

IN THE MATTER OF THE BODIES CORPORATE (OFFICIAL LIQUIDATIONS)  
ACT 1963 (ACT 180)

AND

IN THE MATTER OF THE CORPORATE INSOLVENCY AND RESTRUCTURING ACT 2019  
(ACT 1015)

AND

IN THE MATTER OF THE REVOCATION OF THE LICENCES OF 53 FUND MANAGEMENT COMPANIES BY THE SECURITIES AND EXCHANGE COMMISSION UNDER SECTION 122(2) OF THE SECURITIES INDUSTRY ACT 2016 (ACT 929) AND REQUEST TO THE REGISTRAR-GENERAL TO PETITION THE HIGH COURT TO COMMENCE WINDING-UP PROCEEDINGS AGAINST THE COMPANIES UNDER SECTION 1(C) AND 4(2)(D) OF THE BODIES CORPORATE (OFFICIAL LIQUIDATIONS) ACT 1963 (ACT 180) (AND NOW UNDER SECTIONS 81(1)(c), 84(1)(a) AND 84(2)(f) OF THE CORPORATE INSOLVENCY AND RESTRUCTURING ACT 2020 [ACT 1015] )

AND

IN THE MATTER OF OFFICIAL LIQUIDATION OF BROOKS ASSET MANAGEMENT  
LIMITED

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STATEMENT BY THE OFFICIAL LIQUIDATOR AT THE 1<sup>ST</sup> CREDITORS MEETING

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1. COMPANY'S PROFILE

- a) The Company was incorporated on 15<sup>th</sup> March, 2011 and was issued with certificate to commence business on 16<sup>th</sup> March, 2011. The Company was licensed by SEC as a Fund Manager on 11<sup>th</sup> October, 2011.
  
- b) The nature of business of the Company consisted of Investment Advisory, Asset Management, Syndication and Financial Services.

- c) The Directors of the Company at the time of Revocation of the licence were Benjamin Kujar, Leonard Nyakpo, Ken Kwaku, Elizabeth Obese and Cristiana De Alessi Gracio.
- d) The sole shareholder of the company was Lymin Creek Limited, with 3,700,000 shares.
- e) The Registered office and the principal place of business of the Company was situated at H/NO. 112 East Legon, Freetown Avenue, Accra.
- f) That the Company was registered with 3,700,000 shares with cash consideration of GH¢3,700,000.00

## 2. REVOCATION OF OPERATING LICENCE

- a) The Securities Exchange Commission (hereinafter called 'SEC') by Notice Number SEC/PN/012/11/2019 revoked the licenses of 53 fund management companies including Brooks Asset Management Limited upon stated grounds peculiar to each of the companies.
- b) The SEC by a letter referenced SFC/FM/RGD/LIST/10/19 dated 11<sup>th</sup> November, 2019, delivered to the Registrar of Companies titled "Request to Petition the Court for the liquidation of Fund Management Companies whose licenses have been revoked", requested the Registrar of Companies to Petition the court for an Order for official liquidation of the Company.

Pursuant to sections 2 and 3 of the Securities Industries Act 2016 (Act 929), the SEC is the statutory body mandated by the Act to promote the orderly growth and development of an effective, fair and transparent securities market in which investors and the integrity of the market is protected.

The 'SEC' also has a mandate to maintain surveillance over activities in securities to ensure orderly for and equitable dealing in securities.

- c) Section 3(e) of Act 929 also enjoins 'SEC' to monitor the solvency of licence holders and take measures to protect the interest of investors where the solvency of the licence holder is in doubt.

The Commission also pursuant to section 122(2)(b) of Act 929 may revoke or suspend the licence of a Licencee under the conditions listed therein.

### 3. GROUND FOR REVOCATION OF OPERATING LICENCE OF BROOKS ASSET MANAGEMENT LIMITED.

- i. The 'SEC' had a number of engagements with Brooks Asset Management Limited pursuant to section 19 of Act 929, several decisions were issued by SEC against Brooks Asset Management Limited with directors to take steps to comply and resolve the regulatory infractions but to no avail.
- ii. The specific issues that led to the revocation of the Company's licence included the following;
  - (a) Failure to honour clients' redemption requests
  - (b) Placement of client funds without the requisite standard of professional conduct contrary to paragraphs 2, 3, 6 and 13 of Part X of the SEC Compliance Manual for Broker-Dealers, Investment Advisers and Representatives 2008. Placement of 38.7% of funds with Lymin Creek Ltd (a related party)

- (c) Failure to notify the Commission of closure of branches in Kumasi and Takoradi contrary to section 120 of the Securities Industry Act 2016 (Act 929) and regulations 18 of the Securities and Exchange Regulations, 2003 (LI 1728)
- (d) Non submission of statutory reports contrary to Regulations 33(1)(a)(b)(c) and (6) of LI 172
- (e) Failure to adhere to voluntary payment plans agreed on at Complaints hearings, contrary to required professional and ethical conduct in paragraphs 2, 3, and 6 of the SEC Compliance Manual for Broker-Dealers, Investment Advisers and Representatives 2008 and general best international industry practice.
- (f) Issuance of dud cheques to clients
- (g) Failure to pay penalties levied by the Commission.

#### 4. PROSECUTION OF THE LIQUIDATION

##### (STEPS TAKING)

Upon receipt of the request of 'SEC' contained in the letter dated 11<sup>th</sup> November, 2019 the Official Liquidator took the following steps;

- (a) Appointed the Law Firm Bentsi Enchill Letsa and Ankomah (BELA) under section 10(3) of the Bodies Corporate (Official Liquidations) Act, 1963 Act 180 then who then applied to the High Court, Commercial Division, Accra for an order for the official liquidation of the 50 Fund Management Companies which included Brooks Asset Management Limited.
- (b) The High Court Commercial Division, Accra, presided over by Her Ladyship Justice A. Mensah-Homiah, (JA)(sitting as additional High Court Judge) on 17<sup>th</sup> day of July, 2020, granted the order for the official liquidation of Brooks Asset Management Limited under section 4(2)(d) of Act 180 (and now under section 84(2)(f) of Act 1015).

- (c) The order for the liquidation of the Company has been gazetted and published in the Commercial and Industrial Bulletin No. 25 dated Friday, 17<sup>th</sup> July, 2020.
- (d) Notices to Creditors and Debtors of the Company has been published in the national dailies as a result of which creditors have submitted their proof of debts.
- (e) Bentsi-Enchill, Letsa & Ankomah, De-Georges Law Consult, Quans Consult Limited and PricewaterhouseCoopers have been appointed to among others, deal with all legal issues, litigations, assess and value the assets of the company for sale, and validation of claims and preparation of Statement of Affairs and accounts, respectively, to assist the Official Liquidator in the prosecution of the liquidations, pursuant to section 10(3) of Act 180 (and now section 98(4) of Act 1015).
- (f) The validation of almost all the Investor claims of SEC and the proof of debts submitted have been completed by Pricewaterhousecoopers who were appointed by SEC as its Agents at the revocation of the 53 Fund Management Companies.

## 5. CLAIMS / VALUE

Pursuant to the publications of notices to Creditors and Debtors of the Company to submit their proof of debts, the Official Liquidator received 692 claims valued at GH¢242m and all the claims have been validated.

## 6. VALIDATION OF CLAIMS

PWC has validated the investor claims to date filed against the Company, because PWC had access to all the records of the Company as soon as the licence was revoked. As at 26<sup>th</sup> August, 2020, a total of 692 claims were examined by PWC, with an examined value of GH¢274m. Claims of other Creditors have now been called for by the OL after we received the Order to wind up this Company. PWC

is now going to validate those claims and any other claims that were not submitted initially when the Licence was revoked.

**7. GENERAL LEGAL PRINCIPLES GOVERNING DECLARATION AND PAYMENT OF DIVIDEND DUE CREDITORS' IN COMPANIES IN OFFICIAL LIQUIDATION**

- a) The general legal principles guiding declaration of dividends and payment of dividend, and or claims to Creditors of a company is a creation of statute Act 180, now Act 1015.
- b) Indeed the order to liquidate the company by way of official winding up is by virtue of the fact that, the company is unable to pay its debts when they fall due.

Specifically, Brooks Asset Management Limited was unable to redeem the investments of the Creditors because it lacked funds and or the extent of liabilities far outweighed the assets of the company and the company was deemed bankrupt.

- c) It is noteworthy that, Creditors can only receive their claims consequent upon the assets realized, that is, the extent of assets the company owns will definitely determine the percentage of dividend that will be declared by the Official Liquidator and payable to all the creditors. This is because the payments due Creditors are not charged to the governments consolidated fund. Since the company is bankrupt, the Official Liquidator cannot pay 100% of the claims of the Creditors, but subject to the extent of assets realized.

**8. PAYMENT OF DIVIDEND TO CREDITORS.**

- a) The cardinal obligation of the official liquidator is in her ability to fulfil her obligations to the Creditors and also explore avenues to maximize the percentage of claims due Creditors; to mitigate the hardships that have been occasioned to them.

## 9. GOVERNMENT BAILOUT

Prior to the Official Liquidator realising the value from assets, the Government, mindful of the plight of Investors, has reiterated its commitment to a bailout package for all the clients of the FMCs in the form of a social intervention similar to what was done for depositors of the failed SDIs and MFIs, noting however the legal and technical differences of the two sectors.

The first phase will cover clients of the twenty-two (22) companies currently under official liquidation per Court orders, based on their validated claims. The Official Liquidator will communicate details of the payment process to affected clients before the end of September 2020 in the next round of a class meeting to be held with all investors of FMC after this First Creditor Meeting hopefully in the 3<sup>rd</sup> week of September, 2020. The second phase would cover clients of the remaining companies after the liquidation Orders are secured.

## 10. OBJECTIVES AND KEY PRINCIPLES FOR THIS BAILOUT FROM GOVERNMENT

The provision of the Bailout is for the immediate relief for investors as much as is reasonably possible, for those whose funds have been locked up with the Fund Management Companies whose licences have been revoked.

This Bailout is also envisioned to restore confidence in Ghana's capital market through Government's commitment to assisting affected investors.

### KEY PRINCIPLES

Regulatory Adherence: It is Government's objective that the Legal documentation and processes to be followed as part of this Bailout Program are in accordance with the relevant laws. This Bailout Program would therefore remain optional to claimants to participate or not to after further details of it are spelt out at the Class Meeting for Investors of FMC's only. Therefore Claimants who choose not to participate in the Program may remain with the OL and benefit from the proceeds realized from Brooks Assets Management Limited

## **11. BAILOUT STRUCTURE- A Mutual Fund**

The Bailout structure package is being offered by Government to investors of FMC's via a Mutual Fund (the Fund).

The Fund shall be capitalized by Government in the form of short term and long term bonds.

Investors (Claimants) who choose to participate in the Bailout Program shall exchange your interests in this defunct Company for shares in the Fund- which shall be based on the size of this Company's claims that have been validated.

Claimants shall receive the full amount of your validated claims, however with certain terms and conditions.

Claimants shall receive a portion of your validated claims in Tier 1 shares of the Fund and a portion in Tier 2 shares of the Fund.

### **TIER 1 SHARES OF THE FUND**

It shall function like a money market fund and allow beneficiaries of the shares to withdraw any component of it in cash by simply giving a 24 hour notice period accordingly

This would allow for liquidity to you holders of these shares accordingly on short notice if you choose to accept this Government Bailout package.

### **TIER 2 SHARES OF THE FUND**

This shall be of a medium term in nature. There will be restricted withdrawals on selected anniversary dates that will be announced to all investors.

## **12. BENEFITS**

Acceptance of this program would provide restoration of funds to you investors in the form of liquid assets which would give immediate relief and medium term risk free assets (backed by secure Government Bonds).



It would provide certainty to you investors with regards to what you recover as the OL goes through the court processes to determine what may be recovered through the liquidation proceedings.

The Mutual Fund Structure as I am sure most of you are aware of would allow for liquidity in the event that you as investors would want to discount your investments.

Government would absorb the losses that may emerge post the liquidation proceedings to bring relief to you claimants

### 13. ASSETS;

The Company has no assets that the Official Liquidator could lay hands on, consequently, any creditor who knows of and or can identify any of the assets of the company must make same known to the Official Liquidator as soon as possible.

We will settle all other creditors from assets realized by declaring dividend and pay them on proportionate basis to investment one had.

The Official Liquidator will communicate to all creditors in due course the payment processes to the affected investors in the coming days, when the initial amount payable is determined.

Creditors are to provide email address to enable Official Liquidator forward to you Statement of Affairs. The email address is [info@rgd.gov.gh](mailto:info@rgd.gov.gh)

We will call on officers of Bentsi-Enchill, Letsa & Ankomah, PWC, Quans Consult Limited and De-Georges Law Consult to provide details of work done to date, in the prosecuting of the liquidation.

Thank you very much for the patience exercised in this matter.

**JEMIMA MAMAA OWARE (MRS.)**  
**OFFICIAL LIQUIDATOR**