

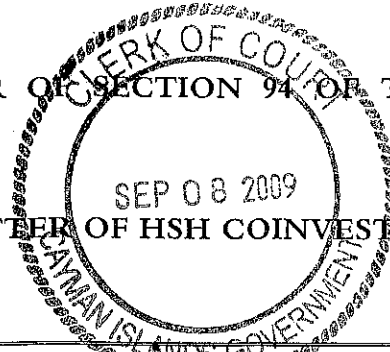
GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION

CAUSE NO: 428 OF 2009



IN THE MATTER OF SECTION 94 OF THE COMPANIES LAW (2007 REVISION)

AND IN THE MATTER OF HSH COINVEST (CAYMAN) GP LTD



WINDING UP PETITION

To: The Grand Court of the Cayman Islands

The humble petition of ABN AMRO Bank N.V., London Branch ("the Petitioner") as facility agent for the lenders set out in Schedule 1 ("the Lenders") shows that:

**The Company**

1. HSH Coinvest (Cayman) GP Ltd (company no. 174067) ("the Company") was incorporated on 15 September 2006 as an exempted company under the laws of the Cayman Islands.
2. The registered office of the Company is situated at Walkers SPV Limited, Walkers House, 87 Mary Street, George Town, Grand Cayman, KY1-1104, Cayman Islands.

**The Limited Partnership**

3. The Company is the general partner of HSH Coinvest (Alberta) L.P., a limited partnership established under the laws of the Province of Alberta, Canada, pursuant to a limited partnership agreement dated 19 September 2006 ("the Limited Partnership").

4. The Limited Partnership is a special purpose vehicle established for the sole purpose of acquiring, and financing the acquisition of, not less than 2,654,841 ordinary shares in a German bank, HSH Nordbank AG, owned by WestLB Beteiligungsholding GmbH (“the HSH Nordbank Shares”).

#### **Authority of Petitioner**

5. Each of the Lenders has irrevocably authorised the Petitioner to take any action in the Cayman Islands on their behalf against the Company in respect of any monies owed to them by the Company.
6. The Petitioner is thereby duly authorised to bring this Petition for and on behalf of the Lenders for the winding up of the Company.

#### **The Facility Agreement**

7. On 19 October 2006, the Company, in its capacity as general partner of the Limited Partnership, entered into a Loan Facility Agreement with ABN AMRO Bank N.V., London Branch (as Arranger and Facility Agent) and ABN AMRO Bank N.V. (as Original Lender) (“the Facility Agreement”).
8. The Petitioner incorporates into this Petition, and relies upon, the terms and conditions contained in the Facility Agreement.

In this Petition, references in square brackets are to clauses in the Facility Agreement.

#### **The Loan Facility**

9. Pursuant to the Facility Agreement, ABN AMRO Bank N.V. agreed to make available to the Limited Partnership:
  - (a) a euro term loan facility in the aggregate amount of €61,809,411.00 under which term loans were made available [2.1] (“Term Loans”); and

- (b) a euro revolving credit facility in the aggregate amount of €4,414,957.93 under which revolving credit loans were made available [2.2] (“Revolving Loans”).
10. The Term Loans were only permitted to be used in or towards financing the acquisition by the Limited Partnership of the HSH Nordbank Shares, and the costs and expenses incurred in connection with that acquisition [3.1].
  11. Each Revolving Loan was only permitted to be used in or towards financing interest expenses under the loan facilities, certain administrative costs, costs and expenses incurred in connection with the acquisition of the HSH Nordbank Shares, and refinancing existing Revolving Loans [3.3].
  12. The Term Loans have agreed successive terms of one, two, three or six months for the purpose of calculating and paying interest due by the borrower under the Facility Agreement [10.1], and were required to be repaid in full in any event on 19 October 2011 [7.1].
  13. Each Revolving Loan was to be for an agreed term of one, two, three or six months [10.2], and was required to be repaid in full on the last day of the term of that Revolving Loan [7.2].
  14. The Limited Partnership was required to pay accrued interest on the Term Loans and the advances under the Revolving Loans on the last day of each term of each such loan [9.2].
  15. The interest payable by the Limited Partnership was a percentage rate per annum equal to the aggregate of the EURIBOR rate, plus 2.50 per cent, plus, a mandatory cost based on the average of rates charged by certain reference banks nominated by ABN AMRO Bank N.V., London Branch [9.1].
  16. The Limited Partnership is in default under the Facility Agreement if it does not pay on the due date any amounts payable by it unless the non-payment is caused

by technical or administrative error, and is remedied within three business days of the due date [20.2].

### **Governing Law**

17. The Facility Agreement is governed by English Law.
18. The Limited Partnership is governed by the laws of the Province of Alberta, Canada.

### **Acquisition of Shares**

19. In accordance with the terms of the Facility Agreement:
  - (a) funds were duly advanced to the Limited Partnership by ABN AMRO Bank N.V. for the purpose of acquiring the HSH Nordbank Shares; and
  - (b) the Limited Partnership duly acquired the HSH Nordbank Shares.
20. The HSH Nordbank Shares were at the time of acquisition, and are presently, registered in the name of the Company in its capacity as general partner of the Limited Partnership.

### **Novation of Lender's Rights**

21. On 29 December 2006, ABN AMRO Bank N.V., as original lender under the Facility Agreement, novated part of its rights and obligations under the Facility Agreement to Dresdner Bank AG, Niederlassung Luxemburg (now Commerzbank AG, Filiale Luxemburg), The Royal Bank of Scotland plc, Landsbanki Islands hf., and Lloyds TSB Bank plc whereupon those parties became lenders for the purposes of the Facility Agreement, the Term Loans, and the Revolving Loans.
22. On 29 January 2007, ABN AMRO Bank N.V. and The Royal Bank of Scotland plc novated part of their rights and obligations under the Facility Agreement to Calyon whereupon that party became a lender for the purposes of the Facility Agreement, the Term Loans, and the Revolving Loans.

## Default by the Company

23. On 30 January 2009, the sum of €3,615,177.98 became due and payable by the Limited Partnership to the Lenders in accordance with the terms of advances made to the Limited Partnership under the Facility Agreement ("the Original January Debt").
24. As at 21 August 2009, the Original January Debt had incurred interest in the sum of €90,174.02 ("the Extra January Debt") payable by the Limited Partnership to the Lenders in accordance with the terms of the Facility Agreement. The Original January Debt plus the Extra January Debt equals a sum of €3,705,352.00 ("the Total January Debt").
25. The Total January Debt is made up as follows:

Revolving Loans principal (including all capitalised interest as at 11 August 2009)	€2,535,740.11
Revolving Loans interest (from 11 August to 21 August 2009)	€2,832.29
Term Loans interest (as at 30 January 2009)	€1,138,384.44
Term Loans interest on interest (on amount due 30 January 2009 up to 21 August 2009)	€28,395.16

26. On 30 April 2009, a further sum of €705,811.44 became due and payable by the Limited Partnership to the Lenders in accordance with the terms of advances made to the Limited Partnership under the Facility Agreement ("the Original April Debt").

27. As at 21 August 2009, the Original April Debt has incurred interest in the sum of €9,257.26 ("the Extra April Debt") payable by the Limited Partnership to the Lenders in accordance with the terms of the Facility Agreement. The Original April Debt plus the Extra April Debt equals a sum of €715,068.70 ("the Total April Debt").

28. The Total April Debt is made up as follows:

Term Loans interest (as at 30 April 2009)	€705,811.44
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Term Loans interest on interest (on amount due 30 April 2009 up to 21 August 2009)	€9,257.26
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29. On 31 July 2009, a further sum of €610,082.29 became due and payable by the Limited Partnership to the Lenders in accordance with the terms of advances made to the Limited Partnership under the Facility Agreement ("the Original July Debt").

30. As at 21 August 2009, the Original July Debt has incurred interest in the sum of €1,404.89 ("the Extra July Debt") payable by the Limited Partnership to the Lenders in accordance with the terms of the Facility Agreement. The Original July Debt plus the Extra July Debt equals a sum of €611,487.18 ("the Total July Debt").

31. The Total July Debt is made up as follows:

Term Loans interest (as at 31 July 2009)	€610,082.29
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Term Loans interest on interest (on amount due 31 July 2009)	
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up to 21 August 2009)

€1,404.89

32. The Total January Debt, the Total April Debt and the Total July Debt are collectively "the Due Debts".
33. The Petitioner made demand for payment of:
  - (a) the Original January Debt plus all other amounts due but unpaid under the Facility Agreement on 30 January 2009, 5 March 2009, 13 March 2009, and 21 May 2009; and
  - (b) the Original April Debt plus all other amounts due but unpaid under the Facility Agreement on 30 April 2009 and 21 May 2009.

#### **Liability of the Company**

34. Pursuant to the laws of the Province of Alberta, Canada, the general partner of a limited partnership is liable for the debts and obligations of the limited partnership.
35. The Company is thereby liable to pay the Due Debts to the Lenders.

#### **Failure to Pay**

36. The Limited Partnership has refused or neglected to pay the Due Debts or any part thereof to the Lenders as required by the Facility Agreement.
37. The Company has similarly refused or neglected to pay the Due Debts or any part thereof to the Lenders as required under the laws of the Province of Alberta, Canada.
38. The Lenders do not hold security for payment of the Due Debts.

## **Insolvency of the Company**

39. The Due Debts have been due and owing by the Company to the Lenders since 30 January 2009 (in respect of the Original January Debt), 30 April 2009 (in respect of the Original April Debt) and 31 July 2009 (in respect of the Original July Debt). The Due Debts are immediately due and payable and thus continue to be due and owing by the Company to the Lenders every day in accordance with the terms of the Facility Agreement.
40. Despite demand, the Due Debts remain unpaid.
41. Neither the Limited Partnership nor the Company have disputed the Due Debts at all.
42. The Company has acknowledged at all material times that the Due Debts are payable, but has refused to make such payment.
43. The Company is unable to pay its debts as evidenced by its failure to pay the Due Debts.
44. Further, the Company, through the conduct and representations of its manager, JC Flowers & Co. LLC, has admitted to the Lenders that the Company does not hold sufficient funds to pay the Due Debts.
45. By reason of being unable to pay its debts, the Company is insolvent for the purposes of the Companies Law (2007 Revision).
46. In the circumstances, the Petitioner seeks an order from this Honourable Court that the Company be wound up.

## **‘Just and Equitable’ Ground**

47. The Limited Partnership is a special purpose vehicle established for the sole purpose of acquiring, and financing the acquisition of, the HSH Nordbank Shares.

48. The sole purpose of the Company is to act as general partner of the Limited Partnership.
49. The Limited Partnership has two substantial assets being:
  - (a) the HSH Nordbank Shares; and
  - (b) a bank account held at J.P. Morgan, The Private Bank, 500 Stanton Christiana Rd., Newark, Delaware 19713, USA, holding cash deposits received in connection with the HSH Nordbank Shares.
50. The Limited Partnership has one substantial debt being the Term Loans, the Revolving Loans, and accrued interest, fees, costs and expenses under both facilities.
51. Neither the Limited Partnership nor the Company have been servicing, or have the wherewithal to be able to service, payments due under the Term Loans or the Revolving Loans.
52. The Lenders have no prospect of receiving payments on account of the Term Loans or the Revolving Loans (or interest accruing thereon or fees, costs and expenses relating thereto) from the Limited Partnership or the Company in accordance with the requirements of the Facility Agreement.
53. The Limited Partnership, and as a necessary consequence, the Company, is unable to carry on the business for which it is formed.
54. The substratum of the Company has therefore failed.
55. In the premises, it is just and equitable for the Company to be wound up.

SCHEDULE 1  
(List of Lenders)

Commerzbank AG, Filiale Luxemburg

Lloyds TSB Bank plc

ABN AMRO Bank N.V.

Calyon

The Royal Bank of Scotland plc

Landsbanki Islands hf.

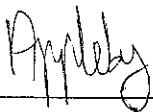
Your Petitioner therefore humbly prays that:

1. The Company be wound up in accordance with the Companies Law (2007 Revision).
2. David Walker and Daniel Schwarzmann of Pricewaterhouse Coopers (“the Liquidators”) be appointed joint Official Liquidators of the Company.
3. The Liquidators shall not be required to give security for their appointment.
4. The Liquidators be authorised to exercise any of the powers conferred on them by the Court pursuant to Section 110(2) and Parts I and II of the Third Schedule of the Companies (Amendment) Law (2007 Revision) without the further sanction or intervention of the Court.
5. The Liquidators be authorised to do any act or things considered by them to be necessary or desirable in connection with the liquidation of the Company and the winding-up of its affairs and to prevent the dissipation of the Company’s assets.
6. No suit, action or other proceeding shall be proceeded with or commenced against the Company except with the leave of the Court and subject to such terms as the Court may impose.
7. No disposition of the Company's property by or with the authority of the Liquidators in carrying out their duties and functions and exercise of their powers under this Order shall be voided by virtue of section 99 of the Companies Law (2007 Revision).

8. The Liquidators be at liberty to appoint counsel, attorneys, professional advisors, whether in the Cayman Islands or elsewhere as they may consider necessary to advise and assist them in the performance of their duties and on such terms as they may think fit and to remunerate them out of the assets of the Company.
9. The Liquidators and their staff be remunerated out of the assets of the Company at the usual customary rate.
10. The Liquidators be at liberty to apply generally.
11. The costs of the Petitioner of and incidental to the Petition be paid out of the assets of the Company as an expense of the liquidation, such costs to be taxed if not agreed with the Liquidators.
12. Such further or other relief be granted as the Court deems appropriate.

AND your Petitioner will ever pray etc.

Dated the 7<sup>th</sup> day of September 2009.



APPLEBY

NOTE: This Petition is intended to be served on:

1. The Registrar of Companies
2. The Company at its registered office.

This Petition was presented by Appleby, Attorneys for the Petitioner, whose address for service is of Clifton House, 75 Fort Street, PO Box 190, Grand Cayman KY1-1104, Cayman Islands (Ref. AB/JNW/07721.028).

## NOTICE OF HEARING

**TAKE NOTICE THAT** the hearing of this petition will take place at the Law Courts,  
George Town, Grand Cayman, on 2009 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.