



IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO. FSD 86 OF 2023 (IKJ)

IN THE MATTER OF THE COMPANIES ACT (2023 REVISION)

AND IN THE MATTER OF COINFUL CAPITAL FUND, SPC

AND IN THE MATTER OF PIERCE 50 SP

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WINDING UP PETITION

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TO: The Grand Court of the Cayman Islands

**THE HUMBLE PETITION** of Mr Ser Kang Wei of 55 Cardiff Grove, Singapore 558921, Singapore (the "Petitioner") shows that:

**A. SUMMARY**

1. The Petitioner seeks the appointment of joint official liquidators over Coinful Capital Fund, SPC (the "**Company**"). The Petitioner is a creditor of the Company and seeks the winding up of the Company pursuant to Section 92(d) of the Companies Act (2023 Revision) (the "**Companies Act**") on the ground that the Company is unable to pay its debts.
2. In the alternative, the Petitioner seeks the appointment of receivers over the segregated portfolio of the Company known as Pierce 50 SP (the "**SP**") pursuant to sections 224 and 225 of the Companies Act. The Petitioner is a creditor of the Company in respect of the SP and seeks the appointment of receivers on the grounds that:

This **Petition** was presented by Campbells LLP of Floor 4, Willow House, Cricket Square, George Town, Grand Cayman KY1-9010, Cayman Islands, Attorneys at Law for the Petitioner, whose address for service is that of their attorneys. (Ref: PDK/CEA – 00255/40973)

- 2.1. The SP is insolvent and the assets attributable to the SP are, or are likely to be, insufficient to discharge the claims of creditors in respect of the SP; and
  - 2.2. The appointment of receivers to manage the assets of the SP would enable the orderly closing down of the business attributable to the SP and the distribution of its assets to those persons entitled to have recourse thereto.
3. The appointment of liquidators, or in the alternative receivers, will also enable independent investigations to be conducted into the affairs of the Company thereby protecting its creditors and contributories.

**B. BACKGROUND**

4. The Company is an exempted segregated portfolio company which was incorporated in the Cayman Islands on 19 April 2018 with registration number 335743 and which has its registered office at Maples Corporate Services Limited, PO Box 309, Ugland House, South Church Street, George Town, Grand Cayman, KY1-1104, Cayman Islands.
5. The Petitioner was a shareholder in the Company and an investor in the SP.
6. The Company carries on its business in the Cayman Islands. The Company is an investment fund providing access to investment portfolios through its segregated portfolios for the purpose of pursuing specific investment objectives. The Company only has one segregated portfolio and therefore the principles concerning the segregation of portfolios and portfolio assets that usually apply to segregated portfolio companies do not arise in respect of the Company.
7. The investment objective of the SP was to achieve capital appreciation through the purchase and resale of over-the-counter commodities, primarily through trading gold bullion directly with small and medium sized gold producers in Sub-Saharan Africa and specifically Zimbabwe and South Africa. The SP's investment objective was pursued through the investment of the entirety of the SP's assets in Coinful Master Pierce 50 SP, a segregated portfolio of Coinful Capital Master Fund

SPC, a Cayman Islands exempted segregated portfolio company (the “**Master Fund**”).

**C. REDEMPTION OF PETITIONER’S SHAREHOLDING**

8. The Petitioner submitted to the Company a redemption request in respect of the entirety of his shareholding in the Company on 27 September 2022.
9. As at 31 December 2022, the Petitioner held 5,048.88 participating shares in the Company with a market value of US\$12,574,413.37 (the “**Shareholding**”) as stated in an Investor Statement provided to the Creditor on behalf of the Company on 18 January 2023.
10. The Shareholding was redeemed with effect from 31 December 2022, being the relevant Redemption Date for the purposes of Article 13.10 of the Company’s Articles of Association (the “**Redemption Date**”).
11. Pursuant to Article 13.10 of the Company’s Articles of Association, as of the Redemption Date the Petitioner became a creditor of the Company in respect of the redemption proceeds. Accordingly, the debt owed to the Petitioner in respect of the redemption proceeds was a debt of the Company and not a debt of the SP.
12. The Creditor acknowledges that the Company has the discretion in certain circumstances to make certain deductions from, and/or to withhold part of, the redemption proceeds payable to the Creditor, as provided for in the Company’s Articles of Association and the relevant subscription documents. The Creditor acknowledges that the sum presently due and outstanding should reflect any such deductions or the withholding of any part of the redemption proceeds that the Company may be entitled to make. However, the Company has not communicated any intention to make any such deductions or to withhold any part of the redemption proceeds payable to the Creditor.
13. The Company is therefore indebted to the Petitioner in the sum of US\$12,574,413.37, which sum is due and outstanding.

**D. STATUTORY DEMAND**

14. In light of the matters set out above, the Petitioner caused a statutory demand under Section 93(a) of the Companies Act to be hand-delivered to the registered office of the Company on 7 February 2023 (the “**Statutory Demand**”) under which the Petitioner demanded payment of the redemption proceeds in the sum of US\$12,574,413.37 (the “**Statutory Demand Debt**”).
15. The Statutory Demand notified the Company that if the Statutory Demand Debt was not paid within 21 days, the Company would be deemed to be insolvent and that a winding up petition would be presented against the Company in accordance with Section 92(d) of the Companies Act.
16. As at the date of this Petition, the Company has failed to make payment to the Petitioner in respect of the Statutory Demand Debt, or any other amounts due and owing.
17. The Company has not raised any dispute in respect of the Statutory Demand Debt.
18. On 27 February 2023 and the day before the expiry of the 21 day period provided by the Statutory Demand for payment of the Statutory Demand Debt, the Company wrote to investors in the SP (the “**Letter**”). The Letter stated, inter alia, that the Company had implemented a suspension of various steps, including the payment of redemption proceeds, as outlined in more detail below (the “**Suspension**”). The Company did not state the date on which the Suspension purported to come into effect or the basis on which this was implemented. However, the Statutory Demand Debt appears to have already been due and owing prior to the Company taking this step.

**E. THE COMPANY’S LIQUIDITY ISSUES**

19. In the Letter, the Company referred to purported events which it stated had significantly impacted on the Company’s liquidity position. The Letter stated, inter alia, that:
  - 19.1. In order to trade in gold bullion and other commodities in Zimbabwe and South Africa, the Company engaged the services of local custodians, namely BetterBrands Investment (Private) Limited (“**BetterBrands**”) in Zimbabwe and LNS Financial Solutions and Trading

(Pty) Limited (“LNS”) in South Africa (together, the “Custodians”).

- 19.2. Pursuant to their respective custodian agreements with the Company, the Custodians were required to hold the Company’s commodities on its behalf, facilitate and execute trades, and remit cash payments on the Company’s instructions. The Company also held cash and other assets on account with the Custodians for the purposes of its trading activities.
- 19.3. The reported valued of the Company’s gold and commodity assets held with BetterBrands and LNS as at 31 December 2022 was approximately USD72.8m and USD29.7m respectively (the “Custody Assets”).
- 19.4. During January 2023, both Custodians failed to comply with the Company’s instructions to sell underlying commodities and remit cash proceeds to the Company.
- 19.5. The Company wrote to the Custodians multiple times demanding payment and seeking explanations but did not receive a response to that correspondence.
- 19.6. This has caused the Company an unexpected liquidity issue, as a result of which the Company had temporarily implemented the Suspension in order to allow the Company to undertake urgent investigations and take steps to secure and protect the Company’s assets. The Company stated that the Suspension included a suspension of the following steps:
  - 19.6.1. The calculation of the NAV of the shares of all classes and/or series;
  - 19.6.2. The issue of shares of all classes and/or series;
  - 19.6.3. Redemptions of shares of all classes and/or series; and
  - 19.6.4. The payment of any redemption proceeds.

20. The Company stated that it had implemented the Suspension “*in accordance with the [Company’s] governing documents*”, although the precise basis and validity of any such action is unclear and is not admitted. As stated above, it is unclear when the Suspension purported to come into effect but this appears to have been implemented after the Statutory Demand Debt was already due and owing.

**F. RELIEF SOUGHT**

21. In the premises:
- 21.1. the Petitioner is a creditor of the Company and has standing to present this Petition under Section 94(1)(b) of the Companies Act;
  - 21.2. the Company is unable to pay its debts pursuant to Section 92(d) of the Companies Act and is therefore insolvent and should be wound up;
  - 21.3. in the further alternative, receivers should be appointed in respect of the SP on the grounds that the SP is insolvent given that the assets attributable to the SP are, or are likely to be, insufficient to discharge the claims of creditors, including the Petitioner, and the appointment of receivers to manage the assets of the SP would enable the orderly closing down of the business attributable to the SP and the distribution of its assets to those persons entitled to have recourse thereto.
22. The Petitioner nominates Andrew Childe and Anna Silver of FFP Limited to act as joint official liquidators of the Company or in the alternative to act as joint receivers of the SP.

**YOUR PETITIONER THEREFORE HUMBLY PRAYS AS FOLLOWS:**

1. The Company be wound up by the Court in accordance with the Companies Act.
2. Mr Andrew Childe and Ms Anna Silver of FFP Limited be appointed as joint official liquidators of the Company (the “Liquidators”).
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 official liquidators of the Company.
5. The Liquidators shall be authorised to do any acts or things 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 and/or elsewhere.
6. The Liquidators shall be authorised to take any such action as may be necessary or desirable to obtain recognition of the Liquidators and/or their appointment and/or powers in any other relevant jurisdiction and to make applications to the courts of such jurisdictions for that purpose.
7. In addition to the powers set out in Part II of the Third Schedule to the Companies Act, the Liquidators shall be authorised to exercise all of the powers set out in Part I of the Third Schedule to the Companies Act pursuant to Section 110(2) of the Companies Act without requiring further sanction of the Court. Specifically, but without prejudice to the generality of the foregoing, the Liquidators shall have power without further sanction of the Court:
  - 7.1. To pay any class of creditors in full;
  - 7.2. To make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claims (present or future, certain or contingent, ascertained or sounding only in damages) against the assets of the Company;

- 7.3. To compromise on such terms as may be agreed all debts or liabilities (present or future, certain or contingent, ascertained or sounding only in damages) as between the Company and any party against whom the Company may have a claim;
  - 7.4. To deal with all questions in any way relating to or affecting the assets of the Company;
  - 7.5. To engage staff to assist them in the performance of their functions;
  - 7.6. To engage attorneys and other professionally qualified persons in the Cayman Islands or elsewhere to assist them in the performance of their functions;
  - 7.7. To take possession of, collect and get in the assets of the Company and for that purpose to take all such proceedings as they consider necessary;
  - 7.8. To do all acts and execute, in the name of and on behalf of the Company, all deeds, receipts and other documents;
  - 7.9. To convene meetings of creditors; and
  - 7.10. To do all other things incidental to the exercise of their powers.
8. No disposition of the property of the Company by or with the authority of the Liquidators in carrying out their duties and functions and the exercise of their powers under any Order granted pursuant to this Petition shall be voided by virtue of Section 99 of the Companies Act.
  9. Subject to Section 109(2) of the Companies Act and the Insolvency Practitioners' Regulations (2023 Consolidation), the Liquidators shall be authorised to render and pay invoices out of the assets of the Company for their own remuneration.
  10. The Liquidators shall 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.

11. The Liquidators shall be at liberty to apply generally.
12. The Petitioner's costs of and incidental to the Petition shall be paid forthwith out of the assets of the Company as an expense of the liquidation, such costs to be taxed on the indemnity basis if not agreed with the Liquidators.

**IN THE ALTERNATIVE:**

13. A receivership order be made in relation to the SP pursuant to section 224 of the Companies Act.
14. Mr Mr Andrew Childe and Ms Anna Silver of FFP Limited (the “**Receivers**”) be appointed jointly and severally as receivers over the SP.
15. The business and segregated portfolio assets of the SP shall be managed by the Receivers for the purposes specified in section 224(3) of the Companies Act.
16. The Receivers shall be authorised to exercise the following powers:
  - 16.1.1. To exercise the powers conferred on the Receivers by section 226 of the Companies Act;
  - 16.1.2. To pay any class of creditors in full;
  - 16.1.3. To make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claims (present or future, certain or contingent, ascertained or sounding only in damages) against the segregated assets of the SP or for which the segregated assets of the SP may be held liable;
  - 16.1.4. To compromise on such terms as may be agreed all debts or liabilities (present or future, certain or contingent, ascertained or sounding only in damages) as between the SP and any party against whom the SP may have a claim;
  - 16.1.5. To deal with all questions in any way relating to or affecting the assets or the orderly closure of the SP;

- 16.1.6. To engage staff to assist them in the performance of their functions;
- 16.1.7. To engage attorneys and other professionally qualified persons in the Cayman Islands or elsewhere to assist them in the performance of their functions;
- 16.1.8. To take possession of, collect and get in the segregated assets of the SP and for that purpose to take all such proceedings as they consider necessary;
- 16.1.9. To do all acts and execute, in the name of an on behalf of the SP, all deeds, receipts and other documents;
- 16.1.10. To convene meetings of creditors; and
- 16.1.11. To do all other things incidental to the exercise of their powers.
17. The Receivers' fees and expenses shall be payable out of the segregated assets of the SP pursuant to section 228 of the Companies Act in priority to all other claims.
18. No suit, action or other proceeding may be instituted against the Company in relation to the SP except with the leave of the Court pursuant to section 226(5) of the Act.
19. Any act required or authorised to be done by the Receivers may be done by any one of them.
20. The Receivers shall be at liberty to apply generally.
21. The Petitioner's costs of this Petition shall be paid out of the segregated assets of the SP, such costs to be taxed on the indemnity basis if not agreed with the Receivers.
22. Such other order may be made as the Court thinks fit.

Dated the 30<sup>th</sup> day of March 2023

A handwritten signature in blue ink that reads "Campbells LLP". The signature is written in a cursive style with a large 'C' and 'L'.

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**Campbells LLP**

This Petition and the verifying and supporting affidavits are intended to be served on the Company and on the Cayman Islands Monetary Authority.

**NOTICE OF HEARING**

TAKE NOTICE THAT the hearing of this Petition will take place at the Law Courts, George Town, Grand Cayman, on 5 July 2023 at 10 ~~am/pm.~~

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.