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Capital Solutions Limited, Stillwater Worldwide Limited, Stillwater Investment Enterprise Limited, Philip Anthony John Montague, Terence Joseph Scullion, David John de Carteret

# Capital Solutions Limited, Stillwater Worldwide Limited, Stillwater Investment Enterprise Limited, Philip Anthony John Montague, Terence Joseph Scullion, David John de Carteret

14th June 2017  
Public Statements

**The Financial Services Commission (Bailiwick of Guernsey) Law, 1987, as amended ("the Financial Services Commission Law");**  
**The Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended ("the Protection of Investors Law");**  
**The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000, as amended ("the Fiduciaries Law");**  
**The Banking Supervision (Bailiwick of Guernsey) Law, 1994, as amended ("the Banking Law");**  
**The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002, as amended ("the Insurance Managers and Insurance Intermediaries Law");**  
**The Insurance Business (Bailiwick of Guernsey) Law, 2002, as amended ("the Insurance Business Law") - (together "the Regulatory Laws")**

**Capital Solutions Limited**  
**Stillwater Worldwide Limited**  
**Stillwater Investment Enterprise Limited**

**Philip Anthony John Montague ("Mr Montague")**  
**Terence Joseph Scullion ("Mr Scullion")**  
**David John De Carteret ("Mr De Carteret")**  
**(together "the directors")**

On 14 June 2017 the Guernsey Financial Services Commission ("the Commission") decided:

To impose a financial penalty of £35,000 on Mr Montague under Section 11D of the Financial Services Commission Law;

To impose a financial penalty of £21,000 on Mr Scullion under Section 11D of the Financial Services Commission Law;

To impose a financial penalty of £10,500 on Mr De Carteret under Section 11D of the Financial Services Commission Law;

To make orders under the Regulatory Laws prohibiting Mr Montague from performing any function in relation to business carried on by any entity licensed under the Regulatory Laws for a period of 7 years;

To make orders under the Regulatory Laws prohibiting Mr Scullion from performing any function in relation to business carried on by any entity licensed under the Regulatory Laws for a period of 5 years;

To make orders under the Regulatory Laws prohibiting Mr De Carteret from performing any function in relation to business carried on by any entity licensed under the Regulatory Laws for a period of 3 years and 6 months;

To disapply the exemption set out in section 3(1)(g) of the Fiduciaries Law in respect to Mr Montague for 7 years, Mr Scullion for 5 years and Mr De Carteret for 3 years and 6 months;

To issue this public statement under section 11C of the Financial Services Commission Law.

Were it not for the fact that Capital Solutions Limited is insolvent, a financial penalty would have been imposed on Capital Solutions Limited under Section 11D of the Financial Services Commission Law.

The Commission considered it reasonable and necessary to make these decisions having concluded that Capital Solutions Limited and the directors were found not to be fit and proper persons in accordance with the Minimum Criteria for Licensing contained in Schedule 4 to the Protection of Investors Law, and Schedule 4 of the Insurance Managers and Insurance Intermediaries Law.

## BACKGROUND

In September 2015, the Commission's investigation initially examined the conduct of two overseas companies, Stillwater Worldwide Limited and Stillwater Investment Enterprise Limited, who acted as the sub investment advisor and promoter to two funds ("the funds") of a Guernsey protected cell company's authorised collective investment scheme, (a controlled investment business), between 2009 and 2015. The investigation then widened to examine a Guernsey based entity, namely, Capital Solutions Limited.

The Investigation examined the following issues:

1. whether Stillwater Worldwide Limited and Stillwater Investment Enterprise Limited were in breach of section 1 of the Protection of Investors Law, in that they had carried on a controlled investment business in the Bailiwick without a licence; and
2. whether Capital Solutions Limited, Mr Montague, Mr De Carteret and Mr Scullion had failed to act in accordance with the minimum criteria for licensing pursuant to Schedule 4 of the Protection of Investors Law and Schedule 4 of the Insurance Managers and Insurance Intermediaries Law, including failure to comply with relevant rules and codes, such as:

The Licensees (Conduct of Business) Rules 2009; and

The Finance Sector Code of Corporate Governance 2011.

Stillwater Worldwide Limited and Stillwater Investment Enterprise Limited were jointly owned by Mr Montague and another individual, both of whom purported to be their directors.

Stillwater Worldwide Limited and Stillwater Investment Enterprise Limited operated from the Capital Solutions Limited offices. Capital Solutions Limited was a Guernsey incorporated entity, licensed to carry on controlled investment business under the Protection of Investors Law and act as an insurance intermediary under the Insurance Managers and Insurance Intermediaries Law.

Whilst holding themselves out as directors of Stillwater Worldwide Limited both Mr Montague and his associate advised the fund to make a substantial investment to a Special Purpose Vehicle in another jurisdiction, and then in turn his associate instructed that these monies be loaned to the another structure for which both Mr Montague and his associate had an ultimate beneficial ownership in. Mr Montague had no part in this transaction that we have been able to identify.

Mr Montague was the controller of Capital Solutions Limited and its director since its incorporation in 2002 until his resignation in December 2015.

Mr Scullion was a controller of Capital Solutions Limited and had been the director since December 2008 until present day.

Mr De Carteret was the non-executive director of Capital Solutions Limited from November 2007 until the present day.

To assist with the investigations carried out by the Commission information was sought from their regulatory partners in the British Virgin Islands, Gibraltar, British Columbia and the Isle of Man, in order to obtain relevant evidential material as appropriate.

## Findings

The Commission's investigation found:

### Capital Solutions Limited

Capital Solutions Limited failed to organise and control its internal affairs in a reasonable manner, retain company records for a period of at least a 6 year period and lacked knowledge and understanding of its legal and professional obligations. This is evidenced by:

Capital Solutions Limited failed to keep adequate records in relation to client agreements when providing advice to its clients, or the suitability for investments into the funds. The Commission therefore, amongst other things, was unable to draw a conclusion as to the

quality, relevance and independence of the advice provided by Capital Solutions Limited to its clients;

Capital Solutions Limited failed to ensure the retention and access to company records after a dispute with its IT service provider. This meant Capital Solutions Limited had significant gaps in their company records and were unable to provide certain information to the Commission for examination; and

Capital Solutions Limited failed to retain its company records which were in the possession of Mr Montague after his resignation as its director, nor made any substantive efforts to ensure that the documentation was returned.

Mr Montague and an associate set up Stillwater Worldwide Limited and Stillwater Investment Enterprise Limited, whilst Capital Solutions Limited was perceived as their regulatory face in Guernsey, failing to confirm the most basic of requirements on whether:

it required a licence to conduct the type of business they intended it to do; and

they were actually named directors of these companies.

Mr Montague and his associate thus conducted unlicensed business for a number of years.

Mr Montague, Mr Scullion and Mr De Carteret, as directors of Capital Solutions Limited, demonstrated complete incompetence in their roles. Corporate governance procedures were treated with contempt, and client data was either lost, or retained by a departing director (Mr Montague);

Capital Solutions Limited, Mr Montague, Mr Scullion and Mr De Carteret thus failed to act in accordance with the minimum criteria for licensing pursuant to Schedule 4 of the Protection of Investors Law; The Licensees (Conduct of Business) Rules 2009 and; The Finance Sector Code of Corporate Governance 2011.

### **Mr Montague**

Mr Montague demonstrated a serious lack of competence, soundness of judgement and knowledge and understanding of his legal and professional responsibilities whilst involved with Stillwater Worldwide Limited, Stillwater Investment Enterprise Limited and Capital Solutions Limited. This is evidenced by:

Between March 2009 and August 2010 Mr Montague was the controller and purported director of Stillwater Worldwide Limited. During this period Stillwater Worldwide Limited was acting as promoter and sub-investment advisor to the funds. In August 2010 Stillwater Worldwide Limited's role was novated to Stillwater Investment Enterprise Limited. Stillwater Investment Enterprise Limited continued to act as sub investment advisor and promoter to the funds until September 2015. Between March 2009 to September 2015 Mr Montague alongside his fellow director signed agreements on behalf of Stillwater Worldwide Limited and Stillwater Investment Enterprise Limited whilst purporting to be their directors;

The Commission has identified that Stillwater Worldwide Limited and Stillwater Investment Enterprise Limited were never licensed to engage in the restricted activities of advising and promoting for a collective investment scheme and therefore were doing so without a license;

Neither Mr Montague nor his fellow director were ever directors of Stillwater Worldwide Limited and were not directors of Stillwater Investment Enterprise Limited until July 2013; and

Mr Montague resigned from Capital Solutions Limited in December 2015 and retained a substantial amount of Capital Solutions Limited's company records on a personal electronic device. This significantly affected the safe and effective ongoing operation of Capital Solutions Limited.

### **Mr Scullion and Mr De Carteret**

Mr Scullion and Mr De Carteret showed a serious lack of competence, soundness of judgement and knowledge and understanding of their legal and professional responsibilities whilst directors of Capital Solutions Limited. This is evidenced by:

Mr Scullion whilst acting as a financial advisor at Capital Solutions Limited failed to keep any substantive documentation surrounding the advice he was providing to clients. Amongst other issues this raises, it has prevented the Commission from assessing Mr Scullion's

Mr Scullion and Mr De Carteret failed to adequately comprehend the significance of the retention of Capital Solutions Limited's company records by Mr Montague after he resigned. With the retention of these records no effective and planned approach to remediating the issue of the loss was considered or instigated. Mr Scullion and Mr De Carteret failed to consider potential operational risks for Capital Solutions Limited, including *inter alia*, reputational risk, business continuity risk and legal risk should data be used for nefarious reasons or the potential for breaching data protection;

Mr Scullion and Mr De Carteret failed to understand the seriousness of the dispute with Capital Solutions Limited's IT service provider which resulted in a significant loss of Capital Solutions Limited's company records. The loss was not identified until a number of years after the fact when the Commission made requests for certain Capital Solutions Limited documentation;

Neither Mr De Carteret nor Mr Scullion provided any effective challenge to Mr Montague at board level, with Mr Montague dominating meetings. Board packs were never produced, minutes were never signed nor reviewed in a timely manner.

### **Mitigating Factors**

At all times, the Directors have co-operated fully with the Commission and have agreed to settle prior to the matter being referred to a decision maker. As such, a discount of 30 percent has been applied to their penalties.

Capital Solutions Limited is no longer licensed by the Commission and Mr Scullion and Mr De Carteret have conducted an orderly wind down of the company.