

IN THE GRAND COURT OF THE CAYMAN ISLANDS

IN THE MATTER OF THE COMPANIES LAW (2007 REVISION) (AS AMENDED)  
AND IN THE MATTER OF BIO CITY DEVELOPMENT COMPANY (MENA) LTD

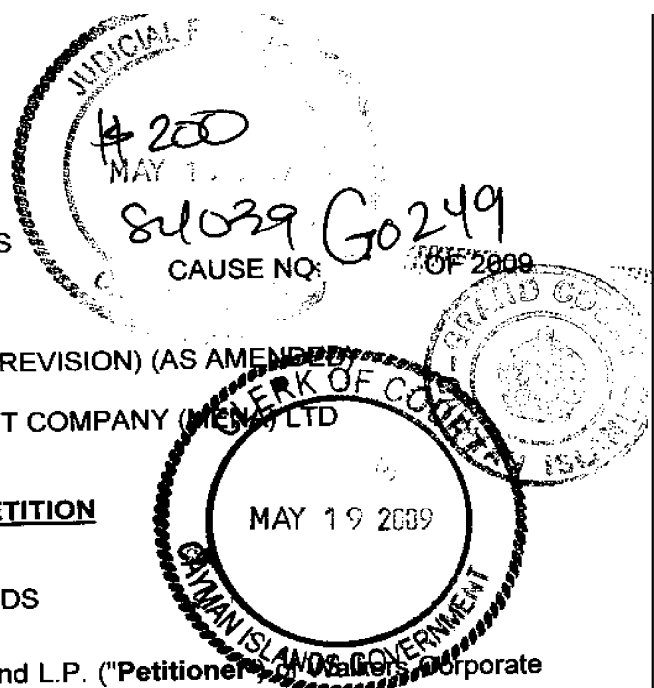
**WINDING UP PETITION**

TO: THE GRAND COURT OF THE CAYMAN ISLANDS

The humble petition of Standard General Master Fund L.P. ("Petitioner") and Walkers Corporate Services Limited, Walker House, 87 Mary Street, George Town, Grand Cayman, Cayman Islands shows that:

**The Company**

1. Bio City Development Company (MENA) Ltd (the "**Company**") was incorporated on 16 August 2007 as an exempted company under the laws of the Cayman Islands.
2. The registered office of the Company is situated at Maples Corporate Services Limited, Ugland House, South Church Street, George Town, Grand Cayman, Cayman Islands.
3. The authorised share capital of the Company is US \$3,000.00 divided into 2,500 Class A Common Shares of a nominal or par value of US \$1.00 each ("**Class A Shares**") and 500 Class B Common Shares of a nominal or par value of US \$1.00 each ("**Class B Shares**").
4. The principal objects for which the Company was established were the negotiation and entry into a joint venture agreement with Emaar Healthcare Group LLC and the development of healthcare infrastructure in the Middle East.
5. As at the date of the Petitioner's subscription for shares in the Company on 31 August 2007, Jullien Gaer, David Moore, Tobias Levey and Raphael Levey were the majority shareholders, and each a Director, of the Company ("**Majority Shareholders**").



**The Petitioner, its investment objectives and rationale for entry into Governing Documents**

6. The Petitioner is a "master fund" in the Standard General hedge fund group ("**Group**").
7. The Petitioner and related entities are subject to certain important obligations to the investors in the Group, including minimising the risks associated with investments and providing investors with timely and accurate information regarding the Group's investments.
8. For these reasons, the Petitioner was vigilant to ensure that the terms upon which it invested in the Company, and the Majority Shareholders' obligations vis-à-vis the Petitioner, were carefully and exhaustively set out in the Company's Governing Documents (defined below).
9. The Governing Documents contain a number of critically important terms protective of the interests of the Petitioner (detailed in paragraphs 17 to 44 in this Petition). In broad terms, these documents provide, inter alia:
  - (a) controls upon the compensation payable to the Majority Shareholders to minimise the risk of them depleting the Company's assets for their own benefit and/or operating in competition to the Company. One such control mechanism confers on the Petitioner the right to receive a "special cumulative dividend" in certain circumstances;
  - (b) controls upon the manner in which the Company may spend the monies invested by the Petitioner and other monies raised by the Company;
  - (c) a "first right of refusal" in respect of shares (or securities or options or the like, conferring rights to shares) to be transferred by shareholders or issued by the Company; and
  - (d) the imposition upon the Company of an obligation to provide with Petitioner with detailed financial information and all other information regarding affairs of the Company requested by the Petitioner.

10. In breach of their obligations, the Majority Shareholders have improperly managed the Company's affairs in gross contravention of the critically important terms referred to above and in a manner oppressive and prejudicial to the Petitioner.

**The original shareholding in the Company**

11. On or about 31 August 2007, the Petitioner agreed to subscribe for five hundred (500) Class B Shares for an aggregate subscription price of US \$2 million. The subscription was to take place in two separate issues.
12. The Petitioner subscribed for two hundred and twenty-three (223) Class B Shares ("**Subscription**") on 31 August 2007 for the sum of US \$1 million ("**Subscription Price**"). The Petitioner was to subscribe for the remaining two hundred and seventy-seven (277) shares ("**Additional Subscription**") for the sum of US \$1 million at a later date and subject to the satisfaction of the conditions precedent contained in clause 4.4 of the Subscription Agreement (as defined below).
13. Pursuant to clause 4.4(b) of the Subscription Agreement, it was a condition precedent to the Additional Subscription that the Company arrange a joint venture with Emaar Healthcare Group LLC. The Company failed to satisfy this condition precedent and accordingly the Petitioner was not required to and did not complete the Additional Subscription.
14. As at 31 August 2007, the following shareholdings were issued and registered in the share register of the Company:

<b>Name of Shareholder</b>	<b>Number and Type of Shares</b>	<b>Percentage Shareholding in Company (approximate)</b>
Jullien Gaer	500 Class A Ordinary Shares	22.5%
David Moore	500 Class A Ordinary Shares	22.5%
Raphael Levey	500 Class A Ordinary Shares	22.5%
Tobias Levey	500 Class A Ordinary Shares	22.5%
Standard General	223 Class B Ordinary Shares	10%

15. As at the date of this Petition, the Petitioner believes that Lyrical (as defined below) holds five hundred (500) Class A Shares (and may hold further Class A Shares by way of a transfer of shares from David Moore) and two hundred and fifty (250) Class B Shares.
16. The Petitioner does not know whether Lyrical is a director of the Company.

### **Governing Documents**

The Petitioner's shareholding is governed by the terms of the following documents:

- (a) Subscription Agreement dated 31 August 2007 between the Company, the Petitioner and the Majority Shareholders ("**Subscription Agreement**");
- (b) Shareholders Agreement dated 31 August 2007 between the Company, the Petitioner and the Majority Shareholders ("**Shareholders Agreement**");
- (c) Consulting, Confidentiality, Non-Competition and Non-Solicitation Agreement dated 31 August 2007 between the Company, the Petitioner and the Majority Shareholders; and
- (d) the Company's Memorandum and Articles of Association (as amended and restated by special resolution dated 17 September 2007) ("**Articles**" or if referring to a particular clause thereof, an "**Article**")

(together the "**Governing Documents**").

### **Failure to provide the Required Information**

17. Pursuant to Section 4.1 of the Shareholders Agreement and Article 128, the parties agreed that the Company would provide the following financial statements, reports, accounts and documents to the Petitioner:
- (a) "Audited Annual Financial Statements" within sixty days after the end of each fiscal year;
  - (b) "Quarterly Financial Statements" with thirty days after the end of each calendar quarter;

- (c) "Accountants Letters" in connection with the audits of the Company; and
- (d) "Other Information" regarding the business, prospects, financial condition, operations, property or affairs of the Company requested by the Petitioner

("Required Information").

18. Despite repeated requests by the Petitioner, the Majority Shareholders have failed to cause the Company to supply the Petitioner with the Required Information. As at the date of this Petition, the Petitioner has not received the Audited 2008 Annual Financial Statements, the third quarter 2008 and first quarter 2009 Quarterly Financial Statements, Accountants Letters or the information specifically requested by the Petitioner in July 2008 and April 2009 related to payments received by the Majority Shareholders and other relevant business transactions undertaken by them (the 2007 Annual Financial Statements were only provided shortly before the filing of this Petition). Further, the Majority Shareholders have failed to cause the Company to provide the Petitioner with sufficient information to enable it to determine:
- (a) whether a Special Cumulative Dividend (as defined below) is payable to the Petitioner; and
  - (b) the full extent to which the Lyrical Transactions (as defined below) are in contravention of the Governing Documents.
19. Further, the failure by the Majority Shareholders to cause the Company to provide the Petitioner with the Required Information has caused the Petitioner significant and ongoing difficulty in the management of its own business. As explained above, the Petitioner and the Manager are obliged to provide investors in the Group with detailed and timely financial information. The failure of the Company to produce the Required Information has prevented the Petitioner from complying with this obligation and has caused irreparable damage to the Petitioner's reputation.

#### **The Lyrical Transactions**

20. In our about April 2008, the Company entered into a series of transactions ("Lyrical Transactions") with Lyrical MCMF, LP ("Lyrical") and Bio City Development Company (Holdings) Ltd ("Holdings"). The Lyrical Transactions consist of a number of complex

transactional documents, financial dealings and shell companies. Effectively, the Company and the Majority Shareholders have raised substantial sums of money via the Lyrical Transactions and in return have issued and transferred shares, provided security and conferred various other rights in the Company to Lyrical.

21. The Company and Lyrical entered into a subscription agreement in or about April 2008 ("**Lyrical Subscription Agreement**") pursuant to which Lyrical agreed to subscribe for five hundred (500) Class A Shares in the Company. The Lyrical Subscription Agreement expressly provides that the subscription was an "inducement" for (and is therefore inextricably related to) a loan agreement ("**Senior Secured Loan Agreement**") entered into by Lyrical and Holdings. The Senior Secured Loan Agreement is a cornerstone document of the Lyrical Transactions.
22. The Majority Shareholders appear to have deliberately structured the Lyrical Transactions, including by interposing the Holdings entity between the Company and Lyrical, in an (unsuccessful) effort to circumvent and undermine the shareholder protection provisions contained in the Governing Documents.
23. The Petitioner only became aware of the Lyrical Transactions or about 29 April 2008 when Ballard Spahr, the lawyers engaged by the Company to structure and document the transactions, appear to have inadvertently sent the Petitioner, rather than the Company, an invoice disclosing the entry into the transactions.
24. As will be seen, the Company's secretive entry into the Lyrical Transactions, and its use of Company resources for this purpose, is a clear contravention of the terms of the Governing Documents.

#### **Contraventions of Governing Documents by entry into Lyrical Transactions**

##### *Special Cumulative Dividend*

25. Pursuant to clause 4.1(d) of the Subscription Agreement and Article 11(a), the Petitioner's Class B Shares were issued on terms that they carry the right to a special cumulative dividend payable, subject to certain exceptions, pro rata to the holders of Class B Shares in an amount equal to 25% of the aggregate of:

- (a) any compensation or other distributions paid by the Company, its subsidiaries, the Joint Venture (as defined in the Subscription Agreement) and any affiliated entities to the Majority Shareholders; and
- (b) any other personal compensation from any source received by the Majority Shareholders arising from the development of healthcare infrastructure in the Middle East

**("Special Cumulative Dividend").**

- 26. The Special Cumulative Dividend was designed to ensure that the Petitioners would participate in any compensation received by the Majority Shareholders from activities that had been agreed would be performed exclusively by the Company. In violation of the Governing Documents, performance of these activities has been diverted to Holdings (and possibly other persons and entities).
- 27. At the very least, the payments to the Majority Shareholders reflected in the budget attached to the Senior Secured Loan Agreement as Exhibit E and the Majority Shareholders' admission in their letter of 18 July 2008 that the Majority Shareholders will receive salaries from Holdings, engage the Special Cumulative Dividend provisions. Accordingly, 25% of these payments should have been paid to the Petitioner by way of a Special Cumulative Dividend.
- 28. Furthermore, the Majority Shareholders have deliberately caused the Company to fail to comply with its Information Requirements in order to conceal the extent of their contravention of the Special Cumulative Dividend requirement from the Petitioner.
- 29. The Petitioner believes that the full extent of the Company's contraventions of the Governing Documents in relation to the Special Cumulative Dividend will be revealed following discovery in these proceedings.

***Share Issue Prohibition***

- 30. Pursuant to Section III of the Shareholders Agreement and Article 44, the parties agreed that the Company would not sell, issue or allot any shares of the Company, securities convertible into or exercisable or exchangeable for shares of the Company or options, warrants or other rights carrying any rights to purchase shares of the Company, except

in compliance with Section III of the Shareholders Agreement (and the equivalent provisions in the Articles) ("**Share Issue Preconditions**").

31. The Share Issue Preconditions require that prior to an issue of shares or securities, the Company must first submit written notice to the shareholders identifying the terms of the proposed sale and offer each shareholder the opportunity to purchase the shares or securities.
32. Pursuant to the Lyrical Transactions, the Company issued Lyrical with five hundred (500) Class A Shares and two hundred and fifty (250) Class B Shares, without first complying with the Share Issue Preconditions.
33. There is an exception to the Share Issue Preconditions in respect of "Permitted Issues" of shares (as defined in the Shareholders Agreement). The issue of shares to Lyrical was not a Permitted Issue because the present value of the consideration exchanged for the shares was not worth US \$2 million as it was deferred and conditional. The Petitioners have received no evidence of the full payment of such consideration.
34. Furthermore, the proceeds of the issue of Permitted Issue shares must be retained by the Company and used only for business purposes. The Petitioner believes that the proceeds from the issue of shares to Lyrical have been used for prohibited activities, including at a minimum, payment of the Ballard Spahr invoice for structuring and documenting the Lyrical Transaction.
35. The Petitioner believes that the full extent of the Company's contraventions of the Share Issue Preconditions (including the prohibited use of the proceeds of the shares issued to Lyrical) will be revealed following discovery in these proceedings.

#### *Share Transfer Prohibition*

36. Pursuant to the Section II of the Shareholders Agreement and Articles 34 to 43, the parties agreed that they would not transfer all or any portion of their Shares except in compliance with Section II of the Shareholders Agreement (and the equivalent provisions in the Articles) ("**Share Transfer Prohibition**").

37. It is a requirement of Section II of the Shareholders Agreement that prior to any share transfer, the shareholder intending to transfer his shares, must first give the Company and the other shareholders the opportunity to purchase the shares.
38. The Lyrical Transactions involved the transfer of David Moore's Class A Shares to Lyrical in contravention of the Share Transfer Prohibition.

*Affiliate Transactions*

39. Pursuant to Section 4.3 of the Shareholders Agreement, the parties agreed that all transactions between the Company and an Affiliate (as defined in the Shareholders Agreement) ("**Affiliate Transactions**") must be approved in advance by the Petitioner.
40. The mutual inducements and cross funding inherent in the Lyrical Transactions gave rise the entry into Affiliate Transactions between the Company and Holdings without the Petition's prior approval and to the Petitioner's detriment.

*Financing Information*

41. Pursuant to Section 4.5 of the Shareholders Agreement and Article 131, the parties agreed that the Company would promptly provide the Petitioner with the details and terms of, and any brochures or investment memoranda prepared by the Company related to, any possible financing of any nature for the Company, whether initiated by the Company or any other person or entity ("**Financing Information**").
42. The Lyrical Transactions involved the provision of financing to the Company. The Company failed to provide the Petitioner with the required Financing Information in respect of the Lyrical Transactions and in fact, kept the Lyrical Transactions a secret from the Petitioner.

*The use of the Subscription Price*

43. Pursuant to clause 1.2 of the Subscription Agreement, the Subscription Price paid by the Petitioner must be used by the Company only for specific purposes.
44. The Petitioner believes that, in contravention of the Subscription Agreement, the Majority Shareholders have diverted the use of some or all of the Subscription Price for use in connection with the Lyrical Transactions.

45. The full extent of the Company's contraventions of the Governing Documents in this regard will be revealed following discovery in these proceedings.

**Ground for Just and Equitable Winding Up of the Company**

46. As identified in paragraphs 17 to 44 of this Petition, the Majority Shareholders have improperly managed the Company's affairs in gross contravention of the critically important terms upon which the Petitioner agreed to become a shareholder in the Company.
47. The protections contained in the Governing Documents were of such importance to the Petitioner that they were expressly incorporated in and form part of the Company's Articles. The contraventions of these protections are incapable of ratification by the Majority Shareholders.
48. The contraventions, coupled with the Company's secretive entry into the Lyrical Transactions and failure to provide the Petitioner with Required Information, demonstrate a deliberate and concerted strategy on the part of the Majority Shareholders to oppress and prejudice the Petitioner.
49. For the reasons detailed in this Petition:
- (a) the Majority Shareholders have acted in an oppressive and prejudicial manner towards the Petitioner and have breached their fiduciary duties as Directors of the Company;
  - (b) the Petitioner justifiably lacks confidence in the conduct of the management of the Company's affairs, on the basis of the improper conduct of the Majority Shareholders; and
  - (c) it would be unjust and inequitable to require the Petitioner to continue as a member of the Company.

**YOUR PETITIONER THEREFORE HUMBL Y PRAYS that:**

1. The Company be wound up in accordance with the Companies Law.

2. Simon Lovell Clayton Whicker and Kris Beighton of PO Box 493, Century Yard, Cricket Square, KY1-1106, Grand Cayman, Cayman Islands be appointed as Joint Official Liquidators of the Company.
3. The costs of and incidental to this Petition be paid forthwith from the assets of the Company.
4. Such other orders or directions shall be made as the Court thinks fit.

AND your Petitioner will ever pray etc.

DATED this 19th day of May 2009

FILED this            day of        2009

  
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**WALKERS**  
Attorneys at Law for the Petitioners

**NOTE:** This petition is intended to be served on the Company at its registered office.

This petition was presented by Walkers whose address for service is Walker House, 87 Mary Street, George Town, Grand Cayman, Cayman Islands, Attorneys at Law for the Petitioners.

**NOTICE OF HEARING**

**TAKE NOTICE THAT** the hearing of this Petition will take place at the Law Courts, George Town, Grand Cayman on  
at 10.00am.

Any correspondence or communication with the Court relating to the hearing of this Petition should be addressed to the Registrar of the Financial Services Division of the Grand Court at PO Box 495, Grand Cayman, KY1-1106, Telephone 345 949 4296.