



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

FSD CAUSE NO: 175 of 2016 (CRJ)

**IN THE MATTER OF THE COMPANIES LAW (2016 REVISION)
AND IN THE MATTER OF SAFEGUARD SECURITY SERVICES LIMITED
BETWEEN:**

MR ADRIEN BRIGGS

Petitioner

-and-

**(1) THE SECURITY CENTRE LIMITED
(2) SAFEGUARD SECURITY SERVICES LIMITED**

Respondents

AMENDED WINDING-UP PETITION

TO: THE GRAND COURT

THE HUMBLE PETITION OF Mr Adrien Briggs (“**the Petitioner**”) of PO Box 479, KY1-1106 shows that:

1. Safeguard Security Services Limited (“**the Company**”) is an ordinary resident company incorporated in the Cayman Islands and registered with the Registry of Companies on 15 November 1994 under Registration Number 56989. The Company was originally incorporated and registered under the name Capricorn Security Services Limited. By a shareholders’ resolution dated 5 January 1995, it was resolved to change its name to Safeguard Security Services Limited, by which name it continues to be known.
2. The current registered office of the Company is located at P.O. Box 10055, Unit B1 Cayman Business Park, Grand Cayman, Cayman Islands, KY1-1001.

3. The authorised share capital of the Company is CI\$102,000 divided into 102,000 ordinary shares of CI\$1.00 of which 100 shares have been issued. The Petitioner held 90 of the issued shares from around November 2005 until on or about 5 July 2006 and is presently the holder of 40 shares of CI\$1.00 each. The remaining 60 issued shares are held by the First Respondent, The Security Centre Limited (“**TSCL**”).
4. The principal objects for which the Company was established are unrestricted with full power and authority to carry out any object not prohibited by any law as provided for by section 6(4) of the Companies Law (Revised) as amended including, without limitation, the objects more particularly set out in its Memorandum of Association.

The Company

5. The Petitioner founded the Company in 1994, from which date it carried on the business of providing security and guarding services (as well as other related activities) within the Cayman Islands. The security and guarding services provided by the Company included the provision of uniformed guards for (amongst other enterprises and locations) condominiums, banks, government, supermarkets (e.g. store detectives), car parks and other commercial sites, as well as the provision of canine and specific event security. The other activities carried out by the Company included the provision of courier services and security office management.
6. As at the date of its incorporation, the Petitioner held all of the 100 issued shares in the Company. However, in or about November 2005, the Petitioner transferred 10 of the said shares to his daughter, Katherine Briggs (“**Ms Briggs**”).

The Joint Venture

7. TSCL, which was and remains under separate ownership, engaged in similar business activities to those carried out by the Company. In or around November 2005, the Petitioner and Ms Briggs commenced discussions with Mr Graham Wall (“**Mr Wall**”) with regard to the pooling of the Company’s and TSCL’s traditional guarding businesses into a single joint venture.
8. Thereafter, TSCL and the Company entered into a Memorandum of Understanding (“**the 2005 MoU**”) dated 7 November 2005 (which was signed on behalf of TSCL on 8 November 2005 and on behalf of the Company on 1 December 2005). The 2005 MOU stated (*inter alia*) that:

- a. It was the intention of TSCL and the Company that they would *pool* their respective traditional guarding businesses, and the pooled business would be carried out by a new company (which it was intended to be called Safeguard Security Limited).
 - b. TSCL would be allocated 60% of the shares in the new company and the Company would hold the remaining 40%.
 - c. Each shareholder in the new company was to give the other shareholder the right of first refusal to purchase any shares it may wish to sell, such shares to be valued on the basis of 5 times the average annual profit over the previous 36 months.
 - d. Any services provided by TSCL or the Company to the new company were to be free of charge unless agreed to the contrary, and in the event that a charge was made, such charge “*should be at cost or an agreed nominal charge*”.
9. The Company and TSCL entered into a further memorandum of understanding on or about 23 March 2006 (“**the 2006 MOU**”). The 2006 MOU (amongst other matters) detailed the business activities that were to comprise the joint venture that was to be pursued through and as the principal objective of the Company and which was to constitute the Company’s business.
10. At all material times the 2006 MOU was kept in the custody of TSCL at its registered office. The Petitioner and Ms Briggs have been advised by TSCL that the 2006 MOU cannot be located.
11. As matters transpired, the envisaged new and separate joint venture company was never incorporated. Instead it was agreed between the Petitioner, TSCL and the Company, in or about July 2006, as anticipated by the 2006 MOU that:
 - a. TSCL’s traditional guarding businesses would be transferred to the Company and merged with the Company’s guarding business to form a joint a venture;
 - b. TSCL would become the holder of 60% of the shares in the Company (Ms Briggs transferred her 10 shares in the Company to TSCL and the Petitioner transferred 50 of his shares to TSCL. The Petitioner retained the remaining 40 shares in the Company); and
 - c. The parties would pursue the joint venture through the Company.
12. By an agreement dated 5 July 2006 made between (*inter alios*) the Petitioner, TSCL and the Company (the “**Shareholders’ Agreement**”), the parties set out their agreement as to the manner

in which the affairs of the Company and the relationship between the shareholders would be regulated with (as alluded to above) the principal objective of the Company being the pursuit of the joint venture as the business of the Company.

13. The Shareholders' Agreement contained recitals as follows:

- “(A) ...
- (B) *The parties hereto have agreed to merge the security services as detailed in 1(a)(x) services of Safeguard Security Services Ltd. and The Security Centre Ltd. in a joint venture in the Cayman Islands under the name of Safeguard Security Services Ltd. with a 60% stake in Safeguard Security Services Ltd. being transferred to The Security Centre Limited.*
- (C) *The parties hereto have agreed that the affairs of the Company and the relationship between the shareholders of the Company should be regulated on the terms of this Agreement.”*

14. Under the Shareholders' Agreement:

- a. The nature of the Company's business was defined and described in clause 1(A)(x).
- b. Both TSCL and the Petitioner were entitled to appoint to the board of the Company and maintain in office a director – a “*Shareholder Director*” – (clause 2(A)). A third director was to be appointed with the mutual agreement of the shareholders.
- c. The first directors appointed under the Shareholders' Agreement were: (i) Mr Stuart Bostock (“**Mr Bostock**”) (who was appointed by TSCL), (ii) Ms Briggs (who was appointed by the Petitioner), and (iii) Mr Graham Wall (clause 2(B)).
- d. At meetings of the board of directors, the quorum was to be all of the directors of the Company (clause 3(A)).
- e. The chairman at meetings of the board was to rotate annually between the three appointed directors (clause 3(B)).
- f. The shareholders agreed to use their respective powers to ensure, so far as they were legally able, that actions or decisions on certain matters (described as “*Reserved Board Matters*”) were not taken without the prior approval of the shareholders (clause 4(A)).
- g. Reserved Board Matters also required unanimous approval of the Shareholder Directors. Such matters included: the entry by the Company into any contract or arrangement outside of the ordinary course of the Company's business or otherwise than on an arm's

length basis, and any transaction by the Company with any TSCL group member which was outside the ordinary course of business or (if within the ordinary course of business) had a value of more than CI\$10,000 per individual transaction or was not on commercial arm's length terms (clauses 4(B)(ix) and (xii)).

- h. The parties agreed to procure that:
 - i. The Company at all times maintained accurate and complete accounting and other financial records in accordance with the requirements of all applicable laws and generally accepted accounting principles acceptable in the Cayman Islands (clause 9(A));
 - ii. Monthly management accounts containing such information as each party shall reasonably require would be prepared and despatched by the Company to the directors within 20 days of the end of each month (clause 9(B)); and
 - iii. Each shareholder and its authorised representatives would be allowed access at all reasonable times to examine the books and records of the Company (clause 9(C)).
- i. There were certain restrictions imposed upon the transfer of shares by the parties. In summary, (with certain exceptions for the sale of shares to family members or the holding company or subsidiary company of an incorporated shareholder) there existed a right of pre-emption in favour of the non-selling shareholder entitling the non-selling shareholder to purchase the shares of the selling shareholder. Only in the event that the non-selling shareholder did not exercise the right to purchase the shares could the selling shareholder transfer their shares to an 'outside' third-party (clause 10).
- j. The parties covenanted with one another to use all reasonable endeavours to promote and develop the Company's business and to consult fully on all matters materially affecting the development of the Company's business in accordance with good business practice and the highest ethical standards (clause 13(A)).
- k. The parties covenanted with one another (in clause 13(B)) that until 5 years after ceasing to be a party to the Shareholders' Agreement, they would not (and would procure that no affiliate) be engaged, concerned or interested either directly or indirectly, and whether on their own behalf or on behalf of or in association with others or in any capacity whatsoever in carrying on in competition with the Company in the area of pooled interest as defined in clause 1(x).

- l. The shareholders undertook with one another to exercise their powers in relation to the Company so as to ensure that the Company fully and promptly observed, performed and complied with its obligations under the Shareholders' Agreement and to exercise their rights as shareholder in a manner consistent with the Shareholders' Agreement (clause 18(B)).
- m. Unless agreed to by the other shareholder, no shareholder was entitled to assign any of its rights or obligations arising under the terms of the Shareholders' Agreement (clause 19(B)).
- n. The shareholders agreed that each would exercise all voting and other rights, *inter alia*, so as to give effect to the Shareholders' Agreement (clause 21(B)).

The Petitioner will refer to the Shareholders' Agreement at trial for its full terms, true meaning and effect.

15. In the premises, it is averred that, at all material times since at least 5 July 2006, the Company has been founded upon the basis of a relationship of trust and confidence as between the Petitioner and TSCL such as created and/or brought into existence, at all material times, an agreement or understanding between them to the effect that they would both be entitled to participate in the management of the Company and would pursue in good faith the joint venture in accordance with the Shareholders' Agreement and for their mutual benefit and for the benefit of the Company. In the premises, following the entry into the Shareholders' Agreement the Company constituted and was intended to be operated as a 'quasi-partnership' as between the Petitioner and TSCL.

The operation of the Company

16. Although Ms Briggs was appointed, by the Petitioner, as a director of the Company, she was not regularly or continually involved in the running of the Company. This was as a result of Mr Bostock: (i) repeatedly making it clear to Ms Briggs that he considered her opinions and ideas to be of no value, and (ii) in pursuing a course with the intention and result of avoiding Ms Briggs being involved in the day-to-day management of the Company's business, assets and affairs. Mr Bostock and (originally) Mr Wall, were the directors, largely to the exclusion of Ms Briggs, with executive roles as regards the Company's business operations.
17. In or about May 2007, the Petitioner loaned CI\$234,000 to the Company through a company owned and/or controlled by him, Jakab Holdings Limited ("**JHL**"), to assist the Company with its working capital requirements.

18. At a meeting of the board of the Company held on 9 July 2013, Mr Bostock, Mr Wall and Ms Briggs voted that the amount of JHL's loan to the Company should be increased to CI\$400,000 by reducing the dividend payable to the Petitioner. The loan advanced by the Petitioner to the Company (through JHL) and the balance of the said dividend remains outstanding.
19. Notwithstanding that the Company was to be operated as a joint venture and a 'quasi-partnership' and that, pursuant to clause 9(A) of the Shareholders' Agreement, appropriate accounting and financial records were to be kept in relation to the Company, Mr Bostock caused financial statements and records to be prepared by the Company which did not maintain any or any proper separation between the assets, liabilities and affairs of the Company and the assets, liabilities and affairs of TSCL and/or TSCL's affiliates.
20. From in or about April 2007, Mr Bostock caused the Company to make payments to TSCL which were purportedly payments in respect of management and other administrative services said to have been provided by TSCL to the Company ("**the Cross Charge**"). It was the understanding of Ms Briggs and the Petitioner that the Cross Charge paid to TSCL by the Company was calculated by reference to the actual cost price of management and administrative services that were in fact provided to the Company by TSCL. The amount of the Cross Charge paid by the Company to TSCL increased substantially between 2007 and 2013 and reached a level which caused Ms Briggs and the Petitioner concern and caused them to seek more details of the Cross Charge from TSCL than had, up to that point in time been provided to them and the Company.
21. In or about June 2013, Ms Briggs was informed by Mr Wall that Ms Patti Jane Ebanks ("**Ms Ebanks**"), who had been an employee of TSCL, had misappropriated nearly C\$\$1,000,000 from and belonging to TSCL. Ms Ebanks had been a director of the Company between September 2010 and June 2013. Mr Bostock wrongly, and without any justification, caused the Company to pay CI\$140,000 to TSCL in order that the losses suffered by TSCL from the misappropriations made by Ms Ebanks would be reduced, albeit at the expense of the Company.
22. In the light of the matters referred to above, in an email to Mr Bostock sent on 2 July 2013, Ms Briggs raised a number of "*questions and concerns*" that she and the Petitioner had regarding, *inter alia*:
 - a. The absence of financial and/or management reports in relation to the Company;
 - b. The absence of bank statements for the Company;
 - c. The way in which the Cross Charge was broken down;
 - d. The use of the Company's funds by TSCL's operations; and
 - e. The merging or pooling of the Company's revenues into TSCL's general accounts.

In addition, Ms Briggs wished to discuss the activities of Ms Ebanks and the reason why it had been considered appropriate by TSCL (which it plainly was not) to cause the Company to bear some of the loss caused to TSCL and resulting from Ms Ebanks' conduct towards TSCL.

23. Ms Briggs attended a meeting with Mr Bostock and Mr Ian Rotsey (who was the Chief Financial Officer for TSCL) on or about 9 July 2013 to discuss the issues raised by Ms Briggs in her email of 2 July 2013 as well as the issues concerning Ms Ebanks.
24. During the course of that meeting, Mr Rotsey informed Ms Briggs that the Cross Charge was calculated as a percentage of the gross profit of each "*TSCL division*". That is to say, TSCL charged the Company a sum of money over and above and entirely unrelated to the actual costs incurred by TSCL in respect of the Company's operations and business in pursuit of the joint venture. Such an arrangement was contrary to the Petitioner's understanding and expectation, and had the effect that the Company's assets were (wrongfully) applied in subsidising the businesses and operations of companies owned and/or controlled and/or operated by TSCL and which did not and do not form part of the Company's business operations in the pursuit of the joint venture or accord with any terms of the Shareholders' Agreement.
25. Further, during the course of that meeting and subsequently, Ms Briggs asked Mr Bostock and Mr Rotsey for: (i) documents and calculations in relation to the Cross Charge; (ii) profit and loss statements in relation to the Company's business and trading operations; (iii) past and up-to-date balance sheets for the Company; (iv) copies of the Company's bank account statements; and (v) other records in relation to the Company's financial position, business affairs and trading activities.
26. Notwithstanding the said requests for information and documents, Ms Briggs was only ever provided with very limited information as set out further below (which did not accord with what the Petitioner was entitled to under the Shareholders' Agreement and which was in breach of the Shareholders' Agreement and contrary to the understandings as between the Petitioner and TSCL and the Petitioner's reasonable expectations under and in accordance with the joint venture and the 'quasi-partnership').
27. Furthermore, in or about 2013, Mr Bostock decided to relocate the Company to newly-constructed premises at Printers Way, Grand Cayman, Cayman Islands. Since the said relocation, TSCL has demanded and Mr Bostock has caused the Company to pay, large amounts in rent (through an addition to the Cross Charge). The sums now being paid in rent to TSCL, are significantly larger than the amounts in respect of rent paid by the Company at its previous premises and in circumstances where the Company does not (and did not) require larger premises

in order to conduct its business operations in pursuit of the joint venture. The Petitioner believes that the new building is owned, in whole or in part, by TSCL and/or one or more of TSCL's significant shareholders.

28. At a meeting attended by Ms Briggs, Mr Bostock and Mr Rotsey, in or about July 2014, Ms Briggs again expressed concerns with the management of the Company and the nature, detail an accuracy of the information with which she and the Petitioner were being provided.

29. In or about October 2014 TSCL provided the Petitioner with a document entitled "*A Review of the Shareholder's [sic] Agreement for Safeguard Security (2005) Limited and Current Relationship between The Security Centre Limited and Adrien Briggs*" ("**the TSCL Review**") in which it proposed that TSCL would: (i) purchase the Petitioner's shares in the Company; (ii) repay the working capital loan (which had been advanced by JHL at the Petitioner's behest); and (iii) pay to the Petitioner sums which were due from the Company in respect of unpaid dividends.

30. In the TSCL Review:

- a. It was said to be TSCL's opinion that the existing agreements and arrangements between TSCL, the Company and the Petitioner were, "*no longer suitable and fail accurately to reflect the situation in practice that now exists*".
- b. This was further said to have been raised as an "*audit issue*" by TSCL's auditors during the course of TSCL's annual audit of its financial statements.
- c. TSCL stated that, as a consequence, it was its desire (and that of its auditors) that the agreements between the parties be reviewed and revised so as, "*to bring them into line with the actuality of the operation of the business on the ground*". It was further asserted that this would, in turn, "*allow a rebalancing of the benefits earned*" by each of TSCL and the Petitioner.
- d. TSCL proposed that there should be (*inter alia*): "*An acknowledgement and agreement that the book of business of [the Company] has, in effect, organically transferred to TSCL over the past several years with the result that from 1st April 2014 [the Company] as a legal entity now contains no active trading activity*".

31. Appended to the TSCL Review was a draft "*Amended Shareholders Agreement*", clauses 1 and 2 of which provided that:

- “1. ... the work and services covered by the Original Shareholders’ Agreement have, to an increasing degree, been developed, won and maintained through the efforts and growing brand of TSCL and its staff. This has included, but is not limited to, the standardisation of the uniforms worn by the security officers to being those of TSCL only and the signature of all contracts as being between the customer and TSCL as the service provider.*
- 2. Whilst the growth in the strength of the TSCL brand since the date of the Original Shareholders’ Agreement has enabled new contracts to be won and has increased the revenue and profits of guarding services covered by that agreement it has created a conflict between the position laid out in the Original Shareholders’ Agreement (whereby the services are offered by [the Company]) and the actual position in the market and as covered by the contracts which govern the services being provided which shows that these services are being provided by TSCL.”*

32. In the premises, and by TSCL’s own admission, it now appears that TSCL (which was appointed originally simply to provide management services to the Company) has wrongly appropriated the business and goodwill of the Company, i.e. the businesses that were being pursued as part of the joint venture, and has wrongly acted in competition with the Company in breach of the Shareholders’ Agreement and contrary to the understandings as between the Petitioner and TSCL and the Petitioner’s reasonable expectations under and in accordance with the joint venture and the ‘quasi-partnership’. For the avoidance of doubt, such appropriation and competition was not agreed to, acquiesced in, procured or permitted by either the Petitioner or Ms Briggs.

33. In an email to Ms Briggs and the Petitioner sent on 5 December 2014 (and copied to Mr Bostock and Mr Wall), Mr Rotsey stated that:

- a. TSCL charged the Company for direct expenses incurred by TSCL in connection with the performance of the Company’s business.
- b. In addition, TSCL charged the Company a further sum (the Cross Charge) which was *“calculated on a pro-rated basis of the administrative expenses of the group which are not directly related to the Safeguard business ... The pro-ration is calculated as the proportion of Safeguard’s gross sales compared to those of the TSCL group as a whole. E.g. if TSCL’s group gross sales are \$10m and Safeguard’s gross sales are \$5m, Safeguard will be charged 50% of the total indirect administrative costs of TSCL”*.

34. In or about April 2015 Ms Briggs discovered that guard-dogs owned by the Company had been used by TSCL to service contracts that it had made on its own behalf, but without any payment to the Company being made in respect of the use of the same. Furthermore, such contracts constitute competition to the business intended to be carried on by the Company in pursuit of the joint venture in breach of the terms of the Shareholders' Agreement and contrary to the understanding as between the Petitioner and TSCL and the Petitioner's reasonable expectations under and in accordance with the joint venture and 'quasi-partnership'.
35. In or about May 2015, Ms Briggs was provided by Mr Rotsey with certain information in relation to the Company. Amongst other things, this information served to confirm the position as reflected by the matters referred to in paragraphs 23 and 32 above, to the effect that the Company had indeed been charged for expenses that did not relate to its business, operated in pursuit of the joint venture, but were expenses that were attributable to separate businesses that were owned and/or operated exclusively by TSCL and/or its affiliates including businesses / companies known as 'Homesafe', 'Apex' and 'Sat-Trak'.
36. The information provided also included a list of the Company's clients. However, the said list did not include any reference to certain contracts (including, in particular, the Company's contract to provide guard services at the Government Administrative Building which contract had been in existence between the Company and the Government of the Cayman Islands prior to the commencement of the joint venture with TSCL) which Ms Briggs believed ought to have been included.
37. In an email to Mr Rotsey sent on 27 May 2015, Ms Briggs drew attention to the said matters as follows:

"I have reviewed the admin cross charge and there are items in [the Company's] accounts that do not relate to [the Company's] business. Can you please explain why [the Company] is paying for Homesafe, Apex and Sat-Trak banners, logos and graphics?"

Also, I don't see the Government admin building under the list of [the Company's] clients nor do I see The Fall's K9 contract over the Christmas [period]? Are they under name's I don't recognise?"

38. In an email sent on 1 June 2015, Mr Rotsey informed Ms Briggs that the contract in relation to the Government Administrative Building "*does not fall within... [the Company's] revenue*", which assertion, as pleaded in paragraph 34 above, was not in fact correct.

39. In a letter from the attorneys acting for and on behalf of Ms Briggs and the Petitioner to TSCL dated 14 April 2016, the Petitioner offered to sell his shares in the Company to TSCL, following the taking of a proper account and undertaking a proper inquiry in relation to various issues relating to the affairs of the Company as rehearsed above.
40. Subsequently, in a letter from TSCL sent in response and dated 12 May 2016:
- a. TSCL refused to provide certain information that had been requested by the Petitioner's and Ms Briggs' attorneys in relation to the Cross Charge (wrongfully) levied by TSCL upon the Company on the basis that it was said that, "*much of the information being requested is both confidential and proprietary to TSCL*". This refusal constitutes a breach of the Shareholders' Agreement and is contrary to the understanding as between the Petitioner and TSCL and the Petitioner's reasonable expectations under and in accordance with the joint venture and the 'quasi-partnership'.
 - b. TSCL alleged that the contract in relation to the Government Administrative Building fell outside of traditional guarding as envisaged under the Shareholders' Agreement, which assertion, as pleaded above, was not and is not correct. The contract was one that belonged to and was part of the business of the Company prior to the commencement of the joint venture and has wrongly been diverted by TSCL for its own benefit in breach of the Shareholders' Agreement and contrary to the understanding as between the Petitioner and TSCL and the Petitioner's reasonable expectations under and in accordance with the joint venture and the 'quasi-partnership'.
 - c. TSCL said, in relation to the decision to relocate the Company to the new premises that, "*the agreement or otherwise of the Briggs' is irrelevant to the decisions of TSCL as an independent company to seek to improve its position and provide a better working environment for all staff, including those of [the Company]*" (emphasis added) and stated that any objection "*will not change the decision*". Which state of affairs is a breach of the Shareholders' Agreement and/or contrary to the understanding as between the Petitioner and TSCL and the Petitioner's reasonable expectations under and in accordance with the joint venture and the 'quasi-partnership'.
 - d. TSCL offered to purchase the Petitioner's shares in the Company for CI\$87,250, which sum was said to be, "[b]ased on the three most recently completed financial years (the results for two of which have been audited with clean opinions by KPMG as part of the TSCL Group audit, and a third of which is being audited currently with another clean opinion expected)". The said offer did not include any provision for an account of the

affairs of the Company to be carried out or for any increase in the price being offered to take account of the matters aforesaid. It is averred, that such an offer was not in accordance with clause 4(H) and (I) of the Shareholders' Agreement.

Recent Developments

41. On or around 1 October 2021 TSCL for the first time, without conceding the allegations set out above and below in this Petition, agreed that it was just and equitable to wind up the Company, and as such the gateway for the Company to be wound up in accordance with section 92(e) of the Companies Act (as revised) was met. This was recorded in the recital to the Order of Justice Ramsay-Hale dated 1 October 2021. However, TSCL did not accept that the Company should be wound up and instead submitted that the Court should exercise its discretion under section 95(3)(d) of the Companies Act (as revised) to make an order that one member shall purchase the other member's shares in the Company.

42. On 12 May 2022 TSCL, through their attorneys of record, HSM Chambers, wrote to Mr. Briggs, via his attorney of record, Nelsons, again, without acceptance of "*a number of allegations set out in the petition*", but accepting that "*no useful purpose would be served in keeping the Company in operation (to the extent that it has any operations at all)*" and confirming that TSCL "will not object to the winding up of the Company and placing it in liquidation". HSM proposed, on behalf of TSCL, that the members pass a special resolution requiring the Company to be wound up in accordance with section 92(a) of the Companies Act (2022 Revision) and appointing joint official liquidators from Kalo to act in the matter.

41.43. Mr. Briggs agreed with this course of action and on or around 20 June 2022 a resolution was signed by both members of the Company resolving to place the Company into a Court supervised liquidation in accordance with section 92(a) of the Companies Act (2022 Revision) and to appoint Elizabeth Galbraith Mackay and Paula Jane Richmond of Kalo as joint official liquidators. This now forms an alternative ground upon which this Petition seeks the winding up of the Company, as to which see 46 and 47, below.

Grounds for seeking relief

42.44. In view of the foregoing:

- a. TSCL and/or its nominated director has wrongfully diverted business opportunities away from the Company and/or has wrongfully appropriated the goodwill and business of the Company and/or is wrongfully acting in competition with the Company.

- b. TSCL has wrongfully enjoyed the benefit of assets belonging to the Company for use in the conduct of its own business or the businesses of its affiliated companies, without accounting to the Company for or making payment to the Company in respect of such benefits.
- c. TSCL has wrongfully levied the Cross Charge against the Company and otherwise charged the Company for rental in respect of premises it does not need and as such has wrongfully extracted money from the Company for TSCL's own use.
- d. The Petitioner and his nominated director, Ms Briggs, have not been provided with information to which he (as a shareholder in the Company) is entitled and have effectively been excluded from proper and effective participation in the management of the Company, its business and affairs as was envisaged under the terms of the Shareholders' Agreement and the 'quasi-partnership' referred to above.
- e. As a consequence, the shareholders' relationship, based on trust and goodwill and constituting a 'quasi-partnership' has irretrievably broken down.

43.45. In the premises:

- a. There has been a loss of the substratum of the Company and it has become impossible and/or impractical for the business of the Company (i.e. the pursuit of the joint venture as pleaded above) to be carried on in accordance with the reasonable expectations of and understandings between the shareholders, the express terms of the Shareholders' Agreement and the aforesaid 'quasi-partnership.
- b. Further or alternatively, by reason of the matters aforesaid, there has been a want of probity in the conduct and management of the Company, its business and affairs and/or a justifiable loss of confidence in the conduct and management of the Company and/or a breakdown in the relationship of trust and confidence as between the Petitioner and TSCL.

44.46. In the alternative to paragraphs 44 and 45 above, the Company should be wound up by virtue of the special resolution passed by 100% of the members of the Company, dated 20 June 2022 resolving that the Company be wound up by the Court.

Order sought

~~45.47.~~ In all the circumstances, it is just and equitable that the Company be wound by the Court pursuant to section 92(e) of the Companies ~~Law- Act (2016~~22 Revision), or in the alternative, pursuant to section 92(a) of the Companies Act (2022 Revision).

~~46.48.~~ In the event of the liquidation of the Company the Petitioner anticipates that there would be a surplus for contributories. Further and in any event, the Petitioner has an interest in the proper inquiry into the affairs of the Company and the repatriation of funds and assets belonging to the Company or the pursuit of compensation in respect of assets and business opportunities that have been diverted, by TSCL, away from and which belong to the Company.

YOUR PETITIONER therefore humbly prays that:-

~~(1) TSCL be ordered to purchase the Petitioner's shares in the Company pursuant to section 95(3) of the Companies Law (2016 Revision) at a fair value to be determined by this Court or an independent valuer with no discount for a minority shareholder and with a premium to reflect the losses suffered by the Company as a result of the matters set out herein, together with interest.~~

(1) That the Company be wound up by the Court under the provisions of the Companies Act (2022 Revision).

(2) Such further or other orders, accounts, inquiries and directions as may be necessary.

(3) Further or other relief.

~~(4) Further or alternatively, that the Company be wound up by the Court under the provisions of the Companies Law (2016 Revision).~~

~~(5)~~(4) That ~~Graham Robinson~~Elizabeth Galbraith Mackay and ~~Paula Jane Richmond~~Russell Homer, of ~~Chris Johnson Associates Ltd, PO Box 2499, Elizabethan Square, Shedden Road, George Town, Grand Cayman, KY1-1104, Kalo, PO Box 776, 38 Market Street, Suite 4208, Canella Court, Camana Bay, Grand Cayman KY1-9006,~~ Cayman Islands be appointed as joint official liquidators of the Company (the "JOLs").

~~(6)~~(5) The JOLs be authorised to exercise any of the powers listed in the Third Schedule to the Companies Law without further sanction or intervention of the Court.

~~(7)~~(6) The JOLs be authorised to do any act or thing considered by them to be necessary or desirable in connection with the liquidation of the Company and the winding up of its affairs.

~~(8)~~(7) The JOLs do file with the Clerk of the Court a report in writing of the position of

the Company and the progress which the liquidators have made with the winding up of the Company, with the realisation of its assets and in relation to any other matters connected to the winding up of the Company, at such time and in such manner as the Court may direct.

~~(9)~~(8) The JOLs be at liberty to appoint such counsel, attorneys, professional advisors, whether in the Cayman Islands or elsewhere, as they may consider necessary to advise and assist them in the performance of their duties and on such terms as they may think fit and to remunerate them out of the assets of the Company.

~~(10)~~(9) No disposition of the Company'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 Law.

~~(11)~~(10) The JOLs and their staff be remunerated for their professional services and time in accordance with Part III of the Insolvency Practitioners Regulations 20~~0~~18 (as amended).

~~(12)~~(11) The JOLs be at liberty to apply generally.

~~(13)~~(12) Such further or other relief be granted as the Court deems appropriate.

~~(14)~~(13) Costs.

AND YOUR PETITIONER will ever pray etc.

DATED this ~~19th day of October 2016~~ 30th day of June 2022

Nelsons ~~& Co.~~, Attorneys-at-Law

Attorneys for the Petitioner, Mr Briggs

Petition Settled by:

Stephen Atherton Q.C.

Tony Beswetherick

20 Essex Street

Nelsons

NOTE: This petition is intended to be served on the Company and TSCL.

THIS PETITION is presented by Nelsons ~~& Co.~~, Attorneys-at-Law, for and on behalf of the Petitioner whose address for service is P.O. Box ~~2075~~30069, 31 The Strand, 46 Canal Point Drive, Grand Cayman, KY1-1~~05~~201, Cayman Islands.

NOTICE OF HEARING

TAKE NOTICE THAT the hearing of this Petition will take place at the Law Courts, George Town, Grand Cayman on:

DATE:

TIME:

Any correspondence or communication with the Court relating to the hearing of this Petition should be addressed to the Registrar of the Financial Services Division of the Grand Court at PO Box 495, Grand Cayman, KY1-1106, Telephone 345 949 4296.