

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
VIRGIN ISLANDS
COMMERCIAL DIVISION**

Case No: BVIHC (COM) of 2022

**IN THE MATTER OF THREE ARROWS CAPITAL, LTD
AND
IN THE MATTER OF SECTIONS 159(1) AND 162(1)(a) AND (b) OF THE INSOLVENCY ACT
2003**

THREE ARROWS CAPITAL, LTD

Applicant

FIRST AFFIDAVIT OF KYLE LIVINGSTON DAVIES

I, **KYLE LIVINGSTON DAVIES**, care of Three Arrows Capital Ltd at ABM Corporate Services Ltd, 1st Floor, Columbus Centre, PO BOX 2283, Road Town, Tortola, British Virgin Islands do solemnly and sincerely affirm and say as follows:

1. I am a director of Three Arrows Capital Ltd, and am duly authorized to make this affidavit on behalf of Three Arrows Capital Ltd ("**TACL**"). There are 2 other directors of TACL, Mr Mark James Dubois and Mr Zhu Su ("**Mr Dubois**" and "**Mr**

Zhu", respectively). As I explain below, a majority of the directors of TACL have deliberated carefully and support this application.

2. The facts deposed to in this affidavit are based on my personal knowledge or derived from documents or information which I have access to insofar as the matters deposed to here are within my personal knowledge, they are true. Insofar as the matters deposed to here are not within my personal knowledge, they are true to the best of my knowledge, information and belief, and the grounds thereof are elaborated upon below.
3. I make this affidavit in support of TACL's application for an order that it be placed under liquidation, and for the appointment of Charlotte Caulfield and Paul Pretlove of Kalo (BVI) Limited ("Kalo") to be appointed Joint Liquidators of TACL.
4. I have been provided with a bundle of documents marked as "**KLD-1**". I will refer to this bundle as **KLD-1/page**.

I. Grounds for application for liquidation

5. On 26 June 2022 the shareholder owning all of the management shares (which is the only class of shares with voting rights) of TACL signed a written resolution that TACL is hopelessly insolvent and immediate application should be made to the BVI Court to appoint Charlotte Caulfield and Paul Pretlove as Joint Liquidators of TACL. A copy of the shareholders' resolution dated 26 June 2022

is exhibited hereto at **KLD-1/pages 443-445**. For completeness, I exhibit TACL's register of members showing that the sole shareholder owning all the management shares of TACL is Three Arrows Capital Pte Ltd ("**TACPL**"). The contents of this document are confirmed by the latest Annual Report for the financial year ending 31 December 2020 that was issued by TACL's auditors, Oakfield & Associates, on 30 June 2021 (the "**2020 Annual Report**"), at page 24. A copy of the 2020 Annual Report is exhibited at **KLD-1/pages 408-435**.

6. Following the passing of the shareholders' resolution, a directors' meeting was convened on 26 June 2022 to deliberate on the viability of TACL as a going concern. Having considered, *inter alia*, the recommendations from TACL's shareholders, the recent Terra Luna crash and its knock-on effect on the cryptocurrency ecosystem at large, as well as the numerous default notices and margin calls that TACL has been receiving over the past 2 weeks, a majority of the directors took the view that it is in TACL's best interest for TACL to be placed under liquidation, and for liquidators to be appointed to carry out an orderly distribution of TACL's assets. A copy of the directors' resolution passed on 26 June 2022, along with TACL's Register of Directors, is exhibited hereto as **KLD-1/pages 436-437 and 446-448**.

7. In this affidavit, I will elaborate on the circumstances that led to TACL's present state of insolvency, as well as the reasons why there is a need for an urgent liquidation order to preserve TACL's assets for the benefit of its creditors as a whole.

II. Facts leading up to TACL's present state of insolvency

8. TACL was incorporated as an exempted company with limited liability in the British Virgin Islands on 3 May 2012 and started operations on 26 November 2012. TACL is in the business of investments and short-term opportunities trading. Mr Zhu and I co-founded TACL in 2012 and we started off by trading traditional currencies in emerging markets. We then diversified into options, equities and cryptocurrency. By 2018, TACL was fully focused on trading cryptocurrency.

9. TACL is a Professional Master Fund within the meaning of the Securities and Investment Business Act, 2010, of British Virgin Islands. The investors in TACL are Three Arrows Fund, Ltd (the "**Offshore Feeder**") and Three Arrows Fund, LP (the "**Onshore Feed**"), and collectively with the "**Offshore Feeder**", the "**Feeder Funds**"). The Feeder Funds invested all of its assets into TACL. This master/feeder structure is used to permit the pooling of assets of investors with similar investment objectives, in an effort to achieve economies of scale and efficiencies in portfolio management, while preserving the separate identities of the investors. A copy of the Offshore Feeder Fund's Offering Memorandum, of October 2021, is marked and exhibited at **KLD-1/pages 185-263**. This document sets out, amongst other things, the risks of the investment in the Offshore Feeder and its relationship with TACL and the investment manager.

10. TACL's investment manager used to be TACPL but on 21 July 2021, TACL resolved to terminate its investment management agreement ("**Old IMA**") with TACPL by giving TACPL 30 days' notice (*i.e.*, expiring 20 August 2021) of TACL's intention to terminate the Old IMA. On 21 July 2021, TACL also resolved to appoint a new investment manager, *i.e.*, ThreeAC Limited, a British Virgin Islands business company ("**ThreeAC**"). Also on 21 July 2021, TACL gave written notice to TACPL of TACL's intention to terminate the Old IMA, by giving it 30 days' notice. Copies of this notice of termination, along with TACL's resolutions on these matters are collectively marked and exhibited at **KLD-1/pages 181-184**.
11. In recent years, TACL's business model is as such that it borrows either cryptocurrency and/or United States dollars to trade on the cryptocurrency market. TACL's lenders are largely institutional lenders and a handful of high net-worth individuals who are accredited investors.
12. I wish to also point out that Mr Zhu (my co-founder) is also an investor in the Offshore Feeder, and consequently, TACL. I attach statements (which are exhibited at **KLD-1/pages 178-180** from TACL's fund administrator, Ascent Fund Services (Singapore) Pte Ltd ("**Ascent**"), showing that as at 31 December 2021 Mr Zhu owns the following classes of shares and its corresponding values:

S/n	Class	Shares	Value (USD)
(i)	Class B – Sep 2021 Series	139,191.934	256,676,684.60
(ii)	Class B – Lead Series	2,193.568	1,148,505,374.87

(iii)	Class Warbler Lead Series	12,500	1,197,483.20
Total:			1,406,379,542.67

13. Due to the collapse and downturn of the cryptocurrency market (which I explain in more detail below), much of the value of these investments have been wiped out. Investors, like Mr Zhu, have suffered immense losses in TACL.
14. In addition to making investments in TACL (through the Offshore Fund), Mr Zhu also lent monies to TACL for its trading activities and are thus unsecured creditors to TACL. TACL owes Mr Zhu the sum of USD 5,085,401.88, and a copy of TACL's statement to Mr Zhu confirming this sum of marked and exhibited at **KLD-1/page 442**.
15. Further, another investor and creditor of TACL, Ms Chen Kaili Kelly ("**Ms Chen**") has also confirmed her support of an Order for liquidation being made. In addition to her investments in TACL, Ms Chen lent monies and is an unsecured creditor of TACL to the tune of USD 65 million. A copy of her letter of support enclosing documents showing her investments and loan to TACL is marked and exhibited at **KLD-1/pages 449-454**.
16. It now appears to be impossible for these debts (with the other liabilities of TACL) to be repaid.

17. A substantial part of TACL's investment portfolio was in a cryptocurrency known as Luna, which is associated with a stablecoin, TerraUSD. It is widely accepted that TerraUSD was to be pegged to almost exactly to the USD and thus, considered, a stablecoin (meaning a cryptocurrency pegged to a fiat currency). Prior to 9 May 2021, TACL was holding on to approximately USD 600 million worth of Terra/Luna (valued at the prevailing trading price).
18. On 9 May 2021, Terra/Luna crashed. Its value dropped rapidly and was wiped out completely. Put simply, Terra/Luna became worthless. This crash is widely reported worldwide and the Terra/Luna crash was reported to have wiped out USD 40 billion in value off the markets. This led to a ripple effect, causing cryptocurrency investors to remove their funds from the cryptocurrency market.
19. The effect of the Terra/Luna crash was perhaps the catalyst causing the general cryptocurrency market and coin prices to fall. The sentiment towards cryptocurrency became poor very rapidly, as the prices of other cryptocurrencies dipped quickly, which resulted in a publicly known sell-off. A contagion effect of the contraction of credit, *i.e.*, as lenders pull back their loans, resulting in a credit crunch in the cryptocurrency markets globally was also observed and widely reported. The further macroeconomic inflationary malaise made the situation worse, and the cryptocurrency markets suffered a rapid downward spiral.

20. TACL borrowed either cash or cryptocurrency from its lenders. For some of these loans, cryptocurrency or digital assets were allocated towards a particular lender. When the cryptocurrency prices dropped, these lenders made margin calls on these loans. Whilst TACL was initially able to meet these margin calls, it was subsequently unable to meet all the margin calls when the lenders reacted *en masse*. When the lenders pulled the credit and recalled its loans, TACL became unable to meet its obligations on these loans.

III. Urgency of application

A. Overwhelming creditor claims

21. Since on or about 15 June 2022, TACL has been overwhelmed with claims and/or queries from its lenders and investors.
22. As of the date of this affidavit, TACL has received default notices and/or demand letters from at least 32 creditors. Of these 32 creditors, 1 creditor has commenced arbitration proceedings against TACL under the auspices of the American Arbitration Association, and another creditor has served a statutory demand pursuant to section 155 of the Insolvency Act, 2003.
23. A list of some of the institutional creditors who have served default notices, demand letters or commenced proceedings against TACL is set out below:

Date of demand	Name of creditor	Date of agreement	Principal amount / Recall amount	Interest	Liquidated collateral	Legal proceedings
24 June 2022	Equities First Holdings LLC	6 November 2021	US\$33,133,100		1,000,000 GBTC.US	None
		11 December 2021	US\$38,841,600		1,500,000 GBTC.US	
		2 January 2022	US\$45,745,300		2,000,000 GBTC.US	
		8 January 2022	US\$44,339,500		2,000,000 GBTC.US	
24 June 2022	Voyager Digital LLC	4 March 2022	15,250 BTC 350,000,000 USDC		Unknown	None
24 June 2022	Tower Square Capital Limited	20 August 2020	106.620552 BTC 52.32976266 BTC 13206.76723 USDC 1098257.337 USDT 23285.24488 USDT	3.5% 3.5% 5% 5% 7%	Unknown	None
24 June 2022	Ashla International Inc	20 June 2019	500 BTC 10,000,000 USDT	1.15068504BTC 65,753.52 USDT	Unknown	None

23 2022	June	Plutus Lending LLC	17 July 2020	10,000,000 USDC		Unknown	None
23 2022	June	Connor Zautke (Master Trade Agreement)	Unknown	12.7233 BTC 109.4143 ETH			None. Collateral held by TACL. Creditor calling for return of these collaterals.
23 2022	June	Stephen Zautke (Master Trade Agreement)	Unknown	218.3534 BTC 1,735.3587 ETH			
23 2022	June	LuneX Ventures LP	4 February 2019	88 BTC			None. Creditor had threatened to issue statutory demand in BVI.
		Kenrick Drijkoningen	4 February 2019	55 BTC US\$250,000			
		Play Future Fund Limited		US\$600,000 capital call			
23 2022	June	Banton Overseas Limited	22 February 2022	150 BTC 387 ETH	4%	Unknown	None
22 2022	June	Moonbeam Foundation Ltd (liquidity)	28 January 2021	200,000 MOVR 10,000,000 GLMR		Unknown	None

		consulting agreement)					
		Moonbase One Ltd (assigned MLA)	20 September 2021	7,000,000 USDC 10,000,000 USDC		Unknown	None
22 June 2022		PureStake Ltd	27 October 2021	8,000,000 USDC		Unknown	None
21 June 2022		Livetree Community Ltd	9 November 2021	US\$300,000 10,000 DOT	10% 8%	Unknown	None
21 June 2022		Onchain Custodian	Unknown	30.18386678 BTC		Unknown	None
21 June 2022		Singapore Bitget Pte Ltd	21 March 2022	US\$16,322,226	US\$4,109.59 per day	US\$6,615,000	Statutory demand issued under Section 155 of the Insolvency Act (BVI)
20 June 2022		SBI Crypto Co Ltd	5 March 2021	362.82191561 BTC	0.52186710 BTC	506.69 ETH	None
17 June 2022		210K Capital, LP	27 July 2020	67.43745958 BTC 0.76355046 BTC		Unknown	None

17 June 2022	Hashkey Trading	10 February 2020	444,196.08 USDT		69.21 BTC (accounted for in balance principal)	None
17 June 2022	FalconX Ltd	Unknown	US\$65,474,982.33		Unknown	None
16 June 2022	Mirana Corp	8 June 2022 (MLA) 9 June 2022 (Guarantee)	US\$13,062,418.07		US\$37,098,062.97 (accounted for in balance principal)	None
16 June 2022	CoinList Services LLC	12 May 2022 1 June 2022	35,000,000 USDC		Unknown	None
15 June 2022	DRB Panama Inc	30 March 2020 (non-liquidating account agreement) 31 March 2020 (loan agreement)	1300 BTC 15,000 ETH		Lender indicated they are liquidating account	None

15 June 2022	Genesis Asia Pacific Pte Ltd	10 January 2019 24 January 2020	US\$2,360,302,065		2,125,794 shares of Grayscale Bitcoin Trust 446,928 shares in Grayscale Ethereum Trust 2,076,238 shares in Grayscale Bitcoin Trust 13,241,612 shares of Grayscale Bitcoin Trust 2,739,043.83 AVAX tokens 13,583,265 NEAR tokens	Arbitration under the auspices of American Arbitration Association
15 June 2022	Arrakis Capital Ltd	28 April 2022	20,000,000 USDC		Unknown	None
15 June 2022	Celsius Network Ltd	25 May 2019	50,226,027.40 USDC 25,118,150.68 USDC		Unknown	None

24. Copies of the default notices and/or demand letters issued by the above-mentioned creditors are exhibited hereto as **KLD-1/pages 1-177, 264-299 and 329-407.**

B. Arbitration commenced by Genesis Asia Pacific Pte Ltd

25. In the absence of a prompt and orderly judicial liquidation process, TACL creditors may resort to their own remedies to enhance their position *viz-a-viz* other similarly situated creditors. This has already begun.
26. Even now, TACL is facing an application for a preliminary injunction in an arbitration in New York commenced by Genesis Asia Pacific Pte Ltd ("**Genesis**") on June 15, 2022, under the auspices of the American Arbitration Association ("**AAA**") and the AAA's International Centre for Dispute Resolution ("**ICDR**"). (*Genesis Asia Pacific PTE. LTD. V. Three Arrows Capital, Ltd.*, AAA/ICDR Case No. 01-22-0002-5568). Among other things, Genesis is seeking preliminary injunctive relief to protect what it concedes are unsecured lending positions.
27. In the arbitration, Genesis alleges TACL is in breach of two Master Lending Agreements and seeks USD\$2,360,302,065.00 (two billion, three hundred sixty million, three hundred two thousand and sixty-five U.S. dollars), an order for additional collateral in dollars, and the right to "foreclose on, and take possession of" various types of purported security. (Exh. 1, Letter of June 15,

2022, for Emergency Arbitral Proceedings and Request for Arbitration and Statement of Claim (“RFA”); RFA at pp. 17-18. **KLD-1/page 30-31**)

28. The same day it filed the arbitration, Genesis sought the appointment of an emergency arbitrator pursuant to the AAA rules to obtain a preliminary injunction ordering TACL to transfer or freeze funds and assets. Specifically, Genesis asked for an order requiring TACL “to deposit \$2,360,302,065 in a third-party escrow account for safekeeping pending the resolution of [the arbitration].” In the alternative, it sought an order requiring the deposit of what it characterizes as additional collateral in the amount of \$462,224,747, cryptocurrency Genesis alleges was pledged, and various shares. (It further seeks, in the alternative, an order enjoining TACL from “taking any action to withdraw transfer, sell, encumber or hypothecate” any of the previously described assets.) (Letter from Genesis’ counsel Morrison Cohen LLP to the AAA dated June 15, 2022, at pp. 1 to 2 **KLD-1/page 9-12**). Genesis also sought an interim order freezing the assets to which it claims right, pending the resolution of its preliminary injunction application.
29. The AAA’s IDCR appointed an emergency arbitrator on June 17, 2022, and an initial conference on Genesis’ application was held on June 21, 2022. During the hearing, Genesis stated that it had “constructive possession” of assets under a certain pledge agreement purportedly given by TACL in 2020, consisting of a significant number of shares in cryptocurrency trusts (see Request for Arbitration at paras 36-47).

30. The emergency arbitrator denied Genesis' application for an interim order, without prejudice to Genesis' application for a preliminary injunction. The emergency arbitrator set a virtual hearing for July 5, 2022. A copy of the emergency arbitrator's procedural order no. 1 dated 22 June 2022 is exhibited hereto as **KLD-1/pages 300-311**.
31. Genesis supplemented its request for emergency relief on June 23, 2022. A copy of Genesis' supplemental submission is exhibited hereto as **KLD-1/pages 312-328**.
32. Genesis now asks the emergency arbitrator to order TACL to place \$1,105,191,619 of "*outstanding unsecured borrowings*" in escrow for the length of the arbitration proceedings. (see para. 35 (emphasis added); *see also id.* At para. 8 (asking for an order to "escrow sufficient assets to cover the remaining \$1,105,191,619 *unsecured amount*" (emphasis added).) Genesis also asks the emergency arbitrator to order TACL to transfer another \$28 million in unsecured loan fees and late fees into escrow, and to put alt tokens in escrow, until the resolution of the arbitration. That application is due to be heard on 5 July 2022.
33. Given the overwhelming claims being made against TACL, the service of a statutory demand on TACL and the possibility that an Order that could give priority to an unsecured creditor could be made as soon as 5 July 2022, TACL makes this application on an urgent basis. I have been told that unless the Court orders otherwise the Application to appoint liquidators should be advertised.

By reason of the very short time available before the hearing of the application in the Arbitration, this Application should be heard on an urgent basis and the Court is respectfully requested to dispense with the need to advertise the Application to Appoint Liquidators. The Joint Liquidators, if appointed, will need to make an urgent application for recognition in the USA and to commence Chapter 15 proceedings in order to preserve the assets of TACL for the benefit of all the creditors.

34. It is clear from this affidavit that the value of crypto assets is extremely volatile and any delay could have a significant impact on the value of the assets of TACL. It is a concern that the advertisement of such an application could adversely affect the value of the assets before the Joint Liquidators are able to take control of the assets.
35. TACL's shareholders did consider resolving to enter voluntary liquidation but the delay associated with calling the requisite creditors' meeting and the limitation of the powers of a voluntary liquidator mean that TACL concluded that the best way to preserve value for the creditors was to make an urgent application to Court. In the same way TACL considered whether an application should be made to appoint provisional liquidators pending the advertisement of the Application. There is no prospect of any restructuring of TACL. It is hopelessly insolvent, there is nothing to be gained from delaying the inevitable liquidation of TACL, instead there are significant benefits to appointing the Joint Liquidators urgently.

IV. Proposed liquidators

36. I attach at **KLD-1/pages 455-456** a copy of the consent to act prepared by Charlotte Caulfield and Paul Pretlove of Kalo who are licensed, well established insolvency Practitioners in BVI. I believe that they are qualified to act as insolvency practitioners and are well placed to deal with this complex liquidation as Kalo has acted on some of the largest fund wind downs in the BVI and Cayman Islands over the last two decades. I attach at **KLD-1/pages 439-441** a copy of the biographies of the Kalo team.

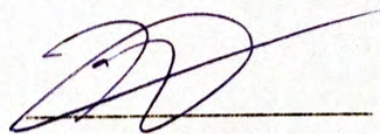
37. I confirm that to the best of my abilities, I am willing to work with the proposed liquidators and the relevant professionals on TACL's Statement of Affairs as quickly possible, so as to carry out the orderly dissolution for the benefit of the creditors and other stakeholders of TACL.

38. In all the circumstances I invite the Court to make the Orders sought.

Sworn by KYLE LIVINGSTON DAVIES)

At)

On June 2022)



KYLE LIVINGSTON DAVIES

Before me:

Commissioner for Oaths / Notary Public