



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

**CAUSE NO. FSD                      OF 2023**

**IN THE MATTER OF SECTION 124 OF THE COMPANIES ACT (2023 REVISION)**

**AND IN THE MATTER OF PORT LINK GP LTD. (IN VOLUNTARY LIQUIDATION)**

**PETITION**

To: The Grand Court of the Cayman Islands (the "**Court**")

The humble petition of Christopher Kennedy and Barry Lynch of Alvarez & Marsal Cayman Islands Limited, Flagship Building, PO Box 2507, 142 Seafarers Way, George Town, Grand Cayman KY1-1104, Cayman Islands (the "**Petitioners**"), shows that:

**Particulars of Incorporation**

1. Port Link GP Ltd. (In Voluntary Liquidation) (the "**Company**") is an exempted limited company incorporated on 8 March 2007 and organised pursuant to the Companies Act of the Cayman Islands (as revised). The registration number of the Company issued by the Registrar of Companies (the "**ROC**") is 183434.
2. The registered office of the Company is at Campbells Corporate Services (Cayman) Limited, Willow House, Cricket Square, Grand Cayman KY1-9101, Cayman Islands.
3. The most recent version of the Memorandum and Articles of Association (the "**Articles**") were adopted by the Company on 8 March 2007. The objects for which the Company was established are unrestricted.
4. The Company has an authorised share capital of US\$50,000 divided into 50,000 shares of a nominal or par value of US\$1.00 (the "Shares").
5. Since 30 May 2018, the entire issued share capital of the Company has been held by Port Link Holdings USA Inc., a Delaware company that was incorporated on 29 May 2018 with registration number 6908085 (the "**Shareholder**").

### The business of the Company

6. On 21 March 2007, the Company entered into a limited partnership agreement with the original limited partners of The Port Link Fund L.P. (“**TPF**”). The Company is, and at all material times has been, the general partner of TPF, which arrangement is currently governed by a limited partnership agreement dated 14 July 2008.
7. TPF is an exempted limited partnership which was registered on 21 March 2007 in the Cayman Islands for the purposes of investing in a wide range of equity, quasi equity and equity-related investments relating to port management, operations and businesses. The Company, as general partner, managed and supervised such investments and undertook other activities incidental or ancillary thereto.

### Ongoing Proceedings

8. On or around October 2020 litigation was commenced by two limited partners of TPF (the Kuwait Ports Authority and the Public Institution for Social Security (the “**Plaintiffs**”)) against the Company, the Shareholder and several other related parties (together, the “**Defendants**”). The Plaintiffs are seeking to recover sums in excess of US\$100 million, said to belong to TPF and/or its limited partners, which they say have been allegedly misappropriated by the Company and the other Defendants.
9. The Company and the other defendants have advanced counterclaims against the Plaintiffs and several of the Defendants have also brought a crossclaim against the Company (in its capacity as general partner of TPF).
10. These proceedings, FSD 236 of 2020 (RPJ), (the “**Proceedings**”) remain ongoing.
11. On 9 February 2023, Kobre & Kim came off the record as attorneys for the Company in the Proceedings, apparently on the basis that the Company was unable to pay their professional fees.
12. The Company’s independent directors also resigned on 15 February 2023. This left the Company unable, effectively, to prosecute or defend the claims to which it is a party in the Proceedings (whether on its own behalf or in its capacity as general partner of TPF).
13. The Plaintiffs filed an application for the appointment of receivers (the “**Receiver Application**”).

14. The Receiver Application was subsequently heard together with the Plaintiffs' joinder application on 24 April 2023, with the presiding judge reserving judgment at that time.

### **Commencement of the voluntary liquidation of the Company**

15. On 2 May 2023 the Company's sole shareholder passed resolutions to appoint the Petitioners as joint voluntary liquidators.
16. Section 116(c) of the Companies Act (2023 Revision) (the "**Act**") provides as follows:

*"A company incorporated and registered under this Law [...] may be wound up voluntarily-*

*[...]*

*(c) if the company resolves by special resolution that it be wound up voluntarily;"*

17. A "*Special Resolution*" is defined in Article 1 of the Articles as a resolution:

*"[...] passed by a majority of not less than two-thirds of such Members as, being entitled to do so, vote in person or, where proxies are allowed, by proxy at a general meeting of the Company [...]"*; or

*"[...] approved in writing by all of the Shareholders entitled to vote at a general meeting of the Company in one or more instruments each signed by one or more of the Shareholders and the effective date of the special resolution so adopted shall be the date on which the instrument or the last of such instruments, if more than one, is executed[...]"*

18. The Articles defines a "*Member*" as:

*"[...] a person whose name is entered into the Register of Members and includes each subscriber to the Memorandum of Association pending the issue to him of the subscriber share or shares [...]"*.

19. On 2 May 2023:

- (a) the Shareholder was the sole registered holder of all of the Shares and as such, the sole "*Member*" of the Company;

- (b) the Shareholder was therefore the only entity entitled to vote at a general meeting of the Company; and
  - (c) in its capacity as the sole registered holder of all of the Shares, the Shareholder executed written special resolutions to resolve that:
    - (i) the Company be wound up voluntarily; and
    - (ii) the Petitioners be appointed joint voluntary liquidators of the Company.
20. In the premises:
- (a) the Company duly resolved by special resolution that it be wound up voluntarily pursuant to section 116(c) of the Act; and
  - (b) the voluntary winding up of the Company is deemed to have commenced on 2 May 2023 pursuant to section 117(1)(a) of the Act.
21. The Petitioners filed a notice of winding up and consent to act as the joint voluntary liquidators of the Company with the ROC on 5 May 2023 in accordance with sections 123(1)(a) and 123(1)(b) of the Act and Order 13, rules 2(a) and 2(b) of The Companies Winding Up Rules (2023 Consolidation) (the "**CWR**"). The Petitioners published notice of the winding up in the Gazette on 22 May 2023 in accordance with sections 123(1)(d) and 123(1)(e) of the Act and Order 13, rules 2(c) and 2(d) of the CWR. Accordingly, the Petitioners' appointment took effect on 2 May 2023 pursuant to section 119(3) of the Act and Order 13, rule 3(2) of the CWR.
22. Given the existence of the LPA and the Company's role as general partner of TPF, the business and management of TPF also falls to the joint voluntary liquidators by way of their appointment over the Company.

### **Appointment of Receivers**

23. On or around 25 May 2023, judgment was handed down in respect of the Receiver Application (the "**Judgment**") and Gordon MacRae and Elizabeth Mackay of Interpath (Cayman) Limited, 38 Market Street, Suite 4208, Canella Court, Camana Bay, Grand Cayman, KY1-9006, Cayman Islands (the "**Receivers**") were appointed as interim receivers of the Company, its assets and the assets of TPF, with the scope of such

appointment limited to the conduct of the litigation to which the Company and/or TPF is or becomes a party.

24. The appointment of the Receivers shall remain in effect until further order of the Court.

#### **Declaration of solvency**

25. Section 124(2) of the Act and Order 14, rule 1 of the CWR require that a declaration of solvency, signed by the company's director(s) be provided to the joint voluntary liquidators and/or filed with the ROC within 28 days of the commencement of the liquidation (a "**Declaration of Solvency**").
26. On 15 February 2023 the Company's directors resigned and, therefore, no such Declaration of Solvency can or will be provided.
27. The JVLs have requested from the former independent directors of the Company a statement of affairs as at the date of their resignation in February 2023. Whilst this is expected to be provided shortly, it had not been received at the time of filing the Petition. Once received, the JVLs will provide a copy to the Court.

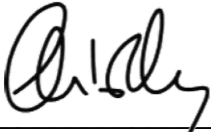
#### **Requirement for Court supervision**

28. Where a Declaration of Solvency, executed by the director(s) of the Company, is not provided within 28 days of the commencement of the voluntary liquidation, the Petitioners are required, pursuant to 124(1) of the Act, to present a petition seeking that the winding up of the Company continue under the supervision of the Court.
29. Accordingly, the Petitioners now present this Petition seeking that the winding up of the Company continue under the supervision of the Court, not to seek to infringe upon or otherwise duplicate the efforts (or costs) of the Receivers, but simply to comply with section 124(1) of the Act.

#### **Consent to Appointment as Joint Official Liquidators**

30. Christopher Kennedy and Barry Lynch are qualified insolvency practitioners (as that term is defined in section 89 of the Act) and, should the Court deem it appropriate, consent to their appointment as joint official liquidators of the Company.

DATED the 5th day of June 2023



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**Christopher Kennedy**  
Petitioner



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**Barry Lynch**  
Petitioner

**NOTE:** This Petition will be served in accordance with any order of the Court requiring the Petitioners to do so.

