



IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION

CAUSE No. FSD                      OF 2023 (                      )

IN THE MATTER OF THE COMPANIES ACT (2023 REVISION)

AND IN THE MATTER OF AVIVO GROUP

---

WINDING UP PETITION

---

**To the Grand Court**

The humble petition of Regulus Capital Ltd (the 'Petitioner') c/o Dentons shows that:

1. The Petitioner presents this petition for the winding up of Avivo Group (the 'Company') and the appointment of Jeffrey Stower and Matthew Wilde of Teneo (Cayman) Limited, Ground Floor, Harbour Place, 103 South Church Street, P.O. Box 10245, George Town, Grand Cayman, Cayman Islands and Teneo Strategy (UAE) Limited, Office 405, Level 4, Gate Precinct Building 5, Dubai International Financial Center, PO Box 506808, Dubai, United Arab Emirates as joint official liquidators.
2. The Company is an exempt company registered pursuant to the Companies Act (2023 Revision) (the 'Companies Act'). It was incorporated in 2011 with registration number 251666. The registered office of the Company is Walkers Corporate Limited, Cayman Corporate Centre, 27 Hospital Road, George Town, Cayman Islands KY1-9008.

3. The Petitioner is a creditor of the Company and seeks the winding up of the Company on the basis that the Company is unable to pay its debts.

#### The Debt

4. On or about 28 January 2016 the Petitioner, under its previous company name, Al Masah Partners Limited, entered into an Investment Management Agreement (the 'IMA') with the Company. Insofar as is material, the IMA contained the following clauses:
  - a. That the Petitioner would be the investment manager of the Company and to provide investment advice in that capacity (clause 2.1);
  - b. That the Petitioner would be entitled to receive a management fee (the 'Management Fee') in return for its service, in any event, and to receive an incentive fee in certain circumstances (clauses 4.1 and 4.3);
  - c. The Management Fee was to be calculated and payable by the Company on a quarterly basis and be equal to 2% per annum of the 'Total Equity Employed' (clause 4.2);
  - d. Total Equity Employed, a defined term under the IMA, was assigned the following meaning pursuant to clause 1.1: *"Total Equity Employed" means, at any time in relation to the Company, the aggregate of (a) the total paid up equity (including share premium) in respect of all Shares issued and outstanding; and (b) the total proceeds received by the Company in respect of any quasi-equity or convertible debt instruments or similar instruments issued by the Company which remain outstanding or unexercised, as determined by (or on behalf of) the Directors.*"
5. Pursuant to Article 12 of the Amended and Restated Memorandum and Articles of Association of the Company, dated 25 November 2015 (the 'ARMAA'), the Petitioner was entitled to receive an annual distribution of 2% of the equity of the Company in its capacity as holder the of the management share of the Company, in return for waiver of fees under the IMA, payable on a quarterly basis (the 'Management Share Distribution'). The Petitioner held the management share of the Company at all material times.
6. The ARMAA of the Company were re-amended and restated by the Company on a number of occasions over the period of the Petitioner's service. Pursuant to the 8 May 2016 version of the ARMAA, the Petitioner's entitlement to the Management Share Distribution was set out under Article 14. Pursuant to the 27 February 2017 version of the ARMAA, the Petitioner's entitlement to the Management Share Distribution was set out under Article 13. To the best of the Petitioner's knowledge, the most recent existing version of the ARMAA came into force on 16 October 2018 and set out the Petitioner's entitlement to the Management Share Distribution at Article 13.

7. The Petitioner elected during all times material to this Petition to exercise its discretion to receive the Management Share Distribution and waive the Management Fee, as envisaged under the terms of the ARMAA. At all material times, the Management Share Distribution due to the Petitioner was calculated at 1.8% of the equity of the Company, because the remaining 0.2% was assigned to Al Masah Capital Limited. Furthermore, from the beginning of 2019 onwards, the Management Share Distribution was not charged upon treasury shares outstanding in the capital of the Company.
8. Payments to the Petitioner by the Company were made in a satisfactory amount during the years 2016 and 2017, in the total sum of US\$ 9,415,409.00.
9. In the year 2018, the Petitioner was entitled to receive a total of US\$ 5,686,799.70 in respect of Management Share Distribution, to be paid in the sum of US\$ 1,421,043.99 in the first quarter and US\$ 1,421,918.57 per quarter thereafter. The Company made payment against the first quarterly payment in the amount of US\$ 1,291,796.00, but no further payments were received. Accordingly, the sum of US\$ 4,395,003.70 remains outstanding for the year 2018 and the Petitioner seeks payment of the same.
10. In the years 2019 onwards, the Management Share Distribution was calculated at US\$ 5,687,674.28 per annum or US\$ 1,421,918.57 per quarter, from which was deducted US\$ 391,500.00 per quarter in respect of outstanding treasury shares of the Company. Accordingly, the quarterly payment due from the Company to the Petitioner in respect of Management Share Distribution in the years 2019, 2020, 2021 and 2022 amounted to US\$ 1,030,418.57.
11. The Petitioner received no payments in 2019, 2020, 2021 or 2022. The Petitioner seeks to recover payments due from but not made by the Company between 1 January 2019 and 30 June 2021, in the total sum of US\$ 10,304,185.70.
12. Accordingly, the Petitioner claims the Management Share Distribution payments due to it but not made between 1 January 2018 and 30 June 2021 in the total sum of US\$ 14,699,189.40 (the 'Debt').
13. Despite demand for payment of the Debt made in correspondence and in person between representatives of the Petitioner and of the Company, the Company has failed and neglected to pay the same or any part thereof since the payment set out at paragraph 9 above.
14. On 28 February 2023, a statutory demand (the 'Statutory Demand') in the form prescribed by the Companies Winding Up Rules, 2018 (the 'CWR') was served on the Company at its registered office, demanding payment of the Debt.
15. Pursuant to CWR Order 2, rule 2(6), the Statutory Demand included a statement that if payment was not made within 21 days of the date upon which it was served on the Company, the Company would

be deemed insolvent and a winding up petition may be presented against the Company in accordance with section 92(d) of the Companies Act.

16. To date, the Debt has not been repaid and the sum owing has not been disputed. Accordingly, the Debt remains outstanding in full and as of the date of the presentation of this Petition.
17. Pursuant to section 93 of the Companies Act, the Company is deemed unable to pay the Debt and is liable to be and should be wound up, pursuant to section 92(d) of the Companies Act.
18. Jeffrey Stower and Matthew Wilde of Teneo, Ground Floor, Harbour Place, 103 South Church Street, P.O. Box 10245, George Town, Grand Cayman, Cayman Islands are nominated for appointment as official liquidator and have each provided consent to act in that capacity.

YOUR PETITIONER THEREFORE HUMBL Y PRAYS

- (1) The Company be wound up in accordance with the Companies Act.
- (2) Jeffrey Stower and Matthew Wilde of Teneo (Cayman) Limited, Ground Floor, Harbour Place, 103 South Church Street, P.O. Box 10245, George Town, Grand Cayman, Cayman Islands and Teneo Strategy (UAE) Limited, Office 405, Level 4, Gate Precinct Building 5, Dubai International Financial Center, PO Box 506808, Dubai, United Arab Emirates be appointed as joint official liquidators of the Company (the 'JOLs').
- (3) The JOLs shall not be required to give security for their appointment.
- (4) The JOLs shall have the power to act jointly and severally in their capacity as liquidators of the Company.
- (5) The JOLs be authorized to take any such action as may be necessary or desirable to be to obtain recognition of the JOLs and/or their appointment in any other relevant jurisdiction and to make applications to the Courts of such jurisdiction for that purpose.
- (6) The JOLs be authorized to exercise any of the powers set listed in parts I and II of Schedule 3 to the Companies Act and section 110(2) thereof, without further sanction or intervention of the Court.
- (7) The JOLs be authorized 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 in the Cayman Islands or elsewhere.

- (8) The JOLs be at liberty to appoint counsel, attorneys, professional advisors, whether in the Cayman Islands or elsewhere, at they may consider necessary to advise and assist them in the performance of their duties in accordance with CWR Order 25 and on such terms as they may find fit and remunerate them out of the assets of the Company.
- (9) No disposition of the property of the Company by or with the authority of the JOLS 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.
- (10) Subject to section 109(2) of the Companies Act and the Insolvency Practitioner's Regulations, 2018, the JOLs shall be authorized to render and pay invoices out of the assets of the Company for the their own remuneration.
- (11) The JOLs be at liberty to meet all disbursements reasonably incurred 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.
- (12) The Petitioner's costs shall be paid out of the assets of the Company as an expense of the liquidation, such costs to be taxed if not agreed with the JOLs.
- (13) Such further or other relief as the Court finds fit.

AND your Petitioner will ever pray etc.

Date this 4<sup>th</sup> day of April 2023



---

Dentons

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

This **Petition** was presented by Dentons, Attorneys for the Petitioner, whose address for service is 3<sup>rd</sup> Floor, One Capital Place, Shedden Road, PO Box 10190, Grand Cayman, KY1-1002, 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 24 May 2023 at <sup>8</sup>~~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.