

**IN THE GRAND COURT OF THE CAYMAN ISLANDS**

**FINANCIAL SERVICES DIVISION**

**CAUSE NO. FSD OF 2023**

**IN THE MATTER OF THE EXEMPTED LIMITED PARTNERSHIP ACT (2021 REVISION)**

**AND IN THE MATTER OF KUWAIT LBO FUND, L.P. (IN VOLUNTARY LIQUIDATION)**

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**PETITION FOR COURT SUPERVISION**

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

**THE HUMBLE PETITION** of Alexander Lawson and Christopher Kennedy, both of Alvarez & Marsal Cayman Islands Limited, Flagship Building, PO Box 2507, 2<sup>nd</sup> Floor, 142 Seafarers Way, George Town, Grand Cayman KY1-1104, Cayman Islands (the **“Petitioners”** or the **“JVLs”**) in their capacity as joint voluntary liquidators of Kuwait LBO Fund, L.P. (in voluntary liquidation) (the **“Partnership”**) shows that:

**A. SUMMARY OF THE RELIEF SOUGHT**

1. The Petitioners seek the following orders and directions pursuant to section 36(3)(g) of the Exempted Limited Partnership Act (2021 Revision) (the **“ELP Act”**):
  - 1.1 An order that the Partnership be wound up under the supervision of the Grand Court and that Christopher Kennedy and Barry Lynch be appointed as the joint official liquidators (the **“JOLs”**) of the Partnership;
  - 1.2 An order that all rights or property of every description of the Partnership, including all choses in action, held or deemed to be held by the general partner of the Partnership shall vest without the requirement for further formalities in the JOLs and shall be held by the JOLs on behalf of the Partnership in accordance with the ELP Act;
  - 1.3 Orders as to the JOLs’ powers;
  - 1.4 Such other relief be granted as the Court deems appropriate.

**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 Petitioners, whose address for service is that of their attorneys. (Ref: LMF/CEA – 20005/35930)

**B. BACKGROUND**Establishment of the Partnership and its partners

2. The Partnership was constituted as an exempted limited partnership in the Cayman Islands on 23 August 2006 pursuant to a Limited Partnership Agreement dated 15 August 2006 between Kuwait LBO Fund GP Ltd (the “GP”) and an initial limited partner.
3. The GP was incorporated as an exempt company in the Cayman Islands on 15 August 2006 with company registration number 172469.
4. By an Amended and Restated Limited Partnership Agreement dated September 2007 (the “LPA”) the initial limited partner withdrew and the Public Institution for Social Security (“PIFSS”) and Noor Financial Investment Company (“NFIC”) were admitted as limited partners of the Partnership on 30 September 2007.
5. Pursuant to a Subscription Agreement dated 16 September 2007, PIFSS committed US\$25 million to the Partnership. PIFSS is the public pension fund of the state of Kuwait, founded in 1955.
6. Pursuant to a Subscription Agreement dated 30 September 2007, NFIC committed US\$15 million to the Partnership. First Services International (“FSI”) acquired NFIC’s limited partnership stake on 15 August 2013. FSI was incorporated as an exempt company in the Cayman Islands on 24 July 2013 with company registration number 279690.
7. Pursuant to the terms of an Investment Management Agreement dated May 2007, the GP appointed Kuwait LBO Mgt Ltd (the “IM”), a Cayman exempt company, to act as the discretionary investment manager of the Partnership subject to the overall supervision of the GP.
8. At all material times, the GP and the IM were owned and controlled by NFIC/FSI, Mr Farouq Sultan Al-Essa and Mr Zaher D.M. Al-Saleh.
9. As at the date of this Petition, the following entities are currently struck-off the Register of Companies:
  - 9.1 the GP was struck off on 30 October 2020;
  - 9.2 the IM was struck off on 30 October 2020; and
  - 9.3 FSI was struck off on 29 July 2022.

### The Partnership's Assets

10. An aggregate amount of US\$34 million was contributed to the Partnership by the Limited Partners for investment by the GP.
11. The Partnership's Register of Commitments and Capital Called records that:
  - 11.1 Of its US\$15 million commitment to the Partnership, NFIC contributed an aggregate amount of US\$9 million;
  - 11.2 PIFSS has contributed its full commitment of US\$25 million;
  - 11.3 The Partnership has received total contributions of US\$34 million, of which PIFSS has contributed 73.53% and NFIC 26.47%; and
  - 11.4 The GP did not commit nor contribute any capital to the Partnership.
12. Based on a review of the Partnership's books and records, the JVLs understand that of the US\$34 million contributed to the Partnership, the proceeds were used as follows:
  - 12.1 an aggregate amount of c. US\$22.98 million was invested in three investments between 2008 and 2014; and
  - 12.2 an aggregate amount of c. US\$11.02 million was spent on management fees and Partnership expenses.

### **The commencement of voluntary liquidation**

13. Pursuant to clause 9.1(a)(i) of the LPA, the term of the Partnership expired by no later than 30 September 2019 with the effect that the Partnership is deemed to have commenced voluntary liquidation on 30 September 2019.
14. Clause 9.2(a) of the LPA provides that following the commencement of liquidation, the property and business of the Partnership shall be liquidated within a reasonable period of time by the GP or, in the event of the unavailability of the GP, by a person designated by more than 50% in Interest of the Limited Partners.
15. The GP was deemed to be the voluntary liquidator of the Partnership from 30 September 2019.
16. On or around 17 December 2019, the directors of the GP, each of whom was appointed by FSI, resigned. On 30 October 2020, the GP was struck off the Register of Companies.

17. On 14 September 2020, PIFSS passed a written resolution as the holder of more than 50% in Interest of the Limited Partners to appoint the JVLs as replacement voluntary liquidators of the Partnership.
18. By Petition dated 14 September 2021, PIFSS applied to the Grand Court in Cause FSD No. 273 of 2021 (DDJ) seeking, inter alia, certain declaratory orders to the effect that the JVLs were the duly appointed voluntary liquidators of the Partnership. The Hon. Justice Doyle delivered a judgment on 29 October 2021 granting the relief sought.

#### **Grounds for the Partnership to be wound up under the supervision of the Grand Court**

19. For the reasons outlined in the first affidavit of Christopher Kennedy filed in support of the Petition, the issues arising in the liquidation of the Partnership are complex. There is a clear need for Court appointed liquidators to take control of the winding up of the Partnership's affairs and for the official liquidators to have adequate powers to conduct the orderly wind down of the Partnership's affairs, including the power to take control of and deal with the Partnership's assets, to ensure that such assets are distributed in accordance with the statutory scheme, and to take such other steps as are necessary in the winding up. Those steps include obtaining information from third parties such as banks to allow the official liquidators to investigate the affairs of the Partnership.
20. The relief sought by the Petition is just and equitable, within the meaning of section 36(3)(g) of the ELP Act, having regard to all of the circumstances. The supervision of the Court will also facilitate a more effective, economic and/or expeditious liquidation of the Partnership in the interests of the limited partners and creditors of the Partnership.
21. Section 36(3) of the ELP Act provides that certain provisions of Part V of the Companies Act and the Companies Winding Up Rules (2023 Consolidation) apply, except to the extent of any inconsistencies, to the winding up of an exempted limited partnership. However, section 36(3)(d) disapplies the majority of Part V to voluntary liquidations, with limited savings. Those provisions will however be engaged in the event that a supervision order is made.
22. The Court has jurisdiction under section 36(3)(g) of the ELP Act to bring a voluntary liquidation of an exempted limited partnership under the supervision of the Court so that it may proceed as an official liquidation.

#### **The proposed JOLs**

23. Mr Lynch is a qualified insolvency practitioner (as defined in the Companies Act) and meets the requirements of a qualified insolvency practitioner pursuant to the Insolvency Practitioners'

Regulations (2023 Consolidation) (“IPR”). Mr Lynch consents to being appointed as a joint official liquidator of the Partnership.

24. Mr Kennedy is a qualified insolvency practitioner (as defined in the Companies Act) and meets the requirements of a qualified insolvency practitioner pursuant to the IPR. Mr Kennedy consents to being appointed as a joint official liquidator of the Partnership.

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

1. The liquidation of the Partnership be continued under the supervision of the Court.
2. Christopher Kennedy and Barry Lynch both of Alvarez & Marsal Cayman Islands Limited, Flagship Building, PO Box 2507, 142 Seafarers Way, George Town, Grand Cayman KY1-1104, Cayman Islands, be appointed as the JOLs of the Partnership.
3. The JOLs shall not be required to give security for their appointment.
4. The JOLs have the power to act jointly and severally in their capacity as liquidators of the Partnership.
5. All rights or property of every description of the Partnership, including all choses in action, held or deemed to be held by the general partner of the Partnership shall vest without the requirement for further formalities in the JOLs and shall be held by the JOLs in accordance with the ELP Act.
6. The JOLs be at liberty to appoint such counsel, attorneys, professional advisors whether in the Cayman Islands or elsewhere, as they may consider necessary to advise and assist them in the performance of their duties in accordance with Order 25 of the Companies Winding Up Rules (2023 Consolidation).
7. No disposition of the property of the Partnership by or with the authority of the JOLs in carrying out their duties and functions and the exercise of their power under any Order granted pursuant to this petition shall be voided by virtue of Section 99 of the Companies Act.
8. Subject to Section 109(2) of the Companies Act and the IPR, the JOLs be authorised to render and pay invoices out of the assets of the Partnership for their own remuneration.
9. 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 Partnership as an expense of the liquidation.

10. The JOLs' powers are exercisable to the exclusion of the general partner and the general partner shall have no authority or power to act in relation to the Partnership.
11. The JOLs have liberty to apply generally under section 36(3)(g) of the ELP Act.
12. The Petitioners' costs of and incidental to the Petition shall be paid forthwith out of the assets of the Partnership as an expense of the liquidation.
13. Such further or other relief as the Court deems appropriate.

Dated the 18<sup>th</sup> day of May 2023



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**Campbells LLP**

**NOTICE OF HEARING**

TAKE NOTICE THAT the hearing of this Petition will take place at the Law Courts, George Town, Grand Cayman, on 14 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.