



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

CAUSE NO. FSD OF 2022 ()

**IN THE MATTER OF THE COMPANIES ACT (2022 REVISION)
AND IN THE MATTER OF BRIMSTONE SPC**

AND IN THE MATTER OF CHINA STABLE INCOME FUND SP2

PETITION

To: The Grand Court of the Cayman Islands

THE HUMBLE PETITION of Brimstone SPC of Ogier Global (Cayman) Limited, 90 Nexus Way, Camana Bay, Grand Cayman KY1-9009, Cayman Islands, (the "**Petitioner**") shows that:

Introduction

- 1 Pursuant to section 224 and 225 of the Companies Act (2022 Revision) (the "**Act**"), the Petitioner seeks the appointment of receivers over one of its segregated portfolios, China Stable Income Fund SP2 (the "**Fund**").

This Petition was presented by Ogier, Attorneys-at-Law for the Petitioner, whose address for service is:
89 Nexus Way, Camana Bay, Grand Cayman KY1-9009, Cayman Islands (502577.00001)

- 2 The Petitioner relies on the following grounds:
- 2.1 The Fund is insolvent (within the meaning of section 224(1)(a) of the Act) because the assets of the Fund are insufficient to discharge the claims of its creditors; and
- 2.2 The appointment of receivers will enable the orderly closing down of the business of the Fund and the distribution of the Fund's assets to those persons entitled to have recourse thereto.

The Petitioner

- 3 The Petitioner was incorporated in the Cayman Islands on 29 June 2018 as an exempted segregated portfolio company with limited liability under the Act with registration number 339327 and is registered with the Cayman Islands Monetary Authority ("**CIMA**") under section 4(3) of the Mutual Funds Act (as amended) with CIMA registration number 1630005.
- 4 The Petitioner's registered office is at Ogier Global (Cayman) Limited, 89 Nexus Way, Camana Bay, Cricket Square, Grand Cayman, KY1-9009, Cayman Islands.
- 5 As of the date of this Petition, the directors of the SPC are Feng Legeng, Guo Ning and Wu Wanfei.
- 6 The amended and restated memorandum of association of the Petitioner adopted by special resolution on 19 May 2020 shows that: (i) the objects for which the Petitioner was established are unrestricted; (ii) the Petitioner has full power and authority to exercise all the functions of a natural person of full capacity; and (iii) the authorised share capital of the Petitioner is US\$50,000 divided into 100 management shares of a par value of US\$1.00 each ("**Management Shares**") and 4,990,000 participating shares of a par value of US\$0.01 each. The Management Shares are registered in the name of Brimstone Consulting Company Limited.

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- 7 The Petitioner's private placing memorandum dated May 2020 ("**PPM**") identifies the Petitioner as an investment fund, operating as a segregated portfolio company with the power to create and issue shares in one or more segregated portfolios in order to segregate the assets and liabilities of the SPC held within or for a segregated portfolio from the assets and liabilities of the SPC held within or for any other segregated portfolio and/or the assets and liabilities of the SPC that are not attributable to a segregated portfolio. The investment strategies and governing terms of any segregated portfolios created by the SPC are set out in separate appendices to the PPM (such as that relating to the Fund).
- 8 The Petitioner's:
- 8.1 manager is Brimstone Asset Management Company Limited (the "**Manager**"); and
- 8.2 auditors are Baker Tilly (Cayman) Ltd.
- 9 The Petitioner has engaged individual fund administrators for each of its segregated portfolios. The administrator for the Fund is Avia Fund Services Limited.
- 10 The Petitioner is governed by the terms of its amended and restated memorandum of association and articles of association adopted by special resolution on 19 May 2020 ("**M&AA**"), the PPM and any applicable appendices.

The General Assets and Liabilities of the Petitioner

- 11 The Petitioner's general assets (the "**General Assets**") are defined in the M&AA as assets of the Petitioner which are not assets belonging to its various segregated

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portfolios, including the proceeds of the issue of the Management Shares. As at the time of this Petition, the Petitioner does not have any General Assets or any liabilities.

The Fund

- 12 The Fund is one of three segregated portfolios of the Petitioner. The other segregated portfolios are China Stable Income Fund SP1 and Brimstone Hung Sing Stable Return Fund SP3. These portfolios are solvent in that they can pay their debts and their assets exceed their liabilities. The Petitioner is not, by this Petition, seeking to appoint receivers over these other portfolios.
- 13 Pursuant to a management agreement dated 15 January 2020 between the Petitioner (for and on behalf of the Fund) and the Manager ("**IMA**"), the Manager was appointed to, in summary, manage and invest the Fund. Notwithstanding the appointment of the Manager, pursuant to the terms of the IMA, the Manager must at all times comply with all instructions of the Directors (subject to certain limited exceptions).
- 14 The investment objective of the Fund is to pursue stable income as well as capital appreciation, by mainly investing in corporate bonds, convertible bonds and equities issued by companies in Greater China, with a focus on companies with significant business exposure in the real estate industry.

The Fund's financial position

- 15 In or around late 2021, the value of the Fund's assets (being predominantly comprised of investments in bonds and equities in companies exposed to the Greater China real estate industry) dropped sharply due to well publicised poor market conditions. As a result, the Fund was served with: (a) early redemption notices; and (b) margin call notices. The Fund did not have sufficient assets to respond to either

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the margin calls, or the early redemption requests and was subsequently served with notices of default and early termination notices as early as November 2021.

- 16 As at 30 June 2022, the Fund's Balance Sheet (the "**June 2022 Balance Sheet**") shows that it had assets of approximately US\$20.2 million and liabilities of approximately US\$132 million, with a resulting net asset value of negative US\$111.8 million.
- 17 The Fund's assets of US\$20.2 million include:
 - 17.1 Cash assets of US\$15.6 million;
 - 17.2 Investments of US\$4.6 million (after accounting for appreciation/depreciation and accrued interest/dividends receivable); and
 - 17.3 Deferred/prepared expenses and other assets of US\$15,500.
- 18 The Fund's liabilities of US\$132 million include:
 - 18.1 Redemptions of US\$57.3 million;
 - 18.2 Borrowings of US\$17 million;
 - 18.3 Monies due to the Fund's broker of US\$38.6 million; and
 - 18.4 Other liabilities of US\$19.1 million.
- 19 As at the date of this Petition, the Fund's financial position has worsened as against that recorded in the Fund's June 2022 Balance Sheet due to, in summary, the continuing deterioration of the Greater China real estate industry, further unpaid requests for redemption issued by the Fund's investors and a depletion of available cash due the payment of certain fees and expenses associated with the continued operation of the Fund.

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20 As such, the Fund's liabilities continue to far exceed its assets.

21 In the circumstances, and by reference to the Fund's significant negative asset value, the Fund is no longer able to meet its financial obligations and is insolvent within the meaning of section 224(1)(a) of the Act.

The Appointment of Receivers over the Fund

22 As the assets attributable to the Fund are or are likely to be insufficient to discharge its liabilities (primarily comprised of the claims of its creditors), the Petitioner respectfully requests that this Honourable Court make an order appointing receivers over the Fund pursuant to sections 224 and 225 of the Act in order to manage the business and assets of the Fund for the purposes of: (a) the orderly closing down of the business of or attributable to the Fund; and (b) the distribution of the assets of the Fund to those entitled to have recourse to those assets.

23 The known creditors of the Fund are aware that the Fund is no longer able to meet its financial obligations and are aware of the Petitioner's present request to this Honourable Court to make an order appointing receivers over the Fund pursuant to sections 224 and 225 of the Act.

24 Further, one of the Fund's creditors, Hongkong and Shanghai Banking Corporation, is supportive of the Petition and no other known creditors have expressed any objection to the Petition.

Nomination of Receivers

25 The Petitioner proposes that Ms Connie Lau of Perun Consultants, 7th Floor, Hollywood Commercial House, 3-5 Old Bailey Street, Central, Hong Kong and Ms Nicola Cowan of FFP (Cayman) Limited, 2nd Floor, Harbour Centre, 159 Mary Street, George Town, Cayman Islands, be appointed as joint receivers of the Fund.

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YOUR PETITIONER THEREFORE HUMBL Y PRAYS AS FOLLOWS

- 1 Pursuant to sections 224 and 225 of the Act, a receivership order be made in relation to the Fund.
- 2 That Ms Connie Lau of Perun Consultants and Ms Nicola Cowan of FFP (Cayman) Limited (the "**Receivers**") be appointed jointly and severally as receivers over the Fund.
- 3 That the business and segregated portfolio assets of the Fund shall be managed by the Receivers for the purposes specified in section 224(3) of the Act.
- 4 That the Receivers be authorised, in accordance with section 226(1) of the Act, to do all such things as may be necessary for the purposes of:
 - 4.1 The orderly closing down of the business of or attributable to the Fund; and
 - 4.2 The distribution of segregated portfolio assets attributable to the Fund to those entitled to have recourse thereto,and in so doing, the Receivers shall have all the functions and powers of directors in respect of the business and segregated portfolio assets of or attributable to the Fund.
- 5 That the Receivers' fees and expenses (including the fees and expenses of any attorneys and other professionally qualified persons in the Cayman Islands or elsewhere to assist them in their performance of their functions) be paid out of the segregated assets of the Fund pursuant to section 228 of the Act in priority to all other claims. The Receivers' fees are to be charged on a time cost basis and may be subject to annual adjustment.

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- 6 That no suit, action or other proceeding may be instituted against the SPC in relation to the Fund except with the leave of the Court pursuant to section 226(5) of the Act.
- 7 That any act required or authorised to be done by the Receivers may be done by any one of them.
- 8 That the Receivers be at liberty to apply for further directions pursuant to section 226(2) of the Act and generally.
- 9 That the Petitioner's costs of this Petition be paid out of the segregated assets of the Fund, and shall be paid in priority to all other claims save for the Receivers' fees and expenses properly incurred.
- 10 That such other order may be made as the Court thinks fit.

AND your Petitioner will ever pray etc.

Dated this 21st day of September 2022



Ogier

NOTE: This petition and the verifying affidavit of Guo Ning, and the affidavits of Lau Wing Yi and Nicola Cowan are intended to be served on:

- (1) the Cayman Islands Monetary Authority
- (2) The Hongkong and Shanghai Banking Corporation Limited, HSBC Main Building, 1 Queens Road Central, Hong Kong

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- (3) Standard Chartered Bank, 15th Floor, Two International Finance Centre, No. 8 Finance Street, Central, Hong Kong
- (4) Huatai Capital Investment Limited, 58/F, The Center, 99 Queen's Road Central
- (5) Shenwan Hongyuan Strategic Investments (HK) Limited, 19/F, 28 Hennessy Road, Hong Kong
- (6) CRIC Securities Co., Limited, 8/F, Fullshare Building, 39 Queen's Road Central, Central, Hong Kong
- (7) Golden Sunflower Limited, MaplesFS Limited PO Box 1093, Queensgate, Grand Cayman, KY1-1102, Cayman Islands
- (8) CMBI Global Markets Limited, 45/F, Champion Tower, 3 Garden Road, Central, Hong Kong
- (9) CCB International Securities Limited, 12/F., CCB Tower, 3 Connaught Road Central, Central, Hong Kong
- (10) Nomura Holdings, 30/F, Two International Finance Centre 8 Finance Street Central, Hong Kong
- (11) Bo Run Company Limited, Ogier Global (Cayman) Limited, 89 Nexus Way, Camana Bay, Grand Cayman KY1-9009, Cayman Islands
- (12) Bo Run SPC for and on behalf of (a) China Real Estate Stable Income Fund SP18; (b) China Real Estate Stable Income Fund SP19; and (c) China Fixed Income Stable Return Fund SP10, Ogier Global (Cayman) Limited, 89 Nexus Way, Camana Bay, Grand Cayman KY1-9009, Cayman Islands

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