

THE GRAND COURT OF THE CAYMAN ISLANDS
SPECIAL SERVICES DIVISION

CAUSE NO. FSD OF 2022 ()

IN THE MATTER OF SECTION 94 OF THE COMPANIES ACT (2022 REVISION)
AND IN THE MATTER OF HOODS BAY LIMITED

WINDING-UP PETITION

TO THE GRAND COURT

The humble petition of Fargan Worldwide Properties Ltd, a company limited by shares duly organized and existing under the laws of the British Virgin Islands, with registration number 2043465, having its registered address at P.O. Box 146, Road Town, Tortola, British Virgin Islands ("**Petitioner**"), shows that:

Introduction

1. Hoods Bay Limited ("**Company**") is an exempted limited company incorporated in the Cayman Islands on 19 December 2012 in accordance with the Companies Act (as amended) ("**Act**") with registration number 274193.
2. The registered office of the Company is situated at Amicorp Cayman Fiduciary Limited, P. O. Box 10655, 2nd Floor, Regatta Office Park, Leeward 2, West Bay Road, Grand Cayman, KY1-1006, Cayman Islands.
3. The authorised share capital of the Company is US\$50,000 divided into 50,000 ordinary shares, par value of US\$1 each. The total number of shares issued is 104.
4. The issued shares in the Company are held as follows:
 - a. 52 shares (i.e., 50%) held by the Petitioner.
 - b. 52 shares (i.e., 50%) held by Ms Sandra Regina Bonifacio Pestana E Silva ("**Sandra**").

This Petition was filed by Carey Olsen, attorneys-at-law for the Petitioner, whose address for service is Level 1, Willow House, Cricket Square, Grand Cayman, Cayman Islands KY1-1001.

5. The Petitioner is wholly owned by Mr Luiz Antonio Gonçalves E Silva ("**Luiz**") and Luiz is also the sole director of the Petitioner. Accordingly, Luiz is the ultimate beneficial owner of the Petitioner's 50% shareholding in the Company. Indeed, the Petitioner received its 50% shareholding in the Company by way of transfer from Luiz on 3 November 2020.
6. Both Sandra and Luiz reside in Brazil. Sandra and Luiz were formerly married (collectively by reference to that former marital status, "**Silvas**"). The Silvas divorced on 15 October 2020, although one discrete element of the post-divorce arrangements continues to play out in Brazil (as referred to in more detail at paragraph 24 below). The matters giving rise to the present petition arise from substantively the same matters that underly the divorce.
7. The Company was originally incorporated for the purpose of holding, managing, and investing the Silvas' assets as a couple. This was the Company's principal business at all relevant times.
8. The only assets of the Company are cash and investments held in the Company's portfolio with Bank Itaú International, Itaú Private Bank Miami ("**Itaú Bank**"). This portfolio consists of a mix of cash, fixed income products, equities, and alternative products.
9. The Petitioner asserts that the Company is solvent and that upon liquidation there will be a surplus for shareholders.

Summary of grounds

10. The Petitioner seeks the winding up of the Company on the following alternative grounds (which are particularised in the rest of this petition):
 - a. **Failure of substratum.** The sole purpose for which the Company was incorporated was to hold, manage, and invest the Silvas' assets as a couple. The Silvas are no longer a couple, having divorced. It is no longer possible for the Company to fulfil its purpose. Accordingly, that which the Company was formed to do can no longer be done. In the alternative, it is no longer possible for the Company to carry on its business in accordance with the reasonable expectations of the shareholders.
 - b. **Deadlock.** There exists an irreconcilable impasse in the Company's corporate decision-making process, which is now damaging the Company.

This Petition was filed by Carey Olsen, attorneys-at-law for the Petitioner, whose address for service is Level 1, Willow House, Cricket Square, Grand Cayman, Cayman Islands KY1-1001.

- c. **Loss of trust and confidence between quasi-partners.** The Company is a family company requiring mutual trust and confidence and, as such, is a quasi-partnership between Sandra and the Petitioner (acting as nominee for Luiz). The Petitioner (and Luiz) has irrevocably and justifiably lost trust and confidence in Sandra as a quasi-partner.

11. The Petitioner submits that all three of the above grounds are made out and that any one of those grounds is on its own sufficient to make it just and equitable for the Company to be wound up pursuant to ss. 92(e) and 94 of the Act.

Narrative of the grounds

12. The Silvas were married in Sao Paulo, Brazil, on 4 April 1992. The Company is a family company that was founded in 2013 (by off the shelf purchase from Itau Cayman Nominees Limited) on the basis of mutual trust and confidence between the Silvas as husband and wife.
13. The Silvas became shareholders in the Company on 6 February 2013 in equal shares. Since then, the Silvas remained 50/50 shareholders (or, at times, joint holders of all shares) in the Company until 3 November 2020, when Luiz transferred his 50% shareholding to the Petitioner in circumstances described below in the context of the Silvas' divorce that was concluded on 15 October 2020.
14. From 6 February 2013 and up to the date of this Petition the Silvas were and remain the only directors of the Company. No director has been designated as chairman.
15. The relevant provisions of the Memorandum and Articles of Association of the Company ("**Articles**") are as follows:
 - a. The quorum for board meetings is two directors (Article 109). There is no provision for a lower quorum at an adjourned meeting if the quorum is not met at the first meeting. Accordingly, no board meeting can be quorate unless both Sandra and Luiz attend.
 - b. The board may convene an extraordinary general meeting ("**EGM**") of the Company at any time (Article 48). The same Article 48 also entitles either one of the Silvas, in their capacity as shareholders, to requisition an EGM. If the board does not proceed to act on such requisition within 21 days, the requisitioner may convene and hold the same.
 - c. EGMs are to be convened on five clear days' notice (Article 49).

This Petition was filed by Carey Olsen, attorneys-at-law for the Petitioner, whose address for service is Level 1, Willow House, Cricket Square, Grand Cayman, Cayman Islands KY1-1001.

- d. The quorum at an EGM as first convened is two shareholders (Article 52).
 - e. However, if such quorum is not present within half an hour, the EGM is adjourned by a week and, if quorum is not present at the adjourned meeting within half an hour, the presence of a single shareholder would constitute quorum (Article 53).
 - f. If only one director is present at an EGM, that director shall be designated chairman (Article 55).
 - g. In the case of equality of votes, the chairman shall be entitled to a casting vote (Article 63).
 - h. The Articles do not modify the Act in respect of the definition of special resolution. Ordinary resolution definition calculates the majority by reference to shareholders actually present at the EGM.
 - i. Directors can be removed and appointed by ordinary resolution (Articles 96 and 97). A director can also be removed by notice signed by all his co-Directors (Article 99(f)). The Articles do not fix a minimum or a maximum number of directors.
16. The Articles do not offer any realistic opportunity to break the deadlock. In practice, the business of the Company has, until the breakdown in the Silvas' relationship, always been regulated informally on the basis of mutual trust and confidence between the Silvas. There have been no formal board meetings or EGMs and very few written formal resolutions passed.
17. The main decision the Company had to make from time to time was with regard to the composition of the portfolio of investments it held at Itaú Bank ("**Portfolio**"). In order to keep the Portfolio performing well, the Company would from time to time instruct the Itaú Bank to adjust the investment mix in the Portfolio as between cash, fixed income products, equities, and alternative products, and also between various products within those categories of investments.
18. The relevant analysis was performed and the decisions were made by Luiz, jointly with advisers from Itaú Bank. Save as described below in relation to the more recent decisions, Sandra did not exercise formal decision-making as a director in this regard and, instead, informally concurred with Luiz, consistent with the subsisting relationship of trust and confidence.

This Petition was filed by Carey Olsen, attorneys-at-law for the Petitioner, whose address for service is Level 1, Willow House, Cricket Square, Grand Cayman, Cayman Islands KY1-1001.

19. However, post divorce, when it came to the Company actually giving the relevant instructions to Itaú Bank to make changes to the Portfolio, Itaú Bank required express formal consent of both directors (following instructions from Sandra). As such, no change to the Portfolio (and, even more so, no cashing out or distribution of the proceeds of the Portfolio or its distribution *in specie*) was or is possible post-divorce without express consent of Sandra as well as Luiz.
20. The Petitioner (and Luiz) is of the view that, in light of the Silvas' divorce, the Company can no longer do what it was set up to do, namely, act as a vehicle for the Silvas' family investments. The Company should be liquidated and its surplus assets distributed so that its shareholders can manage their respective shares of the Portfolio as they see fit in their separate lives.
21. In fact, following their divorce on 15 October 2020, Sandra and Luiz did agree a mechanism for the orderly extraction of Luiz's interests from the Company, which would split the Portfolio 50/50 between the Silvas and enable Sandra to continue as the sole shareholder of the Company. The relevant discussions occurred during August 2020. The transfer of Luiz's shares in the Company to the Petitioner on 3 November 2020 was the first step in the agreed process. The process did not complete, because Sandra ultimately stopped it in the circumstances described below.
22. The next step in the process was supposed to be the transfer of 50% of the Portfolio from the Company to the Petitioner and the surrender by the Petitioner of its shares in the Company, leaving Sandra as the sole shareholder in the Company (which would now have 50% of its former assets) and leaving Luiz as the sole shareholder in the Petitioner (which would now also have 50% of the Company's former assets).
23. By email of 20 November 2020 to Itaú Bank, Sandra approved the transfer of 50% of the Portfolio from the Company to the Petitioner. However, three days later, on 23 November 2020, Sandra sent a follow-up email to Itaú Bank rescinding her previous instructions. As the email itself explains, Sandra stopped the division process due to "*commercial disagreements here in Brazil*". This refers to disagreements between the Silvas regarding post-divorce division of another asset. Further correspondence on this also followed in June 2021, whereby Sandra first re-authorized and then again blocked the separation. However, as a result of Sandra's second authorisation and before she later revoked the same, Itaú Bank performed a partial transfer of assets. This transfer resulted in 50% of the cash held by the Company being transferred to the Petitioner. Following Sandra's revocation of the second authorisation, Itaú Bank requested signatures from both Sandra and Luiz before proceeding with any further transfers.

This Petition was filed by Carey Olsen, attorneys-at-law for the Petitioner, whose address for service is Level 1, Willow House, Cricket Square, Grand Cayman, Cayman Islands KY1-1001.

24. As well as blocking the further consensual separation of the parties' interests in the Company, the extraneous "*disagreements*" referred to by Sandra also blocked any agreement on adjustments to the Company's Portfolio.
25. In particular, Sandra refused to authorise Luiz's proposed changes to the Portfolio on 26 August 2021 and on 29 March 2022. Portfolio value declined approximately 9.31% in the year to April 2022. Until relatively recently, Sandra also blocked payment of the invoices of Amicorp Cayman Fiduciary Limited ("**Amicorp**"), the Company's Cayman Islands registered office provider, straining the relationship between the Company and Amicorp, and, ultimately, potentially exposing the Company to claims and termination of registered office services.
26. Sandra's refusal to authorise adjustments to the Portfolio and her (recently lifted) block on payments of Amicorp's invoices are both grounded in the "*disagreements*" referenced above, which concern the further evolution of post-divorce disputes between the Silvas in Brazil and have nothing to do with whether or not the proposed changes to the Portfolio are in the best interests of the Company.
27. As such, Sandra is using her power as a director and 50/50 shareholder of the Company to block any changes to the Portfolio and (until recently) fee payments to Amicorp as leverage to improve her position in a parallel dispute she is having with Luiz in Brazil, regardless of the fact that the Portfolio is losing value in the meantime. This is a breach of Sandra's fiduciary duties as director of the Company. This conduct caused the Petitioner to justifiably lose faith and confidence in Sandra as a quasi-partner (to the extent such confidence wasn't already justifiably lost in the context of the divorce itself).
28. Therefore, not only has the Company lost its substratum, but it is also in a state of deadlock. The Company's 50/50 shareholders and directors cannot agree on the sole item of business that the Company must conduct, namely, the management of the Portfolio. For the purposes of deadlock, it does not matter whether Sandra's opposition to the changes in the Portfolio is well founded or not. The fact is that Sandra and the Petitioner are at an impasse and there is no reasonable prospect of resolution under the Company's Articles.
29. However, because Sandra's opposition is in fact founded on matters that are extraneous to the question of what the best course of action is in regard to the Portfolio, that opposition also grounds a justifiable loss of faith and confidence in Sandra as a quasi-partner in the Company on the part of the Petitioner.

This Petition was filed by Carey Olsen, attorneys-at-law for the Petitioner, whose address for service is Level 1, Willow House, Cricket Square, Grand Cayman, Cayman Islands KY1-1001.

30. In the premises, the Company has lost its substratum, the Company is in deadlock, and there has been irretrievable and justifiable breakdown of trust and confidence between the quasi-partners.

Conclusion

31. On the basis of all the matters stated above, it is just and equitable that the Company be wound up pursuant to ss. 92(e) and 94 of the Act.

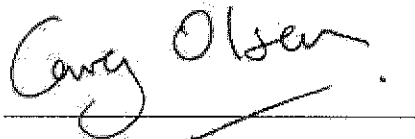
YOUR PETITIONER THEREFORE HUMBLY PRAYS THAT:

- (1) The Company be wound up under the provisions of the Act;
- (2) Mitchell Mansfield and Timothy Davies, both of Kroll (Cayman) Ltd., 3rd Floor, 90 North Church Street, George Town, Grand Cayman, Cayman Islands, be appointed as Joint Official Liquidators of the Company ("**JOLs**") 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 take such steps as may be necessary or expedient for the protection of the Company's assets, and for that purpose may exercise any of the powers specified in Part I and Part II of the Third Schedule of the Act, without further sanction of the Court or otherwise as the Court may direct;
- (5) The JOLs' remuneration and expenses be paid out of the assets of the Company in accordance with Part III of the Insolvency Practitioners' Regulations 2008 (as amended) and Order 20 of the Companies Winding Up Rules 2018 (as amended);
- (6) 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 Company;
- (7) The costs of this Petition and the Petitioner be paid out of the assets of the Company;
- (8) The JOLs be at liberty to apply generally; and
- (9) Such further and other relief be granted as the Court deems appropriate.

AND your Petitioner will ever pray etc.,

This Petition was filed by Carey Olsen, attorneys-at-law for the Petitioner, whose address for service is Level 1, Willow House, Cricket Square, Grand Cayman, Cayman Islands KY1-1001.

DATED this 25th day of August 2022

A handwritten signature in cursive script that reads "Carey Olsen". The signature is written in black ink and is positioned above a horizontal line.

Carey Olsen

Attorneys-at-Law for the Petitioner

NOTE: This petition is intended to be served on the Company at its registered office and also on Ms Sandra Regina Bonifacio Pestana E Silva.

NOTICE OF HEARING

TAKE NOTICE THAT the hearing of this petition will take place at the Law Courts, George Town, Grand Cayman, on *16 Feb 2023* at 10.00am.

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.

This Petition was filed by Carey Olsen, attorneys-at-law for the Petitioner, whose address for service is Level 1, Willow House, Cricket Square, Grand Cayman, Cayman Islands KY1-1001.