

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

AND

IN THE MATTER OF THE CORPORATE INSOLVENCY AND RESTRUCTURING ACT 2020
(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 NESST CAPITAL LIMITED

STATEMENT BY THE OFFICIAL LIQUIDATOR AT THE 1ST CREDITORS MEETING

1. COMPANY'S PROFILE

- a) The Company was incorporated on 31st March, 2016 and was issued with a Certificate to commence business on 1st April, 2016. SEC licensed the company as a Fund Manager on 4th December, 2017.

- b) The nature of business of the Company consisted of; Investment Advisory and Fund Management Services.

- c) The Directors of the Company at the time of the revocation of the licence were Frederick Dah, Christian Odamtten, Michael Amankwa and Hubert Dake.

- d) The shareholders of the company were Kodjo Sosuh with 37,500 and Michael Amankwa with 212,500 shares.
- e) The Registered office and the principal place of business of the Company were situated at No. 6 Agostino Neto Road, Airport Residential Area, Accra.
- f) That the Company was registered with 250,000 shares with cash consideration of GH¢250,000.00

2. REVOCATION OF OPERATING LICENCE

- a) The Securities and Exchange Commission (hereinafter called 'SEC') by Notice Number SEC/PN/012/11/2019 dated 8th November, 2019 revoked the licenses of 53 fund management companies including Nesst Capital Limited upon stated grounds peculiar to each of the companies.
- b) SEC by a letter referenced SFC/FM/RGD/LIST/10/19 dated 11th 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of Companies titled "Request to Petition the Court for the liquidation of Fund Management Companies whose licenses have been revoked", requested the Registrar of Companies to Petition the court for an Order for official liquidation of the Company.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. GROUNDS FOR REVOCATION OF OPERATING LICENCE OF NESST CAPITAL LIMITED

- i. The 'SEC' had a number of engagements with Nesst Capital Limited and pursuant to section 19 of Act 929, several decisions were issued by SEC against Nesst Capital Limited with the directors to take steps to comply with and resolve their regulatory infractions, but all was 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 proper due diligence and the requisite standard of professional conduct contrary to paragraphs 2, 3, 6 and 13 of Part X of the Commission's Compliance Manual for Broker-Dealers, Investment Advisers and Representatives 2008 and Commercial Paper guidelines issued on 8th October, 2012.
 - (c) 100% of Funds under Management was invested in Commercial Paper (CP) contrary to the SEC Guidelines on Commercial Paper issued on 8th October, 2012; and

- (d) Persistent late submissions of statutory returns to Regulations 33(1)(a)(b)(c) and (6) of LI 1728.

4. PROSECUTION OF THE LIQUIDATION

(STEPS TAKING)

Upon receipt of the request of 'SEC' contained in the letter dated 11th 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 (and now being governed by The Corporate Insolvency And Restructuring Act, 2020 (Act 1015))who applied to the High Court, Commercial Division, Accra for an Order for the official liquidation of the 50 Fund Management Companies which included Nesst Capital 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 17th day of July, 2020, granted the Order for the official liquidation of Nesst Capital 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. No. 29 dated Wednesday, 19th August, 2020.
- (d) Notices to Creditors and Debtors of the Company have been published in the national dailies as a result of which creditors are submitting their proof of debts. This is because when the Licence of Nesst Capital Limited was withdrawn in November, 2019, SEC's appointed Agent, PWC, received most of your claims. All who did not submit claims then are being given an opportunity to submit it now for validation

- (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 proof of debts submitted in November, 2019 to PWC have been completed.

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 has received from PWC 33 claims valued at GH¢6m and all the claims have been validated.

6. VALIDATION OF CLAIMS

PWC has been able to examine to date Investors claims filed against the Company, because they had access to all the records of the Company as soon as the licence was revoked. As at 26th August, 2020, a total of 33 claims examined, are now valued at GH¢6.3M.

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 a dividend, and or claims to Creditors of a company is a creation of the 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 debt when they fall due.

Specifically, Nesst Capital 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 being 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 Government's 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 its ability to fulfil its obligations to the Creditors and also explore avenues to maximize the percentage of claims due Creditors; It is also 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 clients of the FMC's in the form of a social intervention similar to what was done for depositors of the failed SDI's and MFI's.

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's after the First Creditor Meetings. This Class Meeting would take place next week in September, 2020. Payment to Investors depending

on which option of payment is adopted should commence from the end of September, 2020.

The second phase of the First Creditor Meetings 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 Nesst Capital 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 one 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 provide you 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 total value of the assets of the Company assessed as at November,2016 was GHC2,195M which is not encouraging. PWC did not have access to the Management Account for 2019 therefore the Assets could be lesser than this to have pushed SEC to withdraw its licence. 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 a dividend and pay them on proportionate basis to the investment one has.

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 their email address to enable the Official Liquidator forward to you the Statement of Affairs I have just read. Please send this information to info@rgd.gov.gh. You may also call 0242439441/0541499436 for any further information you may need on the status of your claim.

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 prosecution of the liquidation should in case any questions are raised in that regard.

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

JEMIMA MAMAA OWARE (MRS.)

OFFICIAL LIQUIDATOR