

IN THE SUPREME COURT OF THE BAHAMAS
COMMERCIAL DIVISION

CAUSE NO. COM/bnk/00077 OF 2019



IN THE MATTER OF THE COMPANIES ACT, 1992, CH. 308

AND IN THE MATTER OF PACIFICO GLOBAL ADVISORS LTD.

SUMMONS

LET ALL PARTIES CONCERNED attend before The Honourable Mr. Justice Ian Winder, a Judge of the Supreme Court of The Commonwealth of The Bahamas, in Chambers at Ansbacher Building, East Street on the ____ day of ____, A.D., 2023 at ____ in the fore/afternoon on the hearing of an application on behalf of the Joint Official Liquidators (“**JOLs**”) of Pacifico Global Advisors Ltd. (“**PGA**”) for an Order pursuant to sections 204, 205, 234, 246, Section 7 of Part 1 of the Fourth Schedule of the Companies (Winding Up Amendment) Act, 2011, the Companies Liquidation Rules, 2012 and the Insolvency Practitioners Rules, 2012 THAT:

1. This Honourable Court sanctions the JOLs resolving the shortfall of USD92,552 (approximate figure (due to daily currency fluctuations) as of 30th April 2022) in PGA’s cash trust accounts from a portion of the monies received from the ALM Sub Fund (“**ALM**”) when ALM paid off its negative cash balance.

2. In instances concerning assets held in PGA's name on behalf of trust clients ("**Trust Assets**"), where PGA does not have sufficient cash in the currency owed to the PGA's trust clients ("**Clients**") (which includes converting cash held in currencies, other than EUR, to USD or EUR), the JOLs are authorized to pay Clients their trust assets in USD, using the conversion date as the date of the order granting this application, after all deductions as allowed by this Honourable Court.
3. As of 8th March, 2023, the JOLs are authorized to charge and recover payment from Clients concerning liquidation costs incurred in maintaining, transferring, selling, or eventually abandoning/disclaiming their portions of the Trust Assets ("**Additional Costs**") when such Clients require special attention to facilitate the transfer of their Trust Assets and/or have not submitted the documents ("**Distribution Documents**") mandated by paragraph 1 of the Order of this Honourable Court dated 07 October 2021 and filed herein 03 November 2021. The Additional Costs are not included in the first or second proposed indemnities referenced in paragraph 12 herein.
4. Further to paragraph 3 herein, the JOLs are seeking leave to file a Notice of Disclaimer (per section 234 of the Companies (Winding Up Amendment) Act and Order 16, rules 22 - 35 Companies Liquidation Rules, 2012) ("**Notice of Disclaimer**") to abandon/disclaim any of the Trust Assets constituted in paragraph 3 herein, if the JOLs deem it cost prohibitive to maintain, retain, realize and/or transfer the aforementioned assets.
5. The JOL's are authorized to sell and/or transfer those Trust Assets for which Clients have not submitted any Distribution Documents on or before 7th March 2023 ("**Trust Assets Lacking Distribution Documentation**").

6. The JOLs are authorized to transfer the Trust Assets Lacking Distribution Documentation to an existing account held in PGA's name at a custodian/financial institution in the event of the JOLs being unable to sell the Trust Assets Lacking Distribution Documentation and the JOLs deeming the transfer of the Trust Assets Lacking Distribution Documentation to be necessary to facilitate PGA's winding-up proceedings,
7. The JOLs are authorized to utilize Trust Assets valued at less than USD1,500, before or after the deduction of bank/closing/custody/safekeeping/maintenance charges) ("**Bank Charges**"), to contribute to liquidation costs, as it is cost prohibitive to issue distributions to the Clients on whose behalf such Trust Assets are being held.
8. The JOLs are authorized to pay the costs incurred by the prior Official Liquidator, Edmund Rahming, ("**OL**") from PGA's proprietary assets and the Trust Assets. The aforementioned costs include liquidation costs up to 15 June 2021, that were approved by this Honourable Court in the 17 January 2022 Ruling in this action ("**January 2022 Ruling**"), and costs incurred for the periods of 15 June 2021 to 30 July 2022, prior to the OL demitting office, and 03 August 2021 to 14 October 2021, when the OL was assisting the JOLs, (constituting bills from the OLs, Intelisys Ltd., Quetelle Ferguson, and Callenders & Co.).
9. The JOLs are seeking clarification of the January 2022 Ruling as regards BSD 248,148 which remains to be paid to the OL and his service providers in that it is unclear as to whether NX Sub Fund is to contribute to the costs set out in paragraph 15(c) of the OL's Fifteenth Affidavit filed in this action on 25th June 2021.

10. The JOLs be granted leave to file a Notice of Disclaimer to disclaim onerous Trust Assets that are cost prohibitive to maintain, retain, realize and/or transfer the aforementioned assets.
11. The JOLs be granted leave to file a Notice of Disclaimer regarding a security currently valued in excess of USD 1,200,000 that may not be sold, as the security is suspended pending liquidation.
12. The JOLs are authorized to deduct third party charges (including but not limited to Bank Charges and:
 - i. fourteen percent (14%) of Trust Assets, except Global Opportunities EUR NX Sub Fund ("**NX Sub Fund**"), and twelve percent (12%) of the Trust Assets held on behalf of NX Sub Fund ("**First Proposed Indemnity**"), based on the information provided in Option 1 in the Sixth Affidavit of Mark Munnings; or
 - ii. fifteen and a half percent (15.50%) of Trust Assets, except NX Sub Fund, and thirteen and a half percent (13.50%) of the Trust Assets held on behalf of NX Sub Fund ("**Second Proposed Indemnity**"), based on the information provided in Option 2 in the Sixth Affidavit of Mark Munnings.

Either the First Proposed Indemnity or Second Proposed Indemnity will be used to indemnify PGA for the costs directly attributable to the distribution of the Trust Assets and to contribute to the liquidation expenses which benefitted the Clients, which included NX Sub Fund.

13. That the Joint Official Liquidators have liberty to apply.

14. That the costs of this application be costs in the liquidation.

DATED the 3rd day of March, A.D., 2023.

Callenders & Co.
Calenders & CO.

REGISTRAR

TO: The Registrar of the Commercial Division

AND TO: Alexander Maillis II
Representative of Liquidation Committee Member - Mosko Realty Ltd.
Charlotte House, Shirley Street
Nassau, N.P., The Bahamas

Garcia R. Whyms
Representative of Liquidation Committee Member –Capital Corporate
Services Ltd.
West Bay Street, Sandypoint
Nassau, N.P., The Bahamas

Luca Lanciano – Liquidation Committee Member
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Old Fort Bay, N.P., The Bahamas

Mr. Gawaine Ward
SECURITIES COMMISSION OF THE BAHAMAS
North Building, 2nd Floor
31A East Bay Street
Nassau, The Bahamas

TIME ESTIMATE: The estimated length of the hearing of this summons is 3 hours.

This Summons is supported by the Sixth Affidavit of Mark E. Munnings, one of the Joint Official Liquidators of PGA.

This Summons for Directions was issued by **CALLENDERS & CO.**, of No. 1 Millars Court, Nassau, N.P. Attorneys for the Joint Official Liquidators.

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Commercial Division

**IN THE MATTER OF THE COMPANIES
ACT, 1992, CH. 308**

**AND IN THE MATTER OF PACIFICO
GLOBAL ADVISORS LTD.
(IN LIQUIDATION)**

S U M M O N S

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Attorneys for the Joint Official Liquidators

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