

Executive Summary Regarding Whether the Receiver or the Investors are Creditors of Pacifico Global Advisors Limited (In Liquidation) (“PGA”)

1. As you are aware, a Receiver, Mr. Phillip Galanis, has been appointed of fifteen Segregated Accounts (“SAs”) related to customers/clients of PGA (“Investors”). Those fifteen SAs are: Alfa Pacifico Sub-Fund; Basur Sub-Fund; Saturr Sub-Fund; Spectator Sub-Fund; WIK Sub-Fund; EUR Conservative Sub-Fund; Global Opportunities KR Sub-Fund; Global Opportunities Sub-Fund EUR LU; LAM Sub-Fund; ALM Sub-Fund; Omega Pacifico Sub-Fund; Pacifico Global Opportunities Sub-Fund CM; Pacifico Global Opportunities Sub-Fund GT; Pacifico Global Opportunities Sub-Fund KA; and Pacifico Global Opportunities Sub-Fund DE. Pursuant to s.2 (4)ⁱ of the Segregated Accounts Companies Act (“the Act”), the SAs operate through the Segregated Accounts Company, Lyford Diversified Global Fund, SAC (“SAC”).
2. The Official Liquidator of PGA (“Official Liquidator”) and his team are in the process of identifying the creditors of PGA. During the review of PGA’s files it was noted that PGA incorrectly recorded the assets relating to the SAs (“Assets”) as belonging to the SAs and not as the SAC’s on behalf of the SAs. This recording was contrary to s.2 (4) of the Act which states that the SAC is a single legal person and a SA is not a legal person separate from the SAC. Thus, a SA is unable to hold an account in its own name or conduct business in its own name separate from the SAC. Those actions can only be done by the SAC on behalf of the SA. You will note that the Offering Memorandum for the SAs all refer to the SAC acting on behalf of each individual SA. Also, the account opening documentation for PGA to open accounts in the name of the SAC on behalf of each the SAs were in the name of the individual SAs and not the SAC on behalf of each of the SAs. That too was contrary to s.2(4) of the Act. Consequent to the breaches of the Act, the purported PGA accounts in the names of individual SAs and the internal recordings of Assets under individual SA’s names, and not under the name of the SAC on behalf of the individual SAs, may render those transactions void ab initio.
3. The Official Liquidator noted that even though there were Custodian Agreements between the SAC on behalf of individual SAs and Deltec Bank & Trust Limited there were no similar Custodian Agreements between the SAC on behalf of the SAs and PGA. The Official Liquidator had sight of Investment Management Agreements between PGA and the SAC on behalf of individual SAs, but these agreements do not appear to give PGA power to act as custodian for the SAs. Thus, it can be argued that there was no valid contract between PGA and the SAs authorizing PGA to act either as a custodian for or hold accounts in the names of the SAs through the SAC. Consequently, the Official Liquidator has been advised that resulting trusts may have arisen in favour of the Investors (who instructed PGA to put the Assets in the name of the SAC on behalf of the various SAs) (“Resulting Trust Principle”). This would result in the Investors being the creditors in the PGA liquidation.
4. Alternatively, the legal principle of ‘Equity treats that as done which ought to have been done’ (“Equitable Maxim”) may be argued in the circumstances to make the Receiver the creditor in the PGA liquidation. The Official Liquidator’s review of the PGA files show that the group of PGA, SAC, SAs and the Investors have transacted business over a period of years concerning the SAs.

Those activities may support application of the Equitable Maxim and recognizing the Receiver as the PGA creditor concerning the Assets.

5. It is recognized that PGA is not the owner of the Assets. The Official Liquidator recognizes the impracticality of voiding and undoing over three years of transactions in the SAs and wishes to resolve the matter in a way resulting in the equitable return of the Assets to the control of the Investors as soon as possible. The Official Liquidator's General Counsel has advised that due to the liquidation and the cessation of PGA's business operations the Court is best suited to consider and apply the Resulting Trust Principle, the Equitable Maxim or another legal principle as it deems appropriate.
6. Considering the various legal issues generally set out above and the Official Liquidator acknowledging that the Assets do not belong to PGA, the Official Liquidator is proposing to obtain an order of the Supreme Court of The Bahamas regarding whether the Receiver or the Investors are the creditor(s) in this liquidation. The Official Liquidator in seeking the order will advise the Court of the various legal issues and the related implications and will of course abide by the directions of the Court as regards whether the Receiver or the Investors are the creditor(s) in the liquidation.. All Investors will be invited to attend the hearing of the application and to be heard by the Court.
7. The Official Liquidator plans to apply to the Supreme Court of The Bahamas:
 - a. to have the Court decide whether the Receiver or the Investors are the creditor(s) of PGA;
 - b. in the event the Court decides that the Receiver is the PGA creditor, then have the Court sanction the Official Liquidator transferring the relevant portions of the Assets to the Receiver; and
 - c. to have the Court sanction the Official Liquidator's pro rata allocation of the losses associated with certain SAs amongst the Assets.

Thereafter, the Official Liquidator will comply with the Court's Orders.

8. It should be noted that the references to legal advice herein do not waive the attorney-client privilege between the Official Liquidator and his General Counsel.



Edmund L. Rahming
Official Liquidator of Pacifico Global Advisors Limited (In Liquidation)

ⁱ "(4) For the avoidance of doubt, and notwithstanding that a segregated accounts company may have created one or more segregated accounts pursuant to the provisions of this Act — (a) a segregated accounts company is a single legal person, and (b) the establishment by a segregated accounts company of a segregated account does not create, in respect of that segregated account, a legal person separate from the company."