

Aaron Javian  
Christopher P. Hoffman  
Nicole Lech  
REED SMITH LLP  
599 Lexington Ave  
New York, NY 10022  
Tel: (212) 521-5400

*Counsel to the Foreign Representative*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

_____ )	
In re: )	Chapter 15
IIG Trade Opportunities Fund N.V. <sup>1</sup> )	Case No. 20-10666 (MEW)
Debtor in a Foreign Proceeding. )	
_____ )	

**DECLARATION OF BARBARA NAGELMAKERS IN SUPPORT  
OF THE VERIFIED PETITION UNDER CHAPTER 15 FOR  
RECOGNITION OF A FOREIGN MAIN PROCEEDING AND RELATED RELIEF**

I, Barbara Nagelmakers, pursuant to 28 U.S.C. § 1746, hereby declare under penalty of perjury as follows:

1. I submit this declaration in support of the *Verified Petition for Recognition of Foreign Main Proceeding and Related Relief* (the “**Verified Petition**”), dated March 2, 2020. I have been shown a copy of the Verified Petition in this proceeding.<sup>2</sup>

**PERSONAL BACKGROUND AND QUALIFICATIONS**

2. I am an attorney at law with the law firm of Nagelmakers Advocaten in Willemstad, Curaçao.

<sup>1</sup> The last four digits of IIG TOF’s company number are (5220). IIG TOF’s registered office is Blenchiweg 23, Curaçao.

<sup>2</sup> Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Verified Petition.

3. I have been retained by Ms. V. P. Maria LLM in her capacity as court-appointed bankruptcy trustee of IIG Trade Opportunities Fund, N.V. (“**IIG TOF**”) and Foreign Representative of IIG TOF’s liquidation proceeding in Curaçao (the “**Curaçao Liquidation**”), to serve as an expert on Curaçao insolvency law in connection with the Foreign Representative’s petition for recognition of the Curaçao Liquidation in the United States under chapter 15 of title 11 of the United States Code (the “**Bankruptcy Code**”). In this declaration, I address the insolvency law applicable to Curaçao-incorporated entities such as IIG TOF under the *Faillissementsbesluit 1931* (as amended, the “**Curaçao Bankruptcy Act**”).

4. I am a qualified attorney at law, and have practiced in the corporate and restructuring areas for over 20 years.

5. I was admitted to practice in the Netherlands in 1996 and in Curaçao in 2002.

6. I am qualified to serve as bankruptcy trustee for bankruptcies commenced under the Curaçao Bankruptcy Act and have been appointed to act as bankruptcy trustee in numerous bankruptcies of Curaçao companies, including open-ended investment companies with limited liability like IIG TOF.

7. This declaration is comprised of matters that are statements of legal opinion and/or statements of fact. Where the matters stated in this declaration are statements of legal opinion, such statements represent my view of Curaçao law as a practicing lawyer.

8. Where the matters stated in this declaration are statements of fact that are within my personal knowledge, they are true. Where the matters stated in this declaration are statements of fact that are not within my personal knowledge, they are derived from documents and/or information supplied to me by or on behalf of the Foreign Representative and are true to the best of my knowledge, information and belief.

## CURAÇAO BANKRUPTCY LAW

### **A. Curaçao Bankruptcy Law Generally**

9. The substantive law relating to bankruptcy in Curaçao is contained in the Curaçao Bankruptcy Act, which is based on and most similar to Dutch insolvency legislation originally enacted in 1893. The two primary, court-based insolvency regimes under Curaçao law are suspension of payment (“*surseance van betaling*”) and bankruptcy (“*faillissement*”).

10. Suspension of payment proceedings are intended to provide a debtor temporary relief from its payment obligations to facilitate its reorganization. Bankruptcy proceedings are intended to facilitate the liquidation of the debtor’s assets for distribution among its creditors. Companies organized and registered under Curaçao law, including open-ended investment companies like IIG TOF, are eligible for relief under the Curaçao Bankruptcy Act.

11. The Court of First Instance of Curaçao (the “**Court**”) may place a Curaçao company into bankruptcy after hearing a voluntary petition filed by the debtor itself or an involuntary petition filed by one or more of the debtor’s creditors. To adjudge a company bankrupt, the Court must be satisfied that the company has ceased to pay its debts as they come due. (Art. 1(1)).

12. Immediately upon the entry of an order adjudging the debtor bankrupt, the Curaçao Bankruptcy Act automatically imposes a general arrest over the debtor’s assets, lifts any attachments that have been levied against the debtor or its assets prior to its bankruptcy, (Article 29) and stays unsecured creditors from commencing or continuing judicial enforcement actions against the debtor or its assets (Article 22). Upon the declaration of bankruptcy, the company’s directors are no longer authorized to act on behalf of the company with respect to any matters relating to its assets. (Article 19). In place of the company’s pre-bankruptcy directors, the Court

will appoint one or more bankruptcy trustees, who are typically qualified as attorneys-at law, to serve as independent administrators of the debtor's estate (Article 64) under the supervision of a bankruptcy judge (the "**Supervisory Judge**"). (Article 60). The judge who declares the debtor bankrupt will be appointed as the Supervisory Judge (Article 11(1)).

**B. Role of the Trustee and Supervisory Judge under the Curaçao Bankruptcy Act**

13. The Curaçao Bankruptcy Act requires the bankruptcy trustee to immediately publish an extract of the bankruptcy order commencing insolvency proceedings with respect to a debtor in the Landscourant (at [www.gobierno.cw/nl/landscourant](http://www.gobierno.cw/nl/landscourant)), Curaçao's Official Gazette and in any other publications as may be designated by the Supervisory Judge, usually two local newspapers. (Article 11(4)).

14. The trustee alone is empowered to pursue and enforce the rights, claims and interests of the debtor and act in its name, including in pre-bankruptcy legal proceedings concerning rights or obligations of the bankrupt estate. (Articles 19, 21). Legal proceedings concerning rights or obligations of the bankrupt estate may also be instated or continued by the trustee in the name of the bankrupt company. (Article 23)

15. Pursuant to the Curaçao Bankruptcy Act, the bankruptcy trustee is required to:

- a. Identify and prepare an inventory and assessment of value of assets of the bankrupt estate, which assessment is subject to the approval of the Supervisory Judge; (Article 89)
- b. Prepare a statement listing the nature and amount of the assets and debts of the bankrupt estate, the names and addresses of known creditors and the amount of claims of each of them; (Articles 106 – 110)

- c. Take direct custody of all money, valuables, transferable securities and other valuable instruments comprising assets of the bankrupt estate, unless some other means of safe custody has been determined by the supervisory judge; (Article 97) and
- d. Issue quarterly reports on the status of the affairs of the bankrupt estate and lodge her report with the Court, where it is available for public inspection.

16. The trustee discharges her duties in accordance with the Curaçao Bankruptcy Act under the supervision of a Supervisory Judge. The Supervisory Judge is an arm of the Court. The Supervisory Judge's role is to monitor, consider and approve certain of the trustee's actions in the Curaçao insolvency proceeding, as required by the Curaçao Bankruptcy Act.

17. The Supervisory Judge has the primary responsibility for overseeing a bankruptcy trustee's day-to-day actions in a Curaçao insolvency proceeding. (See Article 60). The Court, in turn, has authority over certain matters. The most common examples of the Court's direct authority relate to: (i) the allowance of disputed creditor claims; (ii) approval of a composition, which prescribes the manner in which unsecured claims will be satisfied, that is supported by the requisite majority of unsecured creditors; and (iii) determinations regarding the dismissal or replacement of a trustee.

18. The Curaçao Bankruptcy Act empowers the Court or, thereafter, the Supervisory Judge, in her discretion based on the importance or nature of an estate's assets, to appoint a committee comprised of one to three known creditors of the debtor. (Article 70). Such committee advises the trustee on the action she proposes to take in accordance with her duties under the Curaçao Bankruptcy Act and, to that end, the committee is authorized to request consultation of the books, documents and other data relating to the bankruptcy. (Article 72).

**C. Claim Verification Process and Claim Priority Waterfall**

19. Article 22 of the Curaçao Bankruptcy Act establishes the claims verification process in the bankruptcy proceeding as the exclusive means by which claims may be asserted against the estate. All claims of unsecured creditors must be submitted to trustee for adjudication and verification. Claims must be in writing and substantiated by proof. There is no deadline for the submission of claims unless otherwise ordered by the Court. Prior to a claims validation meeting, the trustee will make a list of claims that are provisionally admitted or disputed. Creditors will have notice of a verification meeting, and the opportunity to challenge the admitted claims.

20. Under the Curaçao Bankruptcy Act, creditors that hold valid pledges or mortgages over the debtor's property may enforce their liens over collateral without being subject to the general moratorium arising upon the commencement of bankruptcy, and are entitled to be compensated up to the amount of their claims from the value of their collateral. If their claims against the debtor exceed the value of the collateral, the deficiency claim becomes an unsecured claim against the debtor's estate. The trustee may set these creditors a reasonable time limit to execute their rights. In case the secured property has not been sold within said time limit, the trustee can sell the secured property, in which case the mortgage and pledge holders will have to contribute to the general costs of the bankruptcy from the proceeds of the sale. (Article 54 (1)).

21. The Curaçao Bankruptcy Act recognizes two classes of priority, prepetition claims – preferred claims afforded statutory priority under the Curaçao Bankruptcy Act and claims of creditors that have certain rights under non-bankruptcy law that afford their claims priority status vis-a-vis general unsecured claims.

22. Statutory priority claims include certain tax and pension claims. Creditors with non-bankruptcy law rights that afford their claims priority status include creditors that: (i) have a

right under applicable non-bankruptcy law to retain property of the debtor to the extent the debtor has failed to pay outstanding fees and expenses, (ii) have entered into retention of title arrangements, which are akin to security agreements, with the debtor, or (iii) have set-off rights. In addition, under the Curaçao Bankruptcy Act, “estate creditors,” who do business with the trustee following the commencement of the bankruptcy, are entitled to be paid dollar for dollar from estate assets before pre-petition creditors are entitled to be paid. Finally, general unsecured creditors are entitled to share pro rata in the debtor’s assets after secured, priority and estate claims have been paid in full.

23. The debtor may offer unsecured creditors a composition, which prescribes the manner in which unsecured claims will be satisfied. The trustee is obliged to advise the creditors on the composition. A majority of unsecured creditors representing at least half of the total amount of claims support a composition, it will be submitted to the Court for approval. All unsecured creditors will be bound by a composition that is supported by the requisite majority of unsecured creditors and by the Court. The Court may decline to approve a composition on several grounds, including that the value of the estate’s net assets considerably exceed the amount offered to creditors in the composition.

**D. Trustee’s Avoidance Powers under Curaçao Bankruptcy Act**

24. The Curaçao Bankruptcy Act empowers the trustee to avoid or annul certain transactions entered into by the debtor prior to the commencement of a bankruptcy proceeding. The bankruptcy trustee may void a transaction entered into by the company without a prior legal obligation to do so if the interests of the other creditors are prejudiced by that transaction and if both the company and the counterparty to the transaction were aware, or should have been aware, that the transaction was prejudicial to the interest of the other creditors.

25. The Curaçao Bankruptcy Act provides that debtor and counterparties that entered into certain transactions less than one year before the declaration of bankruptcy will be presumed to have had the requisite knowledge that such transaction was prejudicial to creditors generally, including where: (i) the value of the obligation of the creditor is substantially exceeded by the value of the obligation of the debtor; (ii) payment has been made towards, or security has been granted for, a debt which is not due and payable; or (iii) the debtor and creditor are legal entities and one of such legal entities is director of the other, or at least half of both their issued share capital is owned by one and the same shareholder.

26. In addition, the Curaçao Bankruptcy Act empowers the bankruptcy trustee to avoid or annul transactions that were entered into with the legal obligation to do so if the counterparty (i) knew at the time of the transaction that an application had been made for the bankruptcy of the company, or (ii) where the purpose of the transaction was to prefer the counterparty to the detriment of the debtor's other creditors.

27. Under the Curaçao Bankruptcy Act, the trustee has exclusive authority to institute claims to avoid or annul pre-bankruptcy transactions. Creditors, however, are authorized to challenge the admission of claims that may be subject to avoidance on the grounds above.

**E. Recent Developments in the Curaçao Liquidation**

28. On September 3, 2019, the Joint Court of Justice of Aruba, Curaçao, Sint Maarten, and of Bonaire, Sint Eustatius and Saba (the "**Curaçao Court of Appeals**") declared IIG TOF to be bankrupt. The Curaçao Court of Appeals appointed U.I.D. Luydens, judge of the Court as the Supervisory Judge and V. P. Maria of the Curaçao bar as the trustee.

29. On September 6, 2019, the Trustee caused the notice of IIG TOF's declaration of bankruptcy to be published in the Curaçao Official Gazette. In addition, on September 11, 2019,

the Trustee further caused notice of IIG TOF's declaration of bankruptcy to be published in two local newspapers, the *Amigoe* and the *Antilliaans Dagblad*.

30. On September 17, 2019, IIG Global Trade Finance Fund LTD ("GTFF") and IIG Structured Trade Finance Fund LTD ("STFF") filed a petition with the Court of Appeals seated in Curaçao to challenge its declaration of IIG TOF's bankruptcy.

31. On November 12, 2019, the Supervisory Judge entered an order appointing certain creditors of IIG TOF to serve on a preliminary creditors' committee pursuant to Article 70, section 1, of the Curaçao Bankruptcy Act in light of the importance of IIG TOF's estate.

32. On November 27, 2019, GTFF and STFF withdrew their challenge to the declaration of bankruptcy in respect of IIG TOF issued by the Curaçao Court of Appeals.

33. On January 22, 2020, the Supervisory Judge approved the Foreign Representative's decision to seek recognition of the Curaçao Liquidation in the United States under chapter 15 of the Bankruptcy Code.

**THE CURAÇAO BANKRUPTCY ACT IS CONSISTENT  
WITH THE REQUIREMENTS OF CHAPTER 15 OF THE BANKRUPTCY CODE**

34. Although I am not qualified in respect of the United States Bankruptcy Code, it is my understanding from United States counsel for the trustee of IIG TOF, Reed Smith LLP ("Reed Smith"), that the rules and principles governing the liquidation of IIG TOF's estate under the Curaçao Bankruptcy Act are similar to the rules and principles governing distribution under the Bankruptcy Code. Both systems, among other similarities: (i) recognize the principles of the absolute priority rule; (ii) provide affected creditors a means to vote on, and approve, by majority requirement, a distribution plan; and (iii) provide an orderly and equitable means for creditors to be informed about the debtors' affairs.

**THE TREATMENT OF CLAIMS AGAINST AND INTERESTS IN  
UNDER THE CURAÇAO BANKRUPTCY ACT IS FAIR AND JUST**

**A. Estate Proceeds are Distributed Under the Curaçao Bankruptcy Act  
Substantially in Accordance with the Priorities Prescribed by the  
Bankruptcy Code**

35. Although I am not qualified in respect of the United States Bankruptcy Code, it is my understanding from Reed Smith that the rules and principles governing the distribution in insolvency of a company's estate under Curaçao law are substantially similar to the rules and principles governing distribution under the Bankruptcy Code. In particular, there is a similar order of payments to secured, priority, and ordinary unsecured creditors.

**B. Local and Foreign Creditors are Treated Equally**

36. The Curaçao Bankruptcy Act does not contain provisions that create any special prejudice or inconvenience for the processing of claims asserted by residents of the United States. The Curaçao Bankruptcy Act does not favor local claimants or discriminate against claimants who are not citizens or residents of Curaçao.

37. Moreover, the rights of creditors who are parties to contracts governed by United States law will not be unfairly compromised by the Curaçao Liquidation, because the trustee or, if applicable, the Court will generally apply such governing law to construe such parties' substantive rights, to the extent not expressly overridden by the Curaçao Bankruptcy Act.

**RELIEF UNDER SECTIONS 1519 AND 1521 OF THE BANKRUPTCY CODE**

38. I understand that Section 1519 of the Bankruptcy Code permits this Bankruptcy Court to grant the trustee provisional relief upon filing a petition for recognition where relief is urgently needed to protect the assets of the debtor or the interests of the creditors. The trustee has requested provisional relief to stay proceedings (the "**IIG Trade Finance Litigation**") that GTFF and STFF commenced against IIG TOF in New York on December 27, 2019, nearly four

(4) months after the Curaçao Court of Appeals entered an order declaring IIG TOF bankrupt. I understand from Reed Smith that GTFF and STFF are seeking entry of a judgment against IIG TOF in an amount in excess of \$14 million in connection with IIG TOF's alleged unsecured guaranty of loan obligations allegedly incurred by IIG TOF's wholly-owned subsidiary. The Trustee's request for relief is appropriate because, under the Curaçao Bankruptcy Act, the commencement of a bankruptcy case automatically stays unsecured creditors from commencing or continuing a lawsuit against the debtor to bring a claim against the estate. The Trade Finance Litigation is precisely the type of litigation that should be stayed under the Curaçao Bankruptcy Act. Under the Curaçao Bankruptcy Act, the effect of the stay is to cause all claims to be determined through the claims verification process. The claims being asserted by GTFF and STFF in the Trade Finance Litigation are precisely the type of claims that should be determined through the claims verification process.

39. The Trustee has informed me that IIG TOF owns a bank account at Bank Leumi USA containing, upon her information and belief, approximately \$789,000, a custody account with the Bank of New York Mellon, and an ownership interest in up to approximately \$117,000 being held in an escrow account of Chaffetz Lindsey, LLP, in each case in New York. I understand that Section 1521 of the Bankruptcy Code permits this Bankruptcy Court to grant the trustee appropriate relief, including entrusting her with the realization and administration of IIG TOF's assets within the territorial jurisdiction of the United States. The Trustee has requested such relief in the Verified Petition. The relief is appropriate to maximize the recovery to creditors through distributions in the Curaçao Liquidation and because, pursuant to Article 64 of the Curaçao Bankruptcy Act, the trustee is already empowered to preserve, collect and liquidate all assets of IIG TOF, wherever located, including the United States.

40. I also understand that Article 1521 of the Bankruptcy Code permits this Bankruptcy Court to grant the Trustee the power to engage in the “examination of witnesses, the taking evidence or the delivery of information concerning the debtor’s assets, affairs, rights, obligations or liabilities.” The Trustee believes that such relief is necessary so that she may properly investigate, identify and fully realize the value of IIG TOF’s assets within the territorial jurisdiction of the United States. The relief is appropriate because the Trustee is vested with the power to ask the Supervisory Judge for permission to take such discovery in the Curaçao Liquidation pursuant to Article 62 of the Curaçao Bankruptcy Act.

Pursuant to 28 U.S.C. Section 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my information and belief.

Executed: Willemstad, Curaçao  
March 2, 2020

/s/ Barbara Nagelmakers  
Barbara Nagelmakers