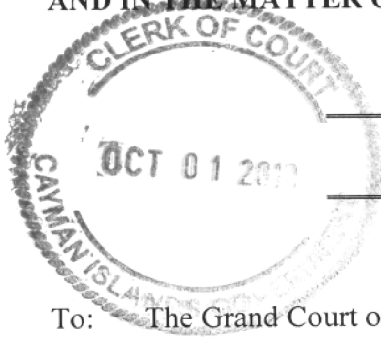


IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION

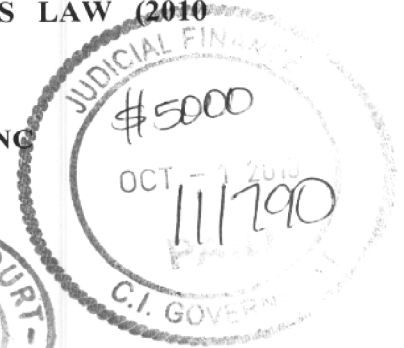
CAUSE NO: FSD <sup>0218</sup> OF 2010

IN THE MATTER OF SECTION 94 OF THE COMPANIES LAW (2010  
REVISION)

AND IN THE MATTER OF GFP DUNAS PARTNERS HOLDINGS, INC



WINDING UP PETITION



To: The Grand Court of the Cayman Islands

The humble petition of GFP Dunas Holdings Inc, the registered office of which is situated at 87 Mary Street, George Town, Grand Cayman, Cayman Islands (“**GFP Dunas**”) shows that:

1. GFP Dunas Partners Holdings Inc. (formerly known as ESM Intermediate (Cayman) Ltd (the “**Company**”), is a Cayman Islands exempted company established on 30 May 2007 under the laws of the Cayman Islands.
2. The registered office of the Company is situated at Ogier Fiduciary Services (Cayman) Limited, 89 Nexus Way, Camana Bay, Grand Cayman, Cayman Islands.
3. The principal object for which the Company was established was to operate as an investment vehicle for the co-operative and joint strategic management of investments in Peruvian energy companies. More particularly the Company owns 99% of the issued shares in Dunas Energia S.R.L (“**Energia**”) which in turn owns

99.6% of the issued shares in Electro Dunas S.A.A. (formerly known as Electro Sur Medico S.A.A.) (“**ESM**”). ESM is a power utility company.

4. The share capital of the Company is US\$29,500 divided into 19,500 A Shares and 10,000 B Shares of a nominal or par value of \$1 each. The Company has two shareholders, Nexstar ESM Holdings (Cayman) Ltd (“**Nexstar**”) which owns 100% of the A Shares and GFP Dunas which owns 100% of the B Shares. Both Nexstar and GFP Dunas are Cayman Islands companies.
5. Both Nexstar and GFP Dunas each have 50% of the voting rights of shareholders in the Company.
6. Nexstar and GFP Dunas each have representatives on the board of the Company:
  7. Nexstar was at all material times represented on the Company’s board of directors by Peter Getsinger (“**Getsinger**”) and Pieter Wernink (“**Wernink**”) until Wernink’s resignation on July 28 2010 (Getsinger and Wernink together, or Getsinger singly as the context requires, the “**A Directors**”);
  8. GFP Dunas was at all material times and continues to be represented on the Company’s board of directors by Rob Venerus (**Venerus**) and Tom Tribone (“**Tribone**”) (together the “**B Directors**”).
9. For all material decisions related to the investments in Peru the Company is only able to act where there is consensus between the A Directors and B Directors, or at least one of each of the A Directors and B Directors.
10. The Petition is sought on the basis that there have been breaches of the legitimate expectations of the Petitioner by reason of the serious and continued misconduct of the remaining A Director and the sole A Shareholder, there has been a loss of confidence in the sole remaining A Director and the sole A Shareholder and by

reason of the fact that the Company is now in deadlock by reason of the Board and the Shareholders being unable to agree to the proper and effective means of managing the Company.

11. The Company is solvent and the Petitioner has a tangible interest in the proceeds of the winding-up of the Company after the payment of creditors and the costs and expenses of any winding-up.

#### **Overview - Grounds for Petition**

12. The Company is a joint venture vehicle for the quasi-partnership between GFP Dunas and Nexstar and it was a common understanding and legitimate expectation of the shareholders that the Company would be jointly managed and that no decisions of the Company could be taken without the agreement of both of GFP Dunas and Nexstar or, in the context of decisions of the Company's Board of Directors (the "**Board**"), without the approval of directors nominated by each of GFP Dunas and Nexstar. The Articles of Association of the Company reflected this legitimate expectation.
13. Nexstar is controlled by its principal, Getsinger. Getsinger has operated as a hedge fund manager through Nexstar Capital Partners. Certain funds managed by Mr. Getsinger have suffered financial difficulties in recent years and his hedge fund has "gated" redemptions.
14. Following these financial difficulties and from January 2010 onwards the views of Nexstar and Getsinger as to the management of the Company diverged from the views of GFP Dunas. Worse, from May 2010, Nexstar, under the control of Getsinger, took covert and unilateral actions in respect of the underlying assets and interests of the Company without the approval of GFP Dunas or the B Directors and which would not have been approved by the GFP Dunas or the B Directors.

## **The Investments In Peru**

15. The Company's 99% owned Peruvian subsidiary, Dunas Energia S.R.L. ("**Energia**"), owns 99.6% of the shares of Electro Dunas S.A.A. (formerly Electro Sur Medico S.A.A.) ("**ESM**") a publicly listed Peruvian power company. The Company's initial investment was to purchase the debts of ESM, which upon ESM emerging from bankruptcy in 2009 were converted into equity interests.
16. The other 1% of Energia is owned by Ismael Rodriguez ("**Rodriguez**") the President of the board of directors of ESM.
17. Since 2007 ESM has been successfully managed in Peru by Rodriguez, Alfredo Pereyra Pantoja (General Manager), Roxana Maribel Palomino Briones (Administration and Finance Manager), Alfredo Luis Marcelo Attilo De Bernardis Llosa (Director), Carlos Armando Garcia Delgado (Director)(together, the "**ESM Management Team**").
18. Since their appointment the ESM Management Team have restored ESM from being a distressed entity crippled by (a) frauds committed by former officers and (b) the destruction of operational assets through a major earthquake in Peru in 2007, to being a profitable publicly listed Peruvian power company.
19. Guggenheim Franklin Park Management, LLC ("**Guggenheim FP**") provides business, financial, technical and commercial advice to ESM pursuant to a technical assistance agreement dated 14 December 2007 ("**ESM Agreement**").
20. It was always GFP Dunas' intention that the investments of the Company would be sold in due course to third parties once the added value of the expertise of Guggenheim FP and the B Directors had assisted the increase in the value of the underlying assets. This intention is reflected, indirectly, in Article 19 of the Company. GFP Dunas engaged Citibank to carry out due diligence work.

Citibank estimated that the value of the Company's investment in ESM (prior to the unilateral actions of Nexstar) at between \$70 million and \$90 million.

### **Getsinger's and Nexstar's Unilateral Actions In Peru**

21. Without any prior notice to or authorisation from GFP Dunas or the B Directors, on or around 18 May 2010, Nexstar, without the authorisation of the Board and unbeknownst to the B Directors, applied to the Fifth Transitory Civil Court in Ica, Peru ("**Ica Court**") for injunctive orders in respect of ESM, the underlying operating asset of the Company's subsidiary, Energia (the "**Nexstar Petition**").
22. The Nexstar Petition made serious and unfounded allegations against the ESM Management Team.
23. The Nexstar Petition sought, on an ex parte basis, the provisional suspension of all faculties and powers granted to each member of the ESM Management Team and the appointment of Carlos Martin Ramirez Rodriguez<sup>1</sup> as Judicial Administrator of ESM. Those orders were initially made by the Ica Court ("**Injunction**").
24. Further, the Nexstar Petition alleged, at the time inaccurately, that the Company was in deadlock and that Nexstar had authority to act to protect the rights and interests of the Company. A pillar of the Nexstar Petition was a legal opinion by Ogier's Cayman Islands office. The legal opinion by Ogier was based on a incorrect statement that a Board meeting took place on 14 January 2010 and an incorrect assertion that the Company was (at that time) in deadlock by reason of the Deadlock Notice and consequently the Company was unable to act to protect its investment in ESM from the alleged wrongdoing of the ESM Management

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<sup>1</sup> Carlos Martin Ramirez Rodriguez, the judicial administrator recommended by Nexstar and appointed by the Peruvian court in Ica, is an attorney in the *same* law firm that filed the Nexstar Petition on behalf of Nexstar. The appointment of the Judicial Administrator is currently the subject of a criminal investigation in Peru.

Team<sup>2</sup>. In short, Nexstar was seeking to usurp the agreed consensual management arrangements of the Company contrary to the legitimate expectations of GFP Dunas.

25. Nexstar took its unilateral action in Peru without calling a meeting of the Board. The Nexstar Petition was issued on 18 May 2010, the day before Nexstar disclosed any evidence related to its allegations to the B Directors, in an email on 19 May 2010. No credible explanation was given by Getsinger as to why he did not act in accordance with constitution requirements of the Company.
26. At all times, GFP Dunas and the B Directors were willing to pursue a thorough and proper investigation into the allegations made by Getsinger, and, where necessary, to take steps to protect the interests of the Company. However, Nexstar's unilateral action in issuing unauthorised proceedings in Peru deprived the Company of its entitlement to fully consider the allegations against the ESM Management Team and, as a Board, to formulate any appropriate action in Peru or otherwise in accordance with the Articles and proper governance by the Board.
27. Without prior notice to GFP Dunas, or approval by the Company, the Injunction was enforced against ESM's utility operations in Ica until 18 June 2010. The injunction was enforced against ESM by armoured cars and armed police. The management was forcibly removed and the Judicial Administrator, a lawyer at Nexstar's Peruvian law firm was installed. Nexstar then sought an order from the Court in Lima, Peru, for the right to enforce the Injunction against ESM's Lima operations. This was a blatant attempt by Getsinger to take control of ESM.
28. The Lima Court refused Nexstar's application and inter alia, held that Nexstar had no standing to request the injunction as it was not a shareholder of Energia and

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<sup>2</sup> GFP Dunas recently notified Ogier of this incorrect statement and incorrect assertion in their legal opinion (presumably by reason of inaccurate instructions by Nexstar) so that they could correct the record with the Peruvian court. As of the date of this Petition, Ogier has made no indication that they plan on correcting the record with the Peruvian court.

that in seeking to suspend the directors of ESM, Nexstar had acted contrary to Peruvian Company law and ESM's articles of association.

29. The Ica Court also revoked the Injunction and removed the Judicial Administrator nominated by Nexstar. In part, this revocation was based on a finding that Nexstar had misled the judge at the ex parte application. Criminal investigations arising out of the injunction are in progress in Peru.
30. Again without approval from or authorisation of the Company, Nexstar has sought to appeal the revocation of the Injunction.
31. The Peruvian litigation negatively impacted upon the value of the assets of the Company, and Getsinger's conduct in causing Nexstar to bring the Peruvian litigation was a breach of his fiduciary duties owed to the Company as a director.
32. Worse was to come. Unable to improperly usurp control of ESM through misleading Court applications, Getsinger and Nexstar sought to destabilise the business of ESM through a concerted campaign in the Peruvian media.
33. Further, Getsinger, on multiple occasions, directly approached ESM's main Peruvian bank, Interbank, without the knowledge of or authorisation from the Board or the B Shareholder. Such improper and undisclosed conduct, along with Getsinger's unsubstantiated allegations against the ESM Management Team caused a perception within the bank that ESM's ownership was dysfunctional and led to a serious deterioration of ESM's relationship with its main creditor bank. As a direct consequence of Nexstar's actions certain of ESM's Interbank mandates/facilities were suspended. Furthermore Interbank varied the conditions for a bond guarantee of ESM of approximately USD6.4 million by requesting 100% cash collateral to renew that guarantee, together with an increase in the applicable interest rate.

34. Getsinger also had meetings with the Peruvian government officials, without the knowledge of, or authorisation from the Board or the B Shareholder, including the Ministry of Energy and Mines which regulates ESM, promoting his view of the complaints in the Nexstar Petition, notwithstanding that the Nexstar Petition was based on false representations and such conversations with the Ministry of Energy and Mines were unauthorised by the Board. Such meetings were very damaging to ESM.
35. Nexstar's actions caused an immediate perception in the market that ESM was a troubled company. This made it impossible to continue the Citibank sale process. Further, it led to liquidity problems at ESM by adversely affecting relations with ESM's main bank, destroyed employee morale at ESM and led to the cancellation of the Maranon hydroelectric concession, a material asset.
36. On 15 July 2010, a Board meeting was held to consider the propriety of the Nexstar Petition and whether it was in the interests of the Company to pursue proceedings in Peru. No proceedings in Peru were authorised by the Board.
37. As a consequence of the devastating impact of the actions of Nexstar and Getsinger upon ESM, the market value of the Company's interest in ESM as at the date of this affidavit is anticipated to be tens of millions United States dollars less than before the unauthorized actions of Nexstar commenced. It will be appropriate for a Liquidator to investigate the recovery of these losses from both Nexstar and Getsinger.

**The Summer of 2010 : GFP Dunas tries to work with Getsinger and Nexstar – Getsinger wants control of ESM**

38. Despite the improper campaign of Getsinger, GFP Dunas and the B Directors sought throughout the summer of 2010 to work with Getsinger to investigate his allegations and concerns and to try to come to a consensual arrangement to maximise and preserve the value of the Company in the interests of all

stakeholders. With hindsight, the efforts of GFP Dunas were doomed to fail. It became clear over time that Getsinger wanted management control of ESM.

39. GFP Dunas sought and obtained explanations from the ESM Management Team which refuted the allegations of fraudulent misconduct and acting without authority made by Getsinger. The management transactions central to the criticisms by Getsinger were the subject of explanations consistent with an overall business strategy which aimed to maximise the interests of ESM. These refutations were supported by detailed opinions from leading Peruvian attorneys and third party corroborative documentation.
40. The B Directors made enquiries of the ESM Management team and sought and obtained their agreement to co-operate with the Board in any independent investigation into the transactions under consideration. Rodriguez offered to step aside pending such an investigation.
41. Upon receipt of this information, through July, August and September 2010 the B Directors sought to work with Getsinger to formalise a co-operative strategy for the future management of the Company which would respect Getsinger's concerns for greater oversight of the ESM Management Team.
42. Getsinger became increasingly isolated over this period. Nexstar's largest shareholder is Albright Capital Partners ("**Albright**"), chaired by the former US Secretary of State. When it became clear that the dispute had been escalated by Getsinger to a level that threatened to impair the Company's interest in ESM, Albright attempted to facilitate a reasonable solution to resolve the dispute between the A and B shareholders. Albright suggested that an independent director, such as the former Prime Minister of Peru, would be an ideal candidate to serve as an independent board member for ESM and offered to contact him if the parties were in agreement. The B Directors agreed with the suggestion or any other suggestion Albright may have regarding an independent director. Even though Albright was a significant Nexstar shareholder, Getsinger rejected Albright's suggestion and

Albright's efforts to resolve the dispute. In protest of Getsinger's actions, Albright's representative, Wernink, resigned from the Board. Although Albright and the B Shareholder essentially agreed to terms to resolve this matter, Getsinger rejected the settlement and Getsinger told Albright to cease all efforts to resolve or mediate this manner.

43. In August 2010, the B Directors proposed a resolution which was based upon:
  44. the immediate cessation of all litigation in Peru and the renunciation of all powers of attorney of Rodriguez to represent ESM, Energia and Maranon;
  45. the appointment of an unbiased, professional board at ESM that would restart the process to sell ESM as called for in the Articles, and
  46. representation on the ESM board commensurate with the 50-50 voting rights under the Articles with the proviso that an independent director of considerable stature be added to resolve any disagreements.
47. After discussions with Getsinger, the B Directors believed that an agreement in principle had been reached on the above terms in late August 2010. However when a draft agreement incorporating the terms was presented to Getsinger. Getsinger stated that he was not prepared to permanently withdraw Nexstar's litigation, that he would only "freeze" it. Further he proposed a structure for the ESM Board that would materially alter the equal representation governance consistent with the shared control of the Company to one that gave the A Directors (i.e. Getsinger) effective control of the ESM board. Basically, the only resolution he would execute would be one that gave him control of the ESM board.
48. This demand for control was consistent with previous threats made by an increasingly desperate Getsinger. For example in a meeting in Lima on 9 July 2010, Getsinger lost his temper with Venerus. Getsinger launched a violent

verbal tirade at Venerus and was physically intimidating in the public setting of a hotel restaurant. Getsinger shouted at Venerus that he “had better deliver Nexstar control of ESM or he would start a war in the media in Peru”.

49. On 22 September 2010, Nexstar and Getsinger purported to give notice to convene a meeting of the Board and the Company’s shareholders. It was clear that the purpose of the meeting was to facilitate further unauthorised unilateral actions by Nexstar and mischaracterize Nexstar’s control of the Company. The letter made new and unsubstantiated allegations of misconduct and fraud including new and baseless allegations against affiliates of GFP Dunas and various assertions of Peruvian law. On 27 September 2010 the B Directors asked for documentation from Getsinger to support these new allegations and assertions. In a letter dated 29 September 2010, Getsinger refused to provide any documents and threatened that “Nexstar will not hesitate to take all actions necessary to protect its rights.”
50. Worse was to come. On 30 September 2010, Getsinger sent a set of proposed resolutions to the B Directors for the Board meeting proposed for 1 October 2010 (“**Proposed Resolutions**”). It became even clearer that Getsinger wanted to take control of ESM and to ignore the shared expectation of joint management of the interests of the Company and its assets. Getsinger was seeking to obtain majority control of the board of ESM and to obtain broad powers of attorney to act unilaterally on behalf of the Company. It was clear that the Company could no longer operate by any principle of responsible corporate governance.
51. By reason of the aforesaid:
  52. Getsinger has acted contrary to legitimate expectations of GFP Dunas that the Company be managed on a joint basis and that decisions would not be taken without the agreement of both the quasi-partners.

53. GFP Dunas has been effectively excluded from the management of the Company by reason of Getsinger and Nexstar's direct and unilateral interference with the assets of the Company and refusal to agree to any consensual arrangement to manage the Company without ceding practical control of ESM to Nexstar and/or Getsinger.
54. GFP Dunas has lost trust and confidence in Nexstar and Getsinger. Similarly by Getsinger's statements in direct and attorney correspondence Nexstar has lost trust and confidence in GFP Dunas and the B Directors.
55. The Company is in deadlock. The quasi-partners are unable to agree upon the appropriate response to the difficulties in Peru caused by Nexstar's actions and allegations and unauthorized actions. Nexstar and Getsinger have asserted that the Company is in deadlock in Cayman.
56. In the premises it is just and equitable for the Company to be wound up.


Your Petitioner therefore humbly prays that:

1. The Company be wound up in accordance with the Companies Law (2010 Revision).
2. Stuart Sybersma and Timothy Derksen both of Deloitte, One Capital Place, George Town, Grand Cayman, Cayman Islands (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 (2009 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 (2010 Revision).
8. The Liquidators be at liberty to appoint counsel, attorneys, and 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 their usual customary rates.
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 1st day of October 2010.

  
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**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. GH/THW/319165.0001).

## **NOTICE OF HEARING**

**TAKE NOTICE THAT** the hearing of this Petition will take place at the Law Courts, George Town, Grand Cayman, on 2010 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.