

CHP 19/0066

**IN THE HIGH COURT OF JUSTICE OF THE ISLE OF MAN
CIVIL DIVISION
CHANCERY PROCEDURE**

Proceedings under the Companies Act 1974, the High Court Act 1991 and the Financial Services Act 2008 relating to Montpelier (Trust and Corporate) Services Limited

BETWEEN:

ISLE OF MAN FINANCIAL SERVICES AUTHORITY

Claimant

and

MONTPELIER (TRUST AND CORPORATE) SERVICES LIMITED

Defendant

and

IN THE MATTER of the Claim Form issued on 17 June 2019

HIS HONOUR

DEEMSTER KHAMISA QC

UPON consideration had hereof and for the reasons set out in the Judgment of the Court dated 2 October 2019 **IT IS ORDERED THAT:**

Appointment of Manager

- 1 Gordon Wilson of CW Consulting Limited ("the Manager") is hereby appointed as Manager under section 22 Financial Services Act 2008 to manage the affairs of Montpelier (Trust and Corporate) Services Limited ("the Defendant") in so far as those affairs relate to the carrying on of any regulated activity until further notice. The terms of this appointment are as follows:

- 2 The Manager may do anything he considers necessary or expedient for the management of the affairs of the Defendant in so far as those affairs relate to the carrying on of any regulated activity, and for these purposes 'the affairs of the Defendant' include its business and property.

- 3 The Defendant and its officers shall not, without the consent of the Manager (which may be general or specific), exercise any power of any kind which could be exercised so as to interfere with or circumvent the powers of the Manager hereunder.
- 4 The Defendant, its officers and employees, shall provide all possible co-operation and assistance to the Manager in the performance of his office as Manager.
- 5 The Defendant, its current and any former officers and its employees shall provide the Manager with any information or documentation requested by the Manager for the purposes of carrying out his function as Manager.
- 6 Without prejudice to the generality of his powers as aforesaid, the Manager's power includes the power to:
 - a. enter the registered office of the Defendant at Fernleigh House, Palace Road, Douglas, Isle of Man and any other premises from which the Defendant operates from the date of this Order to enable him to access, secure and copy any books, records or documents (including in electronic format) of any kind whatsoever which are held or maintained by the Defendant for itself or any of its clients or are under the possession, custody or control of the Defendant or any of its clients;
 - b. employ and remunerate any necessary staff on behalf of the Defendant from the Defendant's assets ;
 - c. carry on the business of the Defendant, or discontinue or dispose of any part of it should this be desirable in the interests of the Defendant and/or its clients and/or its creditors;
 - d. discharge all costs, expenses and outgoings necessary for the continuation of the Defendant's business, and effect all necessary insurances on its behalf from the Defendant's assets;
 - e. require that no transaction of any kind be authorised or effected by (a) the Defendant or any of its officers or employees, (b) the Defendant in its capacity as trustee of a client trust (c) any client trust of the Defendant for

which the Defendant provides a trustee other than the Defendant itself (d) any client company of the Defendant for which the Defendant provides directors whether relating to the business of the Defendant or of its clients or otherwise, without the prior knowledge and consent of the Manager or otherwise than in accordance with such procedures as the Manager may direct. For these purposes "transaction" includes, not by way of limitation, cash payments, bank transfers, the sale, acquisition or transfer of assets, dividends and distributions, loans and the waiver of loans, and options and other agreements for performance in the future; and includes transactions on the Defendant's bank accounts and by its clients for which it provides directors or trustees. The Defendant, its officers and employees, shall provide the Manager with any information he may require relating to such transactions in a timely manner;

- f. require that the Defendant, its officers and employees, not withdraw or cease to provide any services to or in respect of any client company or trust except with the prior knowledge and consent of the Manager;
- g. appoint a director or directors to any client company or subsidiary company of the Defendant;
- h. appoint an agent or agents to do anything the Manager is unable to do himself;
- i. demand repayment of any loan made by a client trust to Bayridge (Isle of Man) Limited and/or Bayridge Investments LLC and/or Montpelier Insurance Company Inc (or any other company in which Edward Watkin Gittins has a financial or beneficial interest) in accordance with terms of the relevant loan agreement (if any);
- j. require the directors of any client company for which the Defendant provides directors to demand repayment of any loan made by such a client company to Bayridge (Isle of Man) Limited and/or Bayridge Investments LLC and/or Montpelier Insurance Company LLC (or any other company in which Edward

Watkin Gittins has a financial or beneficial interest) in accordance with terms of the relevant loan agreement (if any);

k. all things necessary or incidental to the Manager's functions, duties and powers hereunder.

- 7 The Manager shall be given notice of, and have the right to attend, any meeting of the board of directors of the Defendant, as well as any meeting of the board of directors of the Defendant's client companies and any meeting of the trustees of the Defendant's client trusts where such client companies and trusts include any directors or trustees provided by the Defendant.
- 8 The Manager may instruct Advocates or other law agents to assist him in the performance of his duties.
- 9 The Manager shall have a general liberty to apply to the Court. Without prejudice to the generality of this provision, he may in particular apply to the Court if he considers that the powers conferred on him by this Order require modification, addition or clarification or if he seeks any directions or requires any assistance from the Court.
- 10 The Manager shall deliver to the Court an interim report, within 1 month of his appointment, and thereafter further interim reports at monthly intervals, with copies of such reports to the Claimant and, unless the Court otherwise directs, the Defendant. Such reports will provide an account of the performance of his office as Manager and any other matters which the Manager considers it appropriate to draw to the Claimant's attention.
- 11 The Manager shall be paid remuneration by the Defendant for his services as Manager (including in respect of services provided by professional advisors instructed by the Manager and/or the employees of CW Consulting Limited) such remuneration and expenses to be approved by the Court if not agreed. The Manager may apply to the Court at any time for a determination in respect thereof.

- 12 Any balance of the Manager's remuneration not defrayed by the Defendant shall be defrayed by the Treasury and any payments made by the Treasury shall be recoverable by it as a civil debt from the Defendant.
- 13 The Claimant has liberty to apply to the Court to modify or clarify or supplement this Order for the appointment of a Manager in any way and for any reason, including (not by way of limitation) in response to changed circumstances or any matter alluded to in the Manager's reports.
- 14 Liberty to apply generally.

Appointment of Receiver

- 15 Gordon Wilson of CW Consulting Limited is hereby appointed as receiver ("the Receiver"), without security, under section 21 of the Financial Services Act 2008 and section 42 High Court Act 1991 of the affairs, business and property of the Defendant with immediate effect and until further order.
- 16 The Receiver shall have full power to collect all the assets of the Defendant as he shall in his discretion think proper but subject also to the directions of the Court.
- 17 The Receiver shall be at liberty:-
 - (i) to bring or to defend any action or proceedings in any jurisdiction in the name of the Defendant or otherwise as may be appropriate to vest in the possession or under the control of the Receiver all the property and assets of the Defendant and any books, papers, records (whether in computer readable form or otherwise) documentation or writings relating thereto or in any manner whatsoever concerning the same (hereinafter referred to as "the assets" which expression shall include any part or parts thereof respectively) and bring or defend any action or other proceedings or to take any steps in any action or proceedings which the Receiver may deem proper to secure or preserve the assets of the Defendant;
 - (ii) by any appropriate procedure to vest the assets of the Defendant so far as may be appropriate in the name of the Receiver or in the name of any agent or nominee for him;

- (iii) to the extent not covered by the powers vested in the manager appointed pursuant to section 22 of the Financial Services Act 2008 by this Order, to take such steps in the management and administration of the Defendant or the assets as the Receiver may deem proper;
- (iv) to sell dispose or otherwise deal in any manner whatsoever with the assets of the Defendant and for such purposes to enter into such deeds, documents or instruments as may be appropriate, including without limitation, exercising the voting rights in respect of the shares the Defendant holds in Montpelier Properties Limited;
- (v) to give a good receipt or discharge for or in respect of the assets of the Defendant and for such purpose to enter into any arrangement as shall seem proper to the Receiver;
- (vi) the Receiver may instruct Advocates or other law agents to assist him in the performance of his duties.
- (vii) to require any present or former director, officer, manager, employee, banker, agent, advocate, solicitor, attorney, accountant or other adviser of the Company to deliver up the assets of the Defendant and any documents or writings (in computer readable form or otherwise) of the Defendant in the possession, custody or control or any such present or former director, manager, employee, banker, agent, advocate, solicitor, attorney, accountant or other professional adviser of the Defendant or any of them whether in such capacity or otherwise howsoever to the Receiver or to his duly appointed agent and to provide such information about the Defendant and its assets, business, trade and affairs to the Receiver as the Receiver may reasonably require.

18 The Receiver shall file a certified copy of this Order in the file of the Defendant held by the Companies Registry.

19 The Receiver is hereby authorised (without limiting the generality of the foregoing) to do any of the following where the Receiver considers it necessary or desirable :

- (a) to take possession of and exercise control over the Defendant's property and any and all proceeds, receipts and disbursements arising out of or from the property;
- (b) to preserve and protect the property;
- (c) to receive and collect all monies and accounts now owed or hereafter owing to the Defendant and to exercise all remedies of the Defendant in collecting such monies including, without limitation, to enforce any security held by the Defendant;
- (d) to initiate, prosecute and continue or discontinue and/or compromise any and all proceedings and to defend all proceedings now pending or hereafter; and
- (e) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

20 The Defendant, via its directors or secretary, shall advise the Receiver of the existence of any of the Defendant's property including any such property (whether or not in electronic form) in their control or possession, shall grant immediate and continued access to the property to the Receiver, and shall deliver all such property to the Receiver upon the Receiver's request.

21 The Receiver shall be paid remuneration by the Defendant for his services as Receiver (including in respect of services provided by professional advisors instructed by the Receiver and/or the employees of CW Consulting Limited) such remuneration and expenses to be approved by the Court if not agreed. The Receiver may apply to the Court at any time for a determination in respect thereof.

22 Any balance of the Receiver's remuneration not defrayed by the Defendant shall be defrayed by the Treasury and any payments made by the Treasury shall be recoverable by it as a civil debt from the Defendant.

23 Liberty to apply generally.

Appointment of Inspector

- 24 Adrian Hyde and Robert Starkins of CVR Global LLP, 20 Furnival Street, London, EC4A 1JQ are hereby appointed as joint inspectors ("the Inspectors") under section 5 of the Companies Act 1974 to investigate the affairs of Montpelier (Trust and Corporate) Services Limited ("the Defendant") and report on those matters set out in the Schedule hereto.
- 25 The Inspectors shall additionally report on any matter which comes to their attention during the course of the investigation or arising therefrom which they consider ought to be drawn to the Court's attention. Copies of any such report shall be provided to the Claimant and, unless the Court otherwise directs, the Defendant.
- 26 The Inspectors shall deliver to the Court an interim report within 1 month of their appointment and thereafter (until production of their final report) further interim reports at monthly intervals, with copies of such reports to the Claimant and, unless the Court otherwise directs, the Defendant.
- 27 At the conclusion of their investigation, the Inspectors shall, pursuant to section 134(6) Companies Act 1931, deliver a final report to the Court, with a copy to the Claimant and, unless the Court otherwise directs, the Defendant.
- 28 The Court may, if it thinks fit on request and on payment of the prescribed fee, provide a copy of the said final report to any other person whose conduct is referred to in the report and may cause the said final report to be published.
- 29 Any applications under paragraph 28 shall be made to the Court with not less than 7 days' notice to the Claimant and the Defendant and shall be heard at a time and place to be fixed by the Court.
- 30 The Inspectors shall be entitled to reasonable remuneration, to be approved by the Court. Payment of such remuneration shall be made by the Defendant as it falls due, subject to potential future reimbursement if an Order is made under section 135(3)(a) of the Companies Act 1931. There is liberty to apply for directions as to the operation of this provision if a prosecution is instituted.

- 31 Save as provided for in section 135(3)(a) of the Companies Act 1931, the expenses of and incidental to the investigation shall be defrayed by the Defendant.
- 32 Any balance of the expenses including, for the avoidance of doubt, the Inspector's remuneration not defrayed by the Defendant shall be defrayed by the Treasury and any payments made by the Treasury shall be recoverable by it as a civil debt from the Defendant.
- 33 The Claimant has liberty to apply to add to or to modify the scope of the investigation referred to in paragraph 24 above and for the continuation of the appointment of the Inspectors (or their reappointment) so as to effect any such amplified or modified investigation. Any such application shall be made on not less than 14 days' notice to the Defendant and (if appropriate and relevant), to any other interested parties and shall be heard at a time and date to be fixed by the Court.
- 34 Liberty to apply generally.
- 35 The parties have 14 days from the date hereof to file any costs application together with concise written submissions in support.
- 36 The deadline for any concise responsive submissions to any costs application made in accordance with paragraph 35 shall be 7 days thereafter, whereafter such application(s) will be determined administratively without further hearing.
- 37 A copy of this Order be published on the Claimant's website <https://www.iomfsa.im> and the Defendant's website (www.montpelier.im).

Dated 7 October 2019



SEAL OF THE HIGH COURT

Schedule

Matters to be investigated by Inspector

The Inspectors appointed to investigate and report on the affairs of Montpelier (Trust and Corporate) Services Limited ("the Defendant") are to investigate the current and historic operation of the Defendant, with particular reference to dealings between the Defendant and/or any of its clients with Bayridge (Isle of Man) Limited, Bayridge Investments LLC, Bayridge Investments Limited and Montpelier Insurance Company Limited ("the Gittins Entities"). The Inspectors should report upon, inter alia, the following matters:

- 1 How much money has been transferred by the Defendant on behalf of its clients to any of the above referenced Gittins Entities, over what time frame and on whose instructions? A list of transactions by clients showing amounts, dates and transfer authority should be prepared.
- 2 How much money has been transferred by the Gittins Entities back to clients of the Defendant, over what time frame and on whose instructions? A list of transactions by client showing amounts, dates and transfer authority should be prepared.
- 3 Approximately how much money remains due to clients of the Defendant by each of the Gittins Entities at this time?
- 4 Whether there is any evidence that owners/beneficiaries/settlers of those of the Defendant's clients concerned in these transfers of moneys were informed of or otherwise aware of the transfers concerned in advance of the transfers being made (or since), whether they had approved of such transfers (in advance, at the time or in retrospect) and whether Montpelier exercised a fiduciary discretion in effecting the transfers without the owners/beneficiaries/settlers being made aware?
- 5 What documentation can be found in the Defendant's records to support the above referenced transfers and how have the transfers been accounted for in the records of the clients concerned?
- 6 What enquiries did the Defendant make of the Gittins Entities, their ownership and their financial situation before or after the transfers concerned?
- 7 Generally, what did the Defendant know about the financial situation of the Gittins Entities, who knew and when?
- 8 Has the Defendant received any complaints about any dealings with the Gittins Entities by any client, owner, beneficiary, settlor or other party interested in any client, what was the general nature of these complaints, over what period and how did it deal with such complaints?
- 9 Is there any evidence that transfers from the Gittins Entities to clients of the Defendant were funded by money that was first transferred by other Defendant clients to the Gittins Entities?

- 10 Did Mr Watkin Gittins and/or any of his family receive money from the Gittins Entities? If so, details to be provided including dates, amounts and authorisations.
- 11 Did Mr Watkin Gittins or any of his family pay money into any of the Gittins Entities. If so, details to be provided including dates and amounts.
- 12 Did the Defendant provide regulated services to any of the Gittins Entities? If so, what services were provided over what period?
- 13 Has the Defendant discharged its duties in advising the Authority in line with its regulatory and legal responsibilities and acceptable practices?
- 14 Has the Defendant been concerned in unlicensed money lending and/or banking/deposit taking or investment business on the part of Bayridge (Isle of Man) Limited?