively require the Indemnifiers to make a payment to RAGOF to cover all the costs that it had incurred in respect of Springs Farm.
- (b) The audited financial statements of RAGOF show that as at 31 December 2019 (**RAGOF 2019 AFS**), GBP3,800,000 was owed to RAGOF by the Indemnifiers under the Deed of Indemnity and that this amount has been due for some time without interest accruing on it. *The ~~GPB13 million Springs Farm Budget~~ costs and expenses which have been incurred in respect of Springs Farm (which total more than GBP10 million) mean ~~suggests~~ that the actual amounts owed under the Deed of Indemnity ~~are may be~~ significantly larger than the GBP3,800,000 referred to in the audited financial statements.*
- (c) Despite the significant sums accruing, RAGOF has not exercised its right to make a call under the Deed of Indemnity, such that this is effectively operating as an interest free loan to the Indemnifiers to maintain and develop Springs Farm.
- (d) There is no good explanation as to why RAGOF has not made a call under the Indemnity and accordingly in failing to do so, the directors of RAGOF can be seen to not been acting in the best interests of the fund. This is particularly troubling given the conflict of interest arising from the fact that the Indemnifiers are Hussam Otaibi and a company that appears to be ultimately owned and controlled by the Floreat Principals. This is a clear

example of the interests of the Floreat Principals being preferred to those of the investors in RAGOF.

37.4 Springs Farm – significant benefits accruing to Floreat / Floreat Principals

- (a) The Floreat Principals have used the Springs Farm Property as their own private residence for themselves and their families and have apparently been allowed many years rent-free occupation. This was clearly not in the economic interests of RAGOF and is a stark example of the Floreat Principals' interests being wrongly preferred.
- (b) The Floreat Principals appear to have lived a very grand life at Springs Farm keeping many horses and dogs as well as numerous staff to look after those horses and dogs as well as themselves.
- (c) Very considerable sums for 'development' and 'operational' costs have been spent on the Springs Farm Property. ~~As occupiers, the Floreat Principals have to some extent received the benefit of the development costs. Some portion of the operational costs has been expended on the Floreat Principals' personal living expenses and costs of occupying the property.~~ 'Development' and 'operational' costs of in excess of GBP10 million have been incurred in respect of RAGOF's ownership of the Springs Farm Property. These costs and expenses include very significant sums in the millions of GBP that have been incurred as a result of the Floreat Principals' occupation of Springs Farm and/or other expenses which were necessary development and/or operational costs. These expenses were for the benefit of the Floreat Principals and were not legitimate expenses of RAGOF or its subsidiaries. In allowing these expenses to be incurred, the Floreat Management and/or the Floreat Principals have shown a very serious lack of probity.
- (d) In 2017, a GBP13 million budget was approved for the development and operational costs of the Springs Farm Property (**Springs Farm Budget**). There were substantial conflicts of interest in the process by which the Springs Farm Budget was approved. In particular:
  - (i) the Springs Farm Budget was prepared by Floreat Real Estate Limited, RAGOF's investment advisor (**RAGOF Investment Advisor**) and a recommendation given by the RAGOF Investment Advisor that the budget be approved. The directors of the RAGOF Investment Advisor at this time were Hussam Otaibi, Mutaz Otaibi and James Wilcox and it is believed that the company is ultimately owned by the Floreat Principals;
  - (ii) the Springs Farm Budget and funding of GBP13 million to Springs Farm Limited was approved by, RAGOF's investment manager, the RAGOF Investment Manager, at a board meeting on 30 November 2021 following Mutaz Otaibi's active involvement in the board's discussion. The directors of the RAGOF

Investment Manager at this time were Mutaz Otaibi, Walter Reich and David Whitworth. The RAGOF Investment Manager is ultimately owned by Mutaz Otaibi;

- (iii) in light of the RAGOF Investment Manager's approval, Springs Farm Limited was to receive GBP13 million of funding. The directors of Springs Farm Limited at this time were Mutaz Otaibi, David Whitworth and Stephen Dickinson; and
- (iv) the directors of RAGOF appear not to have been involved in the approval of the Springs Farm Budget and the funding of GBP13 million to Springs Farm Limited.
- (e) No attempt appears to have been made to manage the serious conflicts of interest arising in relation to the Floreat Principals' occupation of Springs Farm. In fact, it would appear that their occupation of the property has been specifically obscured from or minimised to the RAGOF Investment Manager.
- (f) Springs Farm Limited borrowed GBP5,000,000 from Arbuthnot Latham bank secured against Springs Farm with a limited guarantee given by RAGOF. The RAGOF 2019 AFS record that the purpose of the loan was the "redevelopment" of the property. RAGOF has also extended an interest free loan of GBP5,731,736 to Springs Farm Limited. The loan is described in RAGOF's accounts as being "short term", but no terms, other than the loan being interest free, are referred to. There is no explanation of the purpose of the loan. It is likely that this loan has been used to improve the property or cover expenses associated with the property. Given that the Floreat Principals occupy the property, it appears that they are to some extent enjoying the benefit of funds spent to improve the property as a result of these transactions. Both these transactions involved conflicts of interest issues which call into question whether the transaction was truly in the interests of RAGOF.
- (g) Springs Farm Limited engaged a company called Studio 51 North Limited (Studio) in respect of "project works" at Springs Farm and incurred GBP560,000 of fees which have, apparently, been paid in full. Studio is the "in-house" designer of Floreat, and is disclosed as a related party of Springs Farm Limited in the RAGOF Accounts by virtue of the two companies having a common director. This is another related party transaction which involved conflicts of interest which call into question whether the transaction was truly in the best interests of RAGOF.

#### 37.5 RAGOF Redemptions – actions taken in breach of terms of offering document

- (a) The Deed of Indemnity committed RAGOF to redeeming all of the Real Asset B Shares (totalling GBP15 million) by 30 November 2017 – i.e. within just over three and a half years from the date of the Deed of Indemnity – with the first tranche of GBP3.5 million falling due within a little over a month on 31 May 2014 (**Redemptions**).

- (b) Floreat sought investment into RAGOF by an offering memorandum dated November 2014 (**RAGOF Offering Memorandum**) which was likely drafted to facilitate Mr Wang's investment. The RAGOF Offering Memorandum stated, *inter alia*, that (**ROM Statements**):
- (i) the directors of RAGOF intended to "*compulsorily redeem the entire holding of a particular Class of Real Asset Shares as soon as practicable following the disposal of the Relevant Asset*" [Emphasis added]; and
  - (ii) the Real Asset B Shares "*...are not voluntarily redeemable by the holders.*".
- (c) The RAGOF Offering Memorandum does not refer to; Springs Farm by name; the Deed of Indemnity; or to the binding commitment of RAGOF to redeem the Real Asset B Shares by November 2017 irrespective of whether Springs Farm was sold.
- (d) In direct conflict with the terms of the Deed of Indemnity, the RAGOF Offering Memorandum thereby gave the clear impression that the Real Asset Shares could not be redeemed at the instigation of the holders of those shares and would not be redeemed by the directors of RAGOF until such time as Springs Farm was sold.
- (e) The ROM Statements were false. In particular, at the time those statements were made, the directors cannot have intended to redeem the Real Asset B Shares following the disposal of the relevant asset given that they had already entered into a binding commitment to redeem the shares at a time before Springs Farm was expected to be sold – and indeed had already apparently been obliged to make the first tranche of payments to redeem the Real Asset B Shares pursuant to that commitment.
- (f) The Redemptions ~~were in part enabled by funded entirely or substantially from~~ Mr Wang's subscriptions and were largely made very shortly after he subscribed for shares in RAGOF. Without Mr Wang's subscriptions, RAGOF ~~would not have been in a position to did not have cash~~ to meet the binding commitment to make the Redemptions.
- (g) The false and misleading statements in relation to the Redemptions are particularly concerning given the apparent use of the funds invested in reliance on the RAGOF Offering Memorandum to ~~enable make~~ the Redemptions which were only in the personal interest of Floreat and the Floreat Principals: either as a result of their ~~receiving the early Redemptions themselves, if they were the holders of the Real Asset B Shares; or as a result of their~~ client receiving the early Redemptions ~~or otherwise, if Sheikh Ghassan Ibrahim Shaker was the holder of the Real Asset B Shares.~~
- (h) Further, in all the circumstances and particularly given that there was a serious conflict of interest arising and given the concealment of the binding commitment to make the Redemptions and the failure to disclose to Mr Wang the use to which his investment

would be put, the RAGOF Directors and the RAGOF Investment Manager have demonstrated a clear lack of probity in relation to these transactions.

37.6 RAGOF Redemptions – early redemption not in best interests of RAGOF

- (a) The final GBP8 million tranche of the Redemptions was apparently paid by RAGOF in November 2016, rather than on 30 November 2017 as provided for by the Deed of Indemnity. This early payment appears to have been made at the instigation of the Floreat Principals or Sheikh Ghassan Ibrahim Shaker; whichever of them were the holders of the Real Asset B Shares.
- (b) This early redemption was in the interests of the Floreat Principals and against the interests of RAGOF.
- (c) There was a clear conflict of interest in relation to this decision and the Floreat Management appears to have substantially preferred the interests of Floreat and the Floreat Principals over those of RAGOF.

37.7 Misuse and misappropriation of art owned by the Fund by the Floreat Principals

- (a) Mr Wang is the beneficial owner of 100% of the participating shares in the Fund and is therefore its sole economic owner. Mr Wang's investments in the Fund, by way of subscriptions for shares in the Fund which are held by his nominees, total approximately US\$110 million.
- (b) Shanti is a Cayman Islands company and is a wholly owned subsidiary of the Fund. The Fund commenced operations on 15 September 2015. In or around October 2015, Hussam Otaibi represented to Mr Wang that Mr Wang was the indirect owner of Shanti and that he should purchase any art which he wished to buy through Shanti.
- (c) Unbeknownst to Mr Wang until recently, the Floreat Management have caused Shanti to use money originating from Mr Wang's subscriptions to purchase art valued at many millions of US\$ for the use and enjoyment of the Floreat Principals. More than 100 pieces of art with a value in excess of US\$10 million which belong to Shanti (**Shanti Art**) have been used, enjoyed and are understood to be physically located at offices and residential properties connected to the Floreat Principals, including:
  - (i) Floreat's offices, "Floreat House" – 43 works with a total insurance value of US\$2,659,655.43;
  - (ii) RAGOF's property, "Springs Farm" which is used as a residence by the Floreat Principals - 23 works with an insurance value of US\$3,045,999.74;
  - (iii) Mutaz Otaibi's London home, "Hans House" – 11 works with a total insurance value of US\$1,813,399.30;

- (iv) Hussam Otaibi's London home, "Cranley Place" - 14 works with a total insurance value of US\$2,032,230.61; and
  - (v) Three Kings Yard, a pied-a-terre used by the Floreat Principals - 2 works with a total insurance value of US\$610,000.
- (d) No fee appears to have been charged for the Floreat Principals' use of the Shanti Art. The use of the Shanti Art by the Floreat Principals is not in the best interests of the Fund. It is averred that the use of the Shanti Art is a wrongful exploitation of the fund's assets by the Floreat Principals for their own benefit.
- (e) The Floreat Principals have used the Shanti Art to present themselves as patrons of the arts and have thereby sought to enhance their own reputations. The Floreat Principals have sought to misappropriate the Shanti Art both through taking physical possession of it and by claims from Hussam Otaibi that he, and not Shanti, is the owner of various pieces of the Shanti Art. Hussam Otaibi's claims of ownership have been made to Mr Wang personally and in public forums, including in a Financial Times article in 2016 and on the website of 'Modern Forms', an art platform promoted by Hussam Otaibi.
- (f) Hussam Otaibi appears to also have personally acquired art and to have publicised his ownership of that art through Modern Forms. Modern Forms and Hussam Otaibi's acquisition of art give rise to substantial conflict of interest issues. In particular:
- (i) Liam Newnham and Nick Hackworth appear to ~~employed by~~ provide services to both Shanti and Modern Forms giving rise to conflicts of interest and issues of the proper allocation of expenses; and
  - (ii) the portfolios of Shanti and Modern Forms contain overlapping artists and Hussam Otaibi appears heavily involved with the selection of art by both Shanti and Modern Forms. This gives rise to conflicts regarding the proper allocation of art and opportunities as between Shanti and Modern Forms and concerns as to whether Mr Hussam Otaibi's personal interests have been preferred over those of Shanti.

37.7A Causing Shanti to purchase art from Hussam Otaibi on terms that benefited Hussam Otaibi at the expense of Shanti.

- (a) Prior to November 2019, Hussam Otaibi owned three works by Jake and Dinos Chapman called "The Model Village of the Damned"; "Great Deeds. Against the Dead!"; and "Story of the Eye" (the **3 Chapman Works**).
- (b) In early November 2019, the Chapmans left their London gallery less than a month before their latest show was due to open. By a written report dated 19 November 2019, Darren Flook advised Hussam Otaibi that the 3 Chapman Works should not be sold at auction, as recent attempts "have either been sold at low end of valuations or failed to

*find a buyer”, but that Hussam should hold on to the works because “if they come back with a strong show with a good gallery their prices could jump back up”.*

- (c) By a document dated 27 November 2019, the Floreat Investment Advisor recommended to the Floreat Investment Manager that Shanti acquire the 3 Chapman Works and another work by Ibrahim El Salahi from Hussam Otaibi for the price that Hussam Otaibi had paid but on terms that any profit be shared 50/50. These terms were disadvantageous to Shanti as (i) the 3 Chapman Works and the Ibrahim El Salahi work were worth considerably less than the price that Hussam Otaibi had paid; and/or (ii) Shanti would bear 100% of any loss but retain only 50% of any profit.
- (d) On the advice of the Floreat Investment Manager, Shanti purchased the 3 Chapman Works and the work by Ibrahim El Salahi from Hussam Otaibi on 10 December 2019. Floreat Management subsequently prepared two PAPs for this purchase. These were back-dated to 1 November 2019. Pending disclosure, the best evidence of the date of creation is the metadata on the documents disclosed by the Floreat Investment Manager, which indicates creation dates of 3 and 6 January 2020. The PAP for the Ibrahim El Salahi correctly recorded that the work was being purchased from Hussam Otaibi. The PAP for the 3 Chapman Works falsely stated that these were being purchased from Jake & Dinos Chapman.

37.7B Overvaluing Shanti’s portfolio, thereby artificially increasing the NAV of the Fund and giving an inflated view of the Fund’s value and performance.

- (a) For the purposes of the financial statements, the proper value of each work is the estimated net sale value. This should be established by reference to auction data and other data.
- (b) The value ascribed to the works by Floreat Management was based on a different and incorrect methodology, with the result that it was very substantially overstated. By way of example only:
  - (i) Converted into USD (for ease of comparison) Sotheby’s has valued 132 works at (in total) between US\$8.11 million (GBP6.15 million) US\$12.1 million (GBP9.16 million) as at 17 December 2021. Shanti valued the same 132 works at US\$21.36 million as at 30 September 2021.
  - (ii) This included valuations of the 3 Chapman Works. Converted into USD, these were purchased for a total of US\$204,383 in or around December 2019. They were valued by Shanti at US\$466,000 as at 11 August 2021. They were valued by Sotheby’s at, converted into USD, between about US\$80,000 and US\$144,000.

- 37.7C Overvaluing the Fund's investments in technology companies, thereby artificially increasing the NAV of the Fund and giving an inflated view of the Fund's value and performance.
- 37.7D Causing the Fund to pay Floreat Merchant Banking Ltd placement fees that were not due in accordance with the governing documents.
- (a) The Fund's OM provided that a "person or company that introduces an investor (the "Relevant Investor") to the Fund ... may receive a placement fee ... of three per cent (3%) of the gross subscription price payable by the Relevant Investor in relation to its initial subscription for Shares ...". The governing documents did not permit the payment of any placement fee for additional or subsequent investments by the same investor.
  - (b) Floreat Merchant Banking Limited introduced Mr Wang to the Fund. In the premises (and without prejudice to the claims Mr Wang has against Floreat Merchant Banking) it is admitted that the Fund was entitled to pay a placement fee of US\$600,000 in respect of the initial subscription of US\$20 million Mr Wang through Clearstream Banking S.A. AFS 104650 as nominee on 15 September.
  - (c) The Fund wrongly paid Floreat Merchant Banking Limited further placement fees totalling US\$2,418,933 in respect of additional and subsequent investments.
- 37.7E Causing the Fund to pay the Floreat Investment Adviser transaction fees that were not due in accordance with the governing documents.
- (a) The Fund's OM provided that the Floreat Investment Advisor would provide its services pursuant to an Investment Advisory Agreement between it and the Floreat Investment Manager and that the fees of the Floreat Investment Advisor would be met by the Floreat Investment Manager out of the Management Fee.
  - (b) The Fund wrongly paid the Floreat Investment Advisor transaction fees totalling US\$1,319,914 in relation to loans to Blue Water, GFIF and RAGOF.
- 37.7F Causing the Fund to fail to properly disclose in its financial statements fees paid to Floreat entities totalling US\$7.1 million.
- 37.7G Dishonestly attempting to secure a transfer to the Floreat Investment Manager of participating shares for no consideration.
- (a) The Fund's OM provided that the shareholders could only redeem shares prior to expiry of the Fund's term with the consent of the directors, "which may be granted or withheld in the Directors' discretion".
  - (b) In about mid-2020, Mr Wang wanted to convert some of his shares in the Floreat Funds into cash. He raised this with Hussam Otaibi and discussed redeeming some of the shares in the Fund. In this context, Hussam told him that there was a technical issue,

but said that he could resolve it. On 14 July 2020 Hussam then provided Mr Wang with a draft of an email, asking him to send the email to Francis Anner of Julius Baer, which he did. That email instructed Francis Anner to place a redemption request to liquidate US\$5million of shares in the Fund.

- (c) On 17 July 2020, Hussam Otaibi wrote by email to Mr Anner stating "*The Investment Manager is financing the redemption to avoid liquidating any of the assets so the difference in the NAV will be converted into shares that will be transferred to the Investment Manager. Gemma will send you the formality. The UBO is aware and in agreement*".
- (d) The statement that the Floreat Investment Manager was financing the redemption was false and was known by Hussam Otaibi to be false. Alternatively he was reckless, not caring whether it was true or false. In support of this allegation, the Petitioner relies on the facts that (i) the Floreat Investment Manager did not finance the redemption; and (ii) Floreat subsequently sought to justify the transfer on a different basis.
- (e) The statement that Mr Wang (the UBO) was aware and in agreement was false and was known by Hussam Otaibi to be false. Alternatively he was reckless, not caring whether it was true or false. In support of this allegation, the Petitioner relies on the fact that Hussam Otaibi had not told Mr Wang that the Floreat Investment Manager was financing the redemption or asked him to agree a transfer for that reason.
- (f) Later the same day, Gemma Johnstone of Floreat, on behalf of Hussam Otaibi sent Mr Anner a share transfer form asking him to sign and return it. Relying on and induced by the representation made to him, Mr Anner sent that on to Mr Wang. In the circumstances, this constituted an implied representation by Floreat that Mr Wang needed to sign the share transfer form to resolve the technical issue that Hussam Otaibi had told him about. This implied representation was false, and known by Hussam Otaibi to be false. Alternatively, he was reckless, not caring whether it was true or false. In support of this allegation, the Petitioner relies on the fact that there was no technical issue that required shares to be transferred to the Floreat Investment Manager.
- (g) Relying on and induced by this implied representation, Mr Wang signed and returned the share transfer form to Mr Anner. Mr Wang did not read down the email chain. Consequently he did not see the email sent by Hussam Otaibi to Mr Anner on 17 July 2020. However, if he had done, it would have made no difference as Mr Wang would (absent an explanation) have assumed that this was, or was something to do with, the technical issue to which Hussam Otaibi had referred.
- (h) This exchange did not give rise to an enforceable contract to transfer the approximately 333 shares to the Floreat Investment Manager for the following reasons:
  - (i) The Floreat Investment Manager provided no consideration for the transfer.

- (ii) Pending disclosure, it is not admitted that signed share transfer form was sent to the Floreat Investment Manager. In the premises, there was no *acceptance* of any *offer* by the Floreat Investment Manager to take a transfer of the shares.
- (iii) If, which is denied, any contract was concluded, it is voidable as it was induced by misrepresentation and has been or hereby is avoided.
- (i) In the premises, it is denied (if it is alleged) that the Floreat Investment Manager has any beneficial interest in any of the shares in the Fund.

37.8 Inappropriate GFIF Return Cap improperly exploited by the Floreat Management

- (a) Mr Wang is the beneficial owner of 100% of each of the Series 1, 3 and 5 shares in GFIF. Mr Wang's investments in GFIF by way of subscriptions for shares in GFIF which are held by his nominee total approximately US\$100 million.
- (b) Owing to the provisions of GFIF's Confidential Offering Memorandum; the offering memoranda related to each of the Series 1, 3 and 5 shares; and GFIF's Articles of Association:
  - (i) the maximum return that a holder of Series 1, 3 and 5 can receive is a capped percentage rate in accordance with a fixed preference dividend (**GFIF Return Cap**), with each series receiving a rate capped (**Capped Rate**) as follows:
    - (A) Series 1: 5%;
    - (B) Series 3: 5%;
    - (C) Series 5: 2%;
  - (ii) as an alternative to a management fee calculated as a pro rata amount, the GFIF Investment Manager retains any excess amounts which GFIF receives and which are not required in order to make payments in accordance with the Capped Rate (**Manager's Excess Retention**). The GFIF Investment Manager is believed to be owned and controlled by the Floreat Principals or parties related to them.
- (c) The GFIF Return Cap and the Manger's Excess Retention give rise to a substantial conflict of interest between the investor and the investment manager: the investment manager is incentivised to make more risky investments which earn a higher rate of return which it can retain; whereas the investor receives no additional benefit for returns beyond the Capped Rate and so investments with a return broadly commensurate with the capped rate are in their interests.
- (d) Return cap structures where the investment manager retains excess returns are not generally appropriate in investment funds where: i) the investment manager has a broad

discretion as to the investments that the fund makes; and/or ii) those in control of the fund are involved in structuring the investments which the fund makes or have an interest in any underlying transaction. In those situations where a fund structure with a return cap is used, appropriate controls should be included within the fund structure to properly manage conflicts of interest. The GFIF fund structure does not include appropriate controls to manage conflicts of interest. It is averred that the GFIF Return Cap is inappropriate for an investment fund of this kind and that GFIF lacks the necessary and appropriate controls to manage conflicts of interest.

- (e) The Floreat Management have improperly exploited the GFIF structure, the GFIF Return Cap and Manager's Excess Retention ~~Cap~~ by causing GFIF to make investments which are: i) with parties which are related or connected to the Floreat Principals or where the Floreat Principals have an interest in an underlying transaction; and/or ii) where the risk profile or the investment return are not commensurate with the Capped Rate.
- (f) The Floreat Management have also improperly exploited the GFIF structure, the GFIF Return Cap and Manager's Excess Retention by:
  - (i) placing the R&G Loan in Series 5. This is a loan at 8.5% which was made to refinance an earlier loan following R&G's default on that loan's maturity on 19 September 2019. (Floreat Advisors Limited also received an 'Introduction Fee' of US\$662,740 in respect of the original R&G Loan which was not disclosed in GFIF's audited financial statements);
  - (ii) placing the Plumstead Loan into series 5. This is a loan at 8% secured *inter alia* by a charge over 85 Avenue Road, where Mr Wang's brother lives. (Floreat Real Estate Limited also received a 'Debt Arrangement Fee' of US\$236,020 in respect of the Plumstead Loan);
  - (iii) placing the RAGOF Loan in Series 5. This is a loan at 6%.
- (g) The Floreat Management have also improperly exploited the GFIF structure, the GFIF Return Cap and Manager's Excess Retention by moving assets between different series, notwithstanding that:
  - (i) the rationale for the different Capped Rates is claimed to be that the assets in the different series have a different risk/reward profile; and
  - (ii) each series is supposedly separate and insolvency remote from each of the other series.

37.9 Investment in Aviation Notes by GFIF constitutes an improper exploitation of GFIF Return Cap

- (a) Floreat has caused Mr Wang to personally invest approximately US\$45 million in loan notes issued by Floreat Fixed Income SA (**Aviation Notes**), a Luxembourg listed fixed

income note issuer. Floreat has also caused GFIF to acquire approximately US\$61.5 million of the Aviation Notes. Given that Floreat has caused Mr Wang to directly acquire Aviation Notes, it is averred that, were it to be in Mr Wang's interest to invest further in the Aviation Notes, there is no proper reason why that investment would be made through GFIF and therefore subject to the Return Cap.

- (b) The Aviation Notes provide for a fixed return of 7% interest. Mr Wang's effective returns on the Aviation Notes held by GFIF are capped at either 2% or 5% - depending on which Series of shares has been 'allocated' the Aviation Notes by the GFIF Investment Manager.
- (c) The GFIF Return Cap means that the GFIF Investment Manager is able to simply collect the difference on the US\$61.5 million investment between the return paid per annum by the Aviation Notes and the Capped Rate dues to Shareholders.
- (d) The GFIF 2019 audited financial statement (**GFIF 2019 AFS**) show that the total "Management Fees" charged by the GFIF Investment Manager for the year to 31 December 2019 amounted to US\$5,952,152. A further "Contingent Management Fee" of US\$804,478 is also referred to. The Management Fee figure is stated to include US\$1,201,280 which was paid to GFIF by Floreat Aviation Services Limited and which is payable to the GFIF Investment Manager in accordance with the Manager's Excess Retention as the excess amount over and above the Capped Rate in respect of the Aviation Notes.
- (e) It is averred that by causing GFIF to invest in the Aviation Notes, the Floreat Management has wrongly exploited GFIF's assets and the GFIF Return Cap so as to:
  - (i) Capture the interest paid by the Aviation Notes above the Capped Rate;
  - (ii) Collect any other management fees that are paid in respect of all assets held within GFIF; and
  - (iii) Obtain, through GFIF, voting control in respect of the Aviation Notes as substantial note holders.

37.9A Causing GFIF to make investments in the Aviation Notes and E-Notes that were inconsistent with the agreed Investment Objective and not in the interests of GFIF.

- (a) The GFIF OM provided that the Investment Objective was to construct a globally diversified portfolio with diversification "*by sector – such as aviation, shipping, freight, renewables, biomass, real estate – and by counterparty/borrower*".
- (b) On 21 December 2016, the Floreat Management caused GFIF to purchase the entire Series B Aviation Notes of US\$81million and allocated it all to Series 1. This constituted more than 50% of the total assets of GFIF, meaning that GFIF (and Series 1 in particular) had a highly concentrated exposure to a single sector and single counterparty. This was

inconsistent with the Investment Objective and not in the interests of GFIF. However, it was in the interests of Floreat. According to the audited financial statements of Floreat Fixed Income SA, it paid Floreat Capital Markets Ltd originator fees of more than US\$2.6 million and Floreat Investor Relations Ltd liaison management fees of more than US\$2.6 million in 2016, and continued to pay those entities fees in subsequent years.

- (c) By mid-January 2020, GFIF had sold Aviation Notes such that its holding was about US\$12.8 million. It had achieved this in part by Floreat Management persuading Mr Wang to personally invest in Aviation Notes (as set out above). However, following the outbreak of Covid 19, Floreat Management caused GFIF to purchase more than US\$48 million of Aviation Notes at or close to par. This included the purchase of US\$32 million (par) of notes for more than US\$27.6 million after Virgin Australia (which was the lessee of one of the 3 aircraft to which the notes related) had gone into a form of Australian administration, thereby putting the entire structure in default and halting distributions to holders of the Aviation Notes. These acquisitions, at these prices, were inconsistent with the Investment Objective and not in the interests of GFIF, but were in the interests of the sellers of the Aviation Notes.
- (d) Floreat Management also caused GFIF to make further aviation sector investments:
- (i) As at 31 December 2020, the investments held by Series 1 consisted of \$26m in Doric NAS (another aviation sector investment); US\$15m in Aviation Notes; and a US\$2.5m loan to the Floreat Investment Manager. As result, save for the loan to the investment manager, 100% was invested in the aviation sector.
- (ii) As at 31 December 2020, the investments held by GFIF included nearly US\$53 million in E-Notes (another aviation sector investment). In total, excluding loans to Floreat entities, Floreat Funds and entities associated with Mr Wang, more than 80% of GFIF's investments were in the aviation sector.
- (e) As at 31 December 2020, all of the aviation sector investments were very substantially overvalued by Floreat Management. As a result, the Floreat Investment Manager was paid management fees of US\$4.3million all or most of which was not due.

37.10 Holbox Transaction by GFIF constitutes an improper exploitation of GFIF's assets

- (a) In or around 2020, the Floreat Management caused GFIF to loan 1981 Holding Limited (**1981 Holding**) US\$17 million (**Holbox Loan**). The Holbox Loan was part of a complex wider transaction by which the loaned funds were flowed down through various corporate entities and used ultimately to acquire interests in Mexican special purpose vehicles which own land in Holbox Island of the coast of Mexico (**Holbox Transaction**).
- (b) Whilst GFIF is to receive interest at a fixed rate on the Holbox Loan, the other economic benefits from the Holbox Transaction, including the indirect interests in the entities which

own land on Holbox Island, were to go to 1981 Holding. 1981 Holding is or was owned by Mutaz Otaibi.

- (c) In or around the first part of 2020, Hussam Otaibi told Mr Wang that he and Mutaz Otaibi had personally acquired land on Holbox Island and that they intended to construct a substantial holiday home there. No mention was made of the involvement of GFIF.
- (d) It is averred that the Holbox Transaction enabled Mutaz Otaibi and the Floreat Management to wrongly exploit the assets of GFIF so as to: i) provide the funds for Hussam Otaibi and Mutaz Otaibi to indirectly acquire land on Holbox Island; and/or ii) to obtain the all the benefits of the Holbox Transaction other than the fixed rate interest on the Holbox Loan.
- (e) It is further averred that the Holbox Loan is an inherently risky loan and that the loan does not have a risk profile commensurate with the Capped Rate of returns paid to investors and therefore was not in the interests of investors.

37.11 Misappropriation of loan termination fee due to GFIF and/or failure to properly manage GFIF

- (a) GFIF was to receive a termination fee of approximately US\$2.2 million (**Termination Fee**) in respect of number of loans that were issued to Reading Football Club by GFIF pursuant to a Note Issuance Facility Deed dated 18 December 2015.
- (b) The Termination Fee was not paid to GFIF. The GFIF Investment Manager ~~has~~ commenced civil litigation proceedings in England against a number of former employees of Floreat Capital Markets Limited, being: Benjamin Churchill, Oumar Diallo, Zaki Mohammed Nuseibeh and Fatoumata Diallo, and their corporate vehicle, IR Relations Limited (**RFC Loan Litigation**). In those proceedings, ~~the GFIF Investment Manager alleges it was established~~ that 50% of the Termination Fee was misappropriated by the former employees and diverted to their corporate vehicle, IR Relations Limited.
- (c) ~~It was also established that In their defence, the former employees allege that~~ Mutaz Otaibi agreed ~~on behalf of GFIF~~ that the Termination Fee would be paid 50% to their corporate vehicle and 50% to his own corporate vehicle, "FCM Cayman". ~~The former employees further allege that~~ The 50% paid to FCM Cayman was only very belatedly repaid to GFIF, ~~apparently~~ because of the anticipated RFC Loan Litigation. ~~However, shortly after being repaid, on 12 June 2019, Floreat Management caused GFIF to pay the exact amount that it had received from FCM Cayman to the Floreat Investment Manager. That payment was not permitted by the governing documents.~~
- (d) In a related matter, an Employment Tribunal decision dated 8 February 2020 found that there were fundamental breaches of the former employees' employment contracts by Mutaz Otaibi and that the same employees were unfairly dismissed from Floreat Capital Markets Limited (**Employment Tribunal Decision**). That decision also noted that the

former employees had taken significant amounts of confidential data from Floreat and GFIF.

- (e) ~~To the extent that the former employees' allegations made in the RFC Loan Litigation are true, As set out above, Mutaz Otaibi has sought to and did improperly divert and misappropriate 50% of the Termination Fee of more than US\$2 million. It is averred that this would demonstrate a very serious lack of probity.~~
- (f) ~~To the extent that the former employees' allegations are not true, it is averred that the Floreat Management has very substantially failed to provide proper management and oversight in respect of the former employees in relation to the management of GFIF. Furthermore, Floreat Management caused GFIF to assign the claims to the Floreat Investment Manager and advance a loan (that is arguably non-recourse) to the Floreat Investment Manager at a rate of just 0.05%. Although the assignment agreement provided that the Floreat Investment Manager was to remit the net proceeds to GFIF, Floreat Management has (by its conduct in relation to the 50% diverted to FCM Cayman) demonstrated that it would procure that any sum remitted to GFIF would shortly thereafter be transferred to the Floreat Investment Manager. As a result, the assignment and loan were for the benefit only of the Floreat Investment Manager (which, but for the appointment of provisional liquidators, would ultimately have received any net recovery) at the risk of the investors (who would bear any losses).~~

37.12 Floreat Management have wrongly charged the Floreat Funds inappropriate fees and caused the Floreat Funds to pay other fees that were not payable by the funds in accordance with the governing documents, and failed to properly disclose all of these fees in the financial statements:

- (a) The Floreat Management's effective control of the Floreat Funds creates a serious conflict of interest in respect of the negotiation and calculation of fees paid to the Floreat Investment Managers, the Floreat Investment Advisor and any other Floreat entity.
- (b) It is averred that the Floreat Management have exploited their control of the Floreat Funds to cause the Floreat Funds to enter into inappropriate fee arrangements including those which could never be in the best interests of the funds. Without prejudice to the generality of the foregoing, and without limitation pending discovery, the Petitioner and Mr Wang refer to the following example:
- (i) In November 2018 the directors of RAGOF approved a change to the management fee structure so that the RAGOF Investment Manager would be paid fees based on actual disposals or realisations of assets (so called 'American-style waterfall') in place of being paid based on whether the market value of assets in the portfolio have increased (so called 'European-style waterfall') (**Management Fee Variation**).

- (ii) An American-style waterfall is generally considered not to be an investor-friendly term. Further, the Management Fee Variation taking place during the course of the life of the fund is not in accordance with normal standards of market practice.
  - (iii) Further, the Management Fee Variation was agreed to apply retrospectively, meaning that the RAGOF Investment Manager was paid EUR3,028,020 that it would not have otherwise received. The purported basis for the change recorded in the RAGOF 2019 AFS – to incentivise the RAGOF Investment Manager to maximise realisation value in any given transaction – cannot have applied to a historic transaction. No mention of the retrospective application of the Management Fee Variation was made in the investor communications summarising the change to fee and other changes that were made to the Offering Memorandum at the same time.
  - (iv) The retrospective application of the Management Fee Variation only benefits the RAGOF Investment Manager at the expense of the investors. This change was enabled by the fact that the Floreat Management control both RAGOF and the RAGOF Investment Manager. The Floreat Management was therefore able to wrongly exploit this control to benefit the RAGOF investment Manager at the expense of RAGOF and ultimately Mr Wang in a situation where a clear and obvious conflict of interest arose.
- (c) Floreat Management caused RAGOF to pay substantial fees to parties affiliated or related to the Floreat Management which were not permitted under the fund's governing documents and/or were not adequately disclosed in the fund's financial statements, including:
- (i) placement fees of GBP2.1 million for the period up to September 2015 to Floreat Merchant Banking Limited which, as a payment to an affiliated or related party, were not permitted under the 2014 OM and were not adequately disclosed in the fund's financial statements;
  - (ii) transaction fees for the period 2014 to 2018 to parties affiliated or related to the Floreat Management which were not permitted under the fund's governing documents and were not adequately disclosed in the fund's governing documents, including:
    - (A) debt arrangement fees to Floreat Capital Markets Limited totalling GBP679,559 and to Floreat Real Estate Limited totalling GBP687,274;
    - (B) disposal fees to Floreat Real Estate Limited totalling GBP800,600,

- (iii) other fees paid to Floreat Real Estate Limited pursuant to invalid amendments to the 2019 OM and 2019 IMA including, in addition to the Management Variation Fee referred to above, which were not permitted under the fund's governing documents and which were not adequately disclosed in the fund's governing documents:
  - (A) debt arrangement fees totalling GBP644,793;
  - (B) disposal fees totalling GBP270,370;
  - (C) acquisition fees totalling GBP307,800.
- (iv) Other fees and payments which were prima facie permitted under the fund's governing documents but which were adequately disclosed, including:
  - (A) placement fees of GBP2,821,536 paid to Floreat Merchant Banking Limited post September 2015;
  - (B) transaction fees of GBP1,974,130 paid to Floreat Real Estate Limited between 2014 and 2018;
  - (C) transaction fees of GBP230,850 paid to Floreat Real Estate Limited between 2019 and 2021;
- (d) Floreat Management caused GFIF to pay termination fees (of about US\$1.2 million), transaction fees (of about US\$0.76 million) and debt arrangement fees (of about \$0.46 million) to Floreat entities, none of which was payable by the fund in accordance with the governing documents; and fees (of about US\$0.26 million) to Abdul Khalek Jallad that were not payable by the fund in accordance with the governing documents. Further, payments to Floreat entities totalling US\$1,875,940 (of which US\$300,000 was payable and US\$1,575.940 was not payable in accordance with the governing documents) were not properly disclosed in the financial statements.
- (e) Floreat Management caused Long View to pay placement fees of US\$420,000 which were not payable in accordance with the fund's governing documents and which were not disclosed in the financial statements. Further, placement fees of US\$112,500 and directors' fees/expenses of US\$18,727 were paid by Long View and not adequately disclosed in its financial statements.

### 37.13 Further mismanagement of the Floreat Funds

- (a) In addition to the matters described above, the Floreat Management have managed the Floreat Funds in a way that falls far short of the standard to be expected from competent fund management. Without prejudice to the generality of the foregoing, and without

limitation pending discovery, the Petitioner and Mr Wang refer to the following examples of mismanagement:

- (b) The Floreat Management have failed to conduct Net Asset Value (**NAV**) calculations in respect of the Fund and RAGOF since 2019 and/or have failed to provide updated NAV figures to the nominees of the Swiss banks which hold shares in those funds on behalf of Mr Wang. This has resulted in certain of the Swiss banks, in accordance with their policies, marking down Mr Wang's investments in the Fund and RAGOF such that they have a zero value. The Fund and RAGOF are funds which Mr Wang has invested approximately US\$110 million and US\$200 million respectively. The failure to conduct and provide NAV calculations is a stark dereliction of duty on the part of the Floreat Management and demonstrates a serious failure to exercise due care and skill in relation to the management of the Fund's and RAGOF's affairs.
- (c) The Floreat Management caused the Floreat Funds to enter into substantial loans on the basis of oral loan agreements and without proper documentation. These loans have been made to related parties and in respect of investments where there are very substantial conflicts of interest. In particular:
  - (i) on or around 8 April 2014, RAGOF entered into an oral agreement by which it lent GBP1,500,000 to its subsidiary, Springs Farm Limited. That loan was not formally documented in a written agreement until 31 December 2017; and
  - (ii) on or around 14 July 2016, RAGOF entered into an oral agreement by which it lent GBP8,600,000 to its subsidiary 33 Grosvenor. That loan was not formally documented in a written agreement until 9 March 2017.

These oral loan agreements demonstrate a clear failure by the Floreat Management to observe proper corporate governance and process and to act with due care and skill in relation to the management of RAGOF's affairs.

#### 37.14 Breaches of statutory and regulatory duties / Floreat Investment Managers not fit and proper

- (a) The Petitioner's and Mr Wang's loss of confidence in the Floreat Management is compounded by the fact that the aforementioned conduct of the Floreat Management amounts to very serious breaches of the statutory and regulatory duties imposed upon the Floreat Funds and the Floreat Investment Managers under the Securities and Investment Business Act (**SIBA**) and/or the Mutual Funds Act (**MFA**) and/or the Private Funds Act and/or the CIMA Statement of Guidance for Regulated Mutual Funds (**CIMA Guidance**).
- (b) Without prejudice to the generality of the foregoing, and without limitation, in this regard it is averred that the Floreat Investment Managers are liable to sanction or other

enforcement action by CIMA under section 17 of SIBA as, in all the circumstances, the Floreat Investment Managers are not able to satisfy the 'fit and proper' criteria.

37.15 Threat by Floreat Principals to use control of Floreat Funds to prejudice Mr Wang

- (a) On 22 April 2021, Mr Hussam Otaibi sent a letter to Mr Wang's personal email address in which he threatened Mr Wang with serious consequences if he did not agree to an "*amicable separation*" (**22 April Letter**).
- (b) The 22 April Letter goes on to set out the details of a threatened orchestrated attack against Mr Wang's interests in which the Floreat Principals plan to use their control of the Floreat Funds and Floreat generally to take actions with the aim of prejudicing Mr Wang's position and presumably to apply pressure on Mr Wang with the aim of blocking any investigation of, or claims in respect of, wrongdoing by the Floreat Principals (**Orchestrated Attack**).
- (c) The ability of the Floreat Principals to take the threatened actions are to predicated, to a large extent, on their ability to control and direct the Floreat Investment Managers, the Floreat Funds and Floreat to implement this coordinated plan. Moreover, given the 22 April Letter, any action set out in the Orchestrated Attack if and when taken cannot sensibly be considered to have been taken because it was in the best interests of the relevant Floreat Fund, but rather because the Floreat Principals considered the action to be in their best interests.
- (d) Following the receipt of the 22 April Letter, the Floreat Principals have now taken steps to put the Orchestrated Attack into action. These steps appear to have been designed and implemented in a way that is intended to cause Mr Wang the most possible disruption, embarrassment and prejudice.
- (e) The actions of the Floreat Principals in threatening and beginning to implement the Orchestrated Attack further demonstrate the clear lack of probity on the part of the Floreat Management of the Floreat Funds.
- (f) In the circumstances, it is apparent that there has been a complete breakdown in the relationship between Mr Wang and the Floreat Principals. In particular, the calculated nature of the Orchestrated Attack and the blatant favouring of their own self-interest by the Floreat Principals has further solidified the complete breakdown of trust and confidence in the management of the Floreat Funds.

38. In all the circumstances, the Petitioner and Mr Wang have justifiably lost trust and confidence in the Floreat Management in relation to their management of the Fund's business and affairs, particularly, but without limitation, in relation to the ability of the Floreat Management to operate and manage the Fund without allowing the Floreat Principals to exploit their control to wrongly favour their interests over the Petitioner and Mr Wang and investors generally. The Petitioner's

and Mr Wang's loss of trust and confidence in the Floreat Management is wholesale and applies across all of the Floreat Funds.

#### **Use of voting power to oppress the Petitioner and Mr Wang**

39. The Floreat Management have also utilised their absolute voting power to oppress Mr Wang as the sole substantial (beneficial) owner of the participating shares in the Fund which carry no voting rights.

#### **Quasi-partnership and breakdown of trust and confidence**

40. Given that Mr Wang is the sole substantial investor in the Fund, this situation is akin to a quasi-partnership, in which Floreat and the Floreat Principals have purported to contribute their investment expertise whilst Mr Wang has been made the sleeping partner who has contributed the capital.
41. That quasi-partnership and the personal relationship on which it was founded has completely and irretrievably broken down such that it is not possible for Mr Wang and the Floreat and the Floreat Principals and therefore the Petitioner and the Floreat Management to continue their association.

#### **Device used by Floreat Principals to exploit Mr Wang's assets**

42. The operation of the Fund shows numerous and repeated instances by which the Floreat Management have exploited their control of the Fund to: i) cause the Fund and/or its investors to be wrongly charged unnecessary or inappropriate fees; and ii) exploit the assets of the Fund for themselves.
43. It is averred that the Fund is not a genuine investment fund, but has been set up from its inception as a device to be used as part of a wider scheme of the Floreat Principals to wrongfully exploit Mr Wang's assets. The Fund has not been formed with the principal purpose of generating investment returns for shareholders as claimed, but has instead been formed with the principal purpose of enabling the Floreat Principals to wrongfully obtain access to Mr Wang's assets so as to charge inappropriate fees and otherwise exploit those assets as their own.
44. Pending discovery and without limitation, the Petitioner and Mr Wang rely upon the following:
- 44.1 The Fund was set up in 2015 shortly before Mr Wang first subscribed for shares in the Fund. Mr Wang is and has always been the sole beneficial owner of participating shares in the Fund. Mr Wang's investments in the Fund are believed to total approximately US\$110 million. It is averred that the Fund was set up for the specific purpose of receiving Mr Wang's investments.

44.2 As described above:

- (a) Mr Wang is the beneficial owner of 100% of the participating shares in the Fund and is therefore its sole economic owner. Mr Wang's investments in the Fund, by way of subscriptions for shares in the Fund which are held by his nominees, total approximately US\$110 million.
- (b) The Floreat Management have caused Shanti to use money originating from Mr Wang's subscriptions to purchase art valued at many millions of US\$ for the use and enjoyment of the Floreat Principals. More than 100 pieces of the 'Shanti Art' valued at more than US\$10 million have been used, enjoyed and are understood to be physically located at offices and residential properties connected to the Floreat Principals.
- (c) The use of the Shanti Art by the Floreat Principals is not in the best interests of the Fund. It is averred that the use of the Shanti Art is a wrongful exploitation of the fund's assets by the Floreat Principals for their own benefit.

44.3 Very substantial fees have been charged to the Fund by the Floreat Management. The Fund's Offering Memorandum states that the Fund is to pay the Manager a "Management Fee" of 2% per annum of the capital invested in the Fund.

44.4 The audited financial statements of the Fund show that Management Fees of approximately US\$2 million per annum are being paid to the Manager. As the sole, beneficial owner of participating shares in the Fund, these fees are, in effect, entirely borne by Mr Wang. These are the best particulars of the fees paid by the Fund to the Floreat Management that the Petitioner and Mr Wang are able to provide pending discovery.

44.5 Mr Wang has also been directly charged significant fees in respect of his investment in the Fund. The Fund's Offering Memorandum provides for an "Placement Fee" of up to 3% of the amount of any subscriptions. Mr Wang's subscriptions in the Fund total approximately US\$110 million. These are the best particulars of the fees charged to Mr Wang directly that the Petitioner and Mr Wang are able to provide pending discovery.

44.6 The fees charged to the Fund and Mr Wang directly in respect of Mr Wang's investment in the Fund are in addition to those charged to Mr Wang and entities which he owns by Floreat for purported management and advisory services in respect of the Portfolio as a whole pursuant to the Floreat Agreements.

44.7 The Fund's Articles of Association and Offering Memorandum do not contain any provisions which would allow the Petitioner and Mr Wang to voluntarily redeem their shares in the Fund. Any redemption of shares in the Fund requires the consent of the directors of the Fund who have discretion to withhold consent. It is averred that the absence of voluntary redemption rights is intended to entrench the Floreat Management's ability to continue to exploit Mr Wang's assets.

45. In the circumstances, it is averred that: a) the Fund offers Mr Wang no real or substantial benefits and that the use of an investment fund structure is unnecessary and inappropriate; and b) that the Fund has from its inception been used as a device to exploit Mr Wang's assets through charging unnecessary and inappropriate fees and using his funds to make investments which are in the interests of the Floreat Management and the Floreat Principals.

## **CONCLUSION**

46. In the premises, and particularly considering the fact that Mr Wang beneficially owns 100% of the Participating Shares in the Fund, it is just and equitable in all the circumstances that the Fund should be wound up pursuant to section 92(e) of the Companies Act (2021 Revision), without limitation, on the following grounds:

### **46.1 Justifiable loss of confidence in Management and Oppression**

- (a) The very substantial wrongful prioritisation of their own self-interest by Floreat, the Floreat Management and ultimately the Floreat Principals in controlling the management and operation of the Floreat Funds, including the Fund. In all the circumstances, there is a serious lack probity on the part of the Floreat Management and the Floreat Principals.
- (b) In all the circumstances, the Petitioner and Mr Wang have justifiably and irretrievably lost all trust and confidence in the Floreat Management's ability or willingness to manage the Fund's business and affairs in the best interests of the Fund as a whole, without favouring their own interests.
- (c) Accordingly, given that the Floreat Principals ultimately sit behind the management of each of the Floreat Funds and that the entities involved in the management of the affairs of the Floreat Funds are intricately linked, the Petitioner and Mr Wang have justifiably lost all trust and confidence in the Floreat Management, Floreat and ultimately the Floreat Principals in relation to the management and operation of the each of the Floreat Funds including the Fund.

### **46.2 Use of voting power to oppress the Petitioner and Mr Wang**

- (a) The Floreat Management have utilised their absolute voting power to oppress Mr Wang as the sole substantial (beneficial) owner of the participating shares in the Fund which carry no voting rights.

### **46.3 Quasi-partnership and breakdown of trust and confidence**

- (a) Given that Mr Wang is the sole substantial investor in the Fund, this situation is akin to a quasi-partnership, in which Floreat and the Floreat Principals have purported to contribute their investment expertise whilst Mr Wang has been made the sleeping partner who has contributed the capital.

- (b) That quasi-partnership and the personal relationship on which it was founded has completely and irretrievably broken down such that it is not possible for Mr Wang and the Floreat and the Floreat Principals and therefore the Petitioner and the Floreat Management to continue their association.

#### 46.4 **Device used by Floreat Principals to exploit Mr Wang's assets**

- (a) The Fund is not a genuine investment fund, but has been set up from its inception as a device to be used as part of a wider scheme of the Floreat Principals to wrongfully exploit Mr Wang's assets.
- (b) The operation of the Fund shows numerous and repeated instances by which the Floreat Management and Floreat Principals have exploited their control of the Fund to: i) cause the Fund and/or its investors to be wrongly charged unnecessary or inappropriate fees; and ii) exploit the assets of the Fund for themselves.

#### 46.5 **The need for an independent investigation**

- (a) **In all the circumstances, and in any event, there is an urgent need for an independent investigation of the Fund's affairs by Court appointed suitably qualified independent professionals.**

47. In all the circumstances, it is averred that the official liquidation of the Fund is necessary to guarantee a fair and transparent realisation of the assets held by the Fund.

48. The Petitioner and Mr Wang have no contractual or other ability to remove or change the Manager or the composition of the Fund's Board of Directors. Given the very real risk that assets will be dissipated and/or that some other further action will be taken to prejudice Mr Wang, it has not been possible for the Petitioner to engage with the Manager or the Directors prior to these proceedings being commenced.

49. In the circumstances, the complaints raised by the Petitioner can only effectively be dealt with by the appointment of independent official liquidators tasked to wind up the Fund and distribute its assets as the law directs. There is no other more suitable remedy open to the Petitioner and Mr Wang and the Petitioner and Mr Wang therefore unequivocally seeks the winding up of the Fund.

#### **Nomination of Joint Official Liquidators**

50. The Petitioner nominates Mitchell Mansfield of Kroll (Cayman) Ltd., 3<sup>rd</sup> Floor, Strathvale House, 90 North Church Street, Grand Cayman KY1-1204 and Cosimo Borrelli of D&P China (HK) Limited, Level 17, Tower 1, Admiralty Centre, 18 Harcourt Road, Hong Kong be appointed as joint official liquidators (**JOLs**) of the Fund. Kroll (Cayman) Ltd and D&P China (HK) Limited (trading as Kroll) are both part of the Kroll group and have the same ultimate ownership. The

JOLs have confirmed that after making due enquiries, they are not aware of any conflicts of interest that would prevent them from accepting the appointment as liquidators.

**YOUR PETITIONER THEREFORE HUMBLY PRAYS THAT:**

- (1) The Fund be wound up in accordance with the Companies Act (2021 Revision);
- (2) Mr Cosimo Borrelli and Mr Mitch Mansfield, both of the Kroll group, be appointed as Joint Official Liquidators of the Fund and be granted the power to act jointly and severally;
- (3) The JOLs shall not be required to give security for their appointment;
- (4) The JOLs be authorised to exercise any of the powers conferred on them by the Court pursuant to section 110(2) and Parts I and II of the Third Schedule of the Companies Act (2021 Revision), without further sanction of the Court or intervention of the Court;
- (5) The JOLs be authorised to do any act or things considered by them to be necessary or desirable in connection with the liquidation of the Fund and the winding-up of its affairs and to prevent the dissipation of the Fund's assets.
- (6) The JOLs remuneration and expenses be paid out of the assets of the Fund in accordance with Part III of the Insolvency Practitioners' Regulations, 2018 and Order 20 of the Companies Winding Up Rules, 2018.
- (7) No suit, action or other proceeding shall be proceeded with or commenced against the Fund except with the leave of the Court and subject to such terms as the Court may impose.
- (8) No disposition of the Fund's property 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 (2021 Revision).
- (9) The JOLs be at liberty to appoint counsel, attorneys, professional advisers 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 to remunerate them out of the assets of the Fund.
- (10) The JOLs and their staff be remunerated out of the assets of the Fund at their usual customary rates. The JOLs be at liberty to appoint counsel, attorneys, professional advisers 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 to remunerate them out of the assets of the Fund.

- (11) The JOLs be at liberty to apply generally.
- (12) The costs of this Petition and the Petitioner be paid out of the assets of the Fund as an expense of the liquidation, such costs to be taxed if not agreed with the JOLs.
- (13) Alternatively, such directions as to the conduct of the Fund as the Court shall in all the circumstances deem necessary to ensure the proper conduct of the Fund’s management and affairs.
- (14) Such further and/or other relief be granted as the Court deems appropriate.

**AND** your Petitioner will ever pray.

**DATED** this 14<sup>th</sup> of September 2021

**FILED** this 14<sup>th</sup> of September 2021

**APPLEBY (CAYMAN) LTD.**  
Attorneys-at-Law for the Petitioner

**AMENDED WINDING UP PETITION**

**RE-DATED** this 20<sup>th</sup> of September 2021

**RE - FILED** this 20<sup>th</sup> of September 2021

**APPLEBY (CAYMAN) LTD.**  
Attorneys-at-Law for the Petitioner

**RE-AMENDED WINDING UP PETITION**

**RE-DATED** this 1<sup>st</sup> of June 2022

**RE - FILED** this of June 2022

**APPLEBY (CAYMAN) LTD.**  
Attorneys-at-Law for the Petitioner

**THIS RE-AMENDED PETITION** was presented by Appleby (Cayman) Ltd. Attorneys-at-Law for the Petitioner, whose address for service is 71 Fort Street, PO Box 190, Grand Cayman KY1-1104, Cayman Islands (Ref. 450306.001)