



## COURT OF THE CAYMAN ISLANDS

## FINANCIAL SERVICES DIVISION

CAUSE NO: FSD OF 2022 (CRJ)

IN THE MATTER OF THE COMPANIES ACT (2022 REVISION)

AND IN THE MATTER OF PAN AFRICAN MINERALS LIMITED (IN OFFICIAL LIQUIDATION)

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**WINDING UP PETITION**

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**TO: The Grand Court of the Cayman Islands**

The humble petition (the "**Petition**") of Pan African Minerals Limited (in official liquidation) (the "**Petitioner**"), a company duly incorporated and existing under the laws of the Cayman Islands and having its registered office at FFP Limited, Harbour Centre, 159 Mary Street, George Town, Grand Cayman, Cayman Islands, and which is in official liquidation with Michael J. Pearson and Stephen R. Cork appointed as the Joint Official Liquidators (the "**JOLs**") shows that:-

**Background**

1. Pan African Niger Limited, (the "**Company**") is an exempted company incorporated under the laws of the Cayman Islands on 10 October 2011 with registration number 263241 and its current registered office is situated at Cayman Law Group, 2<sup>nd</sup> Floor, Strathvale House, 90 North Church St, George Town, Grand Cayman, Cayman Islands. It was set up for the purpose of pursuing mining projects in Niger.
2. The Petitioner is the holding company of the Pan African Group, which was set up by Mr Vasile Frank Timis for the purpose of exploiting and exploring mining interests in Africa.
3. The Petitioner was previously the sole shareholder of the Company. However, in or around 2017 (at a time when Mr Timis was still a director of the Company) he arranged for the Petitioner's shareholding in the Company to be transferred to himself and certain other shareholders of the

Petitioner. The Company is therefore no longer owned by the Petitioner, but rather by Mr Timis and his associates.

#### Debt Owed to the Petitioner

4. The JOLs were appointed over the Petitioner on 23 April 2020. Since their appointment, they have conducted extensive investigations into the financial affairs of the Petitioner and various other entities within the Pan African Group. Based on their review of the books and records of the Petitioner and the Company, the JOLs have uncovered a number of transfers which demonstrate that the Petitioner is owed a substantial sum of money by the Company. In summary:
  - a. Payments totalling \$392,368 were made by the Company to the Petitioner between 30 June 2012 and 7 February 2019;
  - b. Pan African Minerals Services Limited (“**PAMS**”), another company within the Pan African Group, loaned US\$5,011,621 to the Company between 24 May 2012 and 24 October 2013 (the “**Intercompany Loan**”). The Intercompany Loan amounted to a debt (repayable on demand) owed by the Company to PAMS as at 31 December 2013 and was reflected as the same in the books and records of the Company and PAMS.
  - c. The statutory accounts of PAMS for 2014 (which restated PAMS’ 2013 statutory accounts) record that the benefit of the Company’s obligation to repay the Intercompany Loan was subsequently transferred from PAMS to the Petitioner.
  - d. Accordingly, the JOLs’ investigations have determined that, following the aforementioned transfer, the Intercompany Loan is a debt owed by the Company to the Petitioner.
  - e. Despite no proof of debt having been submitted by the Company, the JOLs have determined that the \$392,368 owed by the Petitioner to the Company (discussed in paragraph 4.a. above) should be set off against the Intercompany Loan debt of \$5,011,621 presently due from the Company to the Petitioner. Accordingly a total Debt of \$4,619,253 is owed by the Company to the Petitioner (the “**Debt**”).

**Demand for repayment**

5. The Petitioner invoked its right to demand that the Company pay the Debt by issuing a statutory demand under section 93 of the Companies Act on 20 October 2021 (the “**Demand**”). The Demand was served on the Company at its registered office and a delivery receipt duly signed on 20 October 2021.
6. The Demand set out the basis of the Petition Debt and, pursuant to Order 2, rule 2(6) of the Companies Winding Up Rules (“**CWR**”), warned the Company that if payment was not made within 21 days of the date that the Demand was served on the Company, the Petitioner would present a petition to wind up the Company on the basis that it would be deemed to be insolvent.
7. As at the date of this Petition, which is more than 21 days following the service of the Demand, the Company has failed to pay any amount of the Debt, and the Debt remains unsatisfied, due, and immediately payable in full to the Petitioner.
8. The Petitioner is a creditor of the Company in the amount of the Debt and presents this Petition pursuant to the Companies Act (2022 Revision) (the “**Companies Act**”) on the grounds that:
  - a. The Company is deemed to be unable to pay its debts by operation of section 93(a) of the Companies Act and is accordingly insolvent;
  - b. Further or in the alternative, pursuant to section 92(d) of the Companies Act, the Company is unable to pay its debts and is undisputedly insolvent;
  - c. As the Company is unable to pay its debts, appointing liquidators and winding up the Company will recover the most value for the Company’s creditors and is therefore in their best interests.
9. The Petitioner nominates Mr Michael Pearson of FFP Limited and Stephen Cork of Cork Fully LLP to be appointed as joint official liquidators of the Company.

**Your Petitioner therefore humbly prays that:-**

1. The Company be wound up in accordance with section 92(d) of the Companies Act.

This **PETITION** was issued by Travers Thorp Alberga, Attorneys for the JOLs, whose address for service is Second Floor, Harbour Place, PO Box 472, 103 South Church Street, Grand Cayman, KY1-1106, Cayman Islands (Ref: P1381-001)

2. Mr Michael Pearson of FFP Limited, Harbour Centre, 159 Mary Street, George Town, Grand Cayman, Cayman Islands, and Stephen Cork of Cork Gully LLP 6 Snow Hill, London, England, be appointed as joint official liquidators (the “**Liquidators**”) of the Company.
3. The Liquidators shall not be required to give security for their appointment.
4. The Liquidators shall have the power to act jointly and severally in their capacity as joint liquidators of the Company.
5. The Liquidators shall be authorised to take any such action as may be necessary or desirable to obtain recognition of their appointment and their powers in any other relevant jurisdiction and to make applications to the courts of such jurisdictions for that purpose.
6. No disposition of the Company’s property by or with the authority of the Liquidators carrying out their duties and function and in exercise of their powers shall be voided by virtue of section 99 of the Act.
7. The Liquidators be authorised to engage staff (whether or not as employees of the Company) to assist them in the performance of their functions.
8. The Liquidators be at liberty to appoint such counsel, attorneys, and professional advisors as they may consider necessary to advise and assist them in the performance of their duties in accordance with CWR Order 25 on such terms as they think fit, and to remunerate them out of the assets of the Company as an expense of the liquidation.
9. Subject to section 109(2) of the Companies Act and the Insolvency Practitioners Regulations 2008 (as amended), the Liquidators be authorised to render and pay invoices out of the assets of the Company for their own remuneration.
10. The Liquidators be at liberty to meet all disbursements reasonably included in connection with the performance of their duties and, for the avoidance of doubt, all such payments shall be made as and when they fall due out of the assets of the Company as an expense of the liquidation.
11. The Petitioner’s costs relating to the Petition be paid out of the assets of the Company as an expense of the liquidation.

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12. Such further or other relief be granted as the Court deems appropriate.

**AND your Petitioner will ever pray etc.**

Dated the 21 day of October 2022



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Travers Thorp Alberga

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

**TAKE NOTICE THAT** the hearing of this petition will take place at the Law Courts, George Town, Grand Cayman on 4 January 2023 at 9:30am.

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 P O Box 495, Grand Cayman KY1-1106, telephone 345 949 4296.

This **PETITION** was issued by Travers Thorp Alberga, Attorneys for the JOLs, whose address for service is Second Floor, Harbour Place, PO Box 472, 103 South Church Street, Grand Cayman, KY1-1106, Cayman Islands (Ref: P1381-001)