

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO: 72 OF 2012

IN THE MATTER OF THE COMPANIES LAW (2011 Revision) (As Amended)

AND IN THE MATTER OF EMIRATES NBD INVESTMENT PARTNERS INTERNATIONAL GP (IN VOLUNTARY LIQUIDATION) formerly known as NBD Sana Capital GP



AMENDED PETITION



The humble petition of Tadhamon International Islamic Bank of PO Box 2411, Sana'a, Al Saeed Commercial Centre, Zubiri Street, Republic of Yemen (the "Petitioner") shows that:-

1. Emirates NBD Investment Partners International GP (in voluntary liquidation), formerly known as NBD Sana Capital GP, was incorporated in the Cayman Islands on 16 April 2007 as an exempt company with registration number 185716 ("the Company"). Its present registered office is care of PWC Corporate Finance & Recovery (Cayman) Limited, 5th Floor, Strathvale House, 90 North Church Street, George Town, Grand Cayman.
2. On 14 June 2010, the Company changed its name from NBD Sana Capital GP to Emirates NBD Investment Partners International GP. ~~On a date unknown, the Fund changed its name from NB Sana Capital Fund LP to Emirates NBD Investment Partners International Fund LP.~~
3. The Company was incorporated for the sole purpose of serving as a General Partner of an investment fund registered in the Cayman Islands on 1 May 2007 as an exempted limited partnership with registered number MC-19959 under the original name of NB Sana Capital Fund L.P. ("the Fund").
4. The Fund represented a joint venture project between NBD Sana Capital Mgmt Shareholding Company, a company incorporated in the Cayman Islands on 17 July 2007 ("Sana Management") and Emirates NBD Capital (formerly NBD Investment Bank Ltd), a company

incorporated in Dubai ("Emirates Capital"). At all material times Emirates Capital and Sana Management were the 95% majority shareholders in the Company. One director of Sana Management, Abrar Mir ("Mr Mir") was appointed a director of the Company and one director of Emirates Capital, Suresh Kumar ("Mr Kumar") was also appointed a director of the Company. Mr Mir and Mr Kumar were also the directors of the Investment Manager of the Fund, a Cayman Islands exempt company called NBD Sana Capital Limited (the "Investment Manager").

5. On a date unknown in 2010, the Fund changed its name from NB Sana Capital Fund LP to Emirates NBD Investment Partners International Fund L.P.
4. 6. By a Private Placement Memorandum dated September 2007, 50,000 limited partnership interests in the Fund were offered at an offer price of US\$10,000 for each limited partnership interest.
5. 7. By a Share Purchase Agreement dated 17 March 2008, the Petitioner acquired 5% of the shares in the Company from Emirates Capital and Sana Management, who continued to hold 95% of the shares in the Company at that time. This share purchase was conditional upon the Petitioner also acquiring certain 29.4% of all limited partnership interests in the Fund for the sum of US\$50 million.
6. 8. The Fund was a growth focused, Shari'a compliant private equity fund, with a regional specialisation in the Middle East, North Africa, Turkey and South Africa. The Fund was marketed in the Middle East and specifically the United Arab Emirates.
7. 9. The Fund failed to meet its investment objectives, was not financially viable and traded at a loss for its first years in operation. Audited financial statements show that from 1 May 2007 to 31 December 2008, the Fund lost US\$4,702,505. For the 2009 financial year, the Fund lost US\$3,402,795. The Fund's financial failure ~~is~~ was as a result of firstly, poor management by the directors of the Company as general partner and manager of the Fund. From March 2009 onwards, Mr Mir and Mr Kumar, the Directors of the Company and their respective appointing majority shareholders had a fundamental divergence of views as to how the Fund should operate. Whilst Mr Mir, The Investment Manager and Sana Management sought to pursue the investment strategy for the Fund as described in its Private Placement Memorandum; they were thwarted by Mr Kumar, who on behalf of Emirates Capital (the majority shareholding with a blocking position in the Company) sought to conserve all the Fund's capital in cash and to achieve an expedited return of capital contributions to all the limited partners (effectively ending the Fund and the Company's business). By reason of such central management dispute and conflict of interest.

~~and in breach of the directors' fiduciary duties to the Fund and the Limited Partners, the Fund was deprived of valuable investment opportunities and in turn, the Company was deprived of potential management fees and interest. For example, Secondly despite the then Investment Manager, every member of the Investment Committee of the Fund (apart from Mr Kumar) and most Limited Partners being in favour of purchasing a Turkish telecommunications company, Borusan Telekom for US\$18 million, with the intention of selling the said entity onto Vodafone, the Directors of the Fund and in particular Mr. Kumar, and Emirates Capital vetoed the transaction from March to June 2009 which therefore did not proceed. decided not to and Borusan Telekom was eventually purchased for approximately US\$70 million by Vodafone only a year later, thereby depriving the Fund of a potential profit of US\$52 million on this transaction, and the Company of its corresponding management fees and wasting approximately US\$1 million of the Fund's resources spent on due diligence for this intended acquisition.~~

- ~~8- 10. The dispute between the Company's directors and majority shareholders lead to the Fund being generally mismanaged by the Company and in turn to the failure of the Fund. At a meeting of limited partners held on 31 January 2011, a resolution was passed to terminate the Fund. At no time did the Petitioner receive notice or proper notice of the meetings called to liquidate the Fund. 27 March 2011, †The dissolution of the Fund formally commenced on 27 March 2011 and the Company (as General Partner of the Fund) was appointed liquidating trustee. The Final Report dated 5 September 2011 to the Limited Partners shows a final cash asset balance of US\$352,887 to be distributed to the Limited Partners. The Fund was finally dissolved and struck off the Register on 9 September 2011.~~
- ~~9- 11. Following the dissolution of the Fund, by a resolution dated 21 November 2011, the Company (having no other business purpose as general partner of the Fund as a dissolved partnership) was placed into voluntary liquidation and David Walker and Ian Stokoe of PWC Corporate Finance & Recovery (Cayman) Limited were appointed Joint Voluntary Liquidators (the "Joint Voluntary Liquidators"). At no time did the Petitioner receive notice or proper notice of the meetings called to liquidate the Fund vehicle.~~
- ~~10- 12. In a letter dated 8 November 2010, KBH Kaanuun on behalf of the Petitioner wrote to the Fund, inter alia, stating that the Fund should be wound up.~~
- ~~14- 13. The Joint Voluntary Liquidators held a general meeting of contributories in which they presented their account and report of the winding up on 31 January 2012. Following the general meeting, the Joint Voluntary Liquidators duly filed their return with the Registrar of Companies on the same date.~~

- ~~42~~-14. The Company will be deemed to be dissolved on 1 May 2012 in accordance with Section 151(2) of the Companies Law, being the date upon which three months will have expired since the date the return was registered by the Joint Voluntary Liquidators.
- ~~43~~-15. The Petitioner is a minority shareholder of the Company holding 5% of the issued shares in the Company. Two other shareholders: Emirates ~~NBD~~ Capital ~~Limited~~ and Emirates Financial Services PSC currently hold the other 95% of the shares in the Company, the Petitioner believes the latter entity acquired Sana Management's shares in the Company which is what also triggered the changes in names of the Company and the Fund.
- ~~44~~-16. The Petitioner is also an interested party in the Company in its capacity as former 29.4% Limited Partner of the Fund. The Petitioner accordingly has standing to seek the deferral of the dissolution of the Company.
- ~~45~~-17. The Petitioner furthermore claims to be a contingent creditor of the Company in respect of potential damages claims it has against the Company and its directors for, *inter alia*, breach of fiduciary duty and mismanagement in respect of their respective roles in the Company leading to the financial collapse and failure of the Fund causing loss and damage to the Petitioner in its capacity as limited partner and all limited partners, and to the Petitioner as shareholder in the Company and to all the shareholders of the Company.
18. The Petitioner as a limited partner in the Fund also had a right to receive the benefit of certain claw back provisions in the Limited Partnership Deed by which the Company was obliged to pay back contributions to the Fund as its general partner on termination of the Fund to restore the Limited Partners their original capital contributions, payments of management fees together with interest. In breach of the Partnership Deed, the Company did not return any capital to the Fund on its termination, for the benefit of the petitioner and other limited partners. Accordingly, the Petitioner may have a claim against the Company in respect of its obligation to contribute to the Fund's assets.
- ~~46~~-19. If the Company is dissolved on 1 May 2012, the Petitioner will suffer significant prejudice by being irreversibly deprived of its right to seek redress against the Company and on/or on behalf of the Company against the Directors of the Company derivatively.
- ~~47~~-20. The Petitioner seeks initially only a short-term deferral of the dissolution of the Company, pending the issuing of proceedings against the Company and its directors and the filing of full evidence concerning the Petitioner's claims before the Court, to allow the Court to come to a determination

as to whether it would be just in all the circumstances to defer the dissolution of the Company indefinitely.

Your Petitioner therefore humbly prays that:-

- (1) Pursuant to Section 151(3) of the Companies Law (2011 Revision), the dissolution of the Company shall be deferred from 1 May 2012 for a period of three months or for such period as the Court shall think fit or alternatively, shall be deferred indefinitely pending further order of the Court.
- (2) That the Petitioner do file and serve its main evidence concerning its claims against the Company and its directors and showing why the deferral of the dissolution of the Company should be indefinite by 15 June 2012.
- (3) That the Joint Voluntary Liquidators' liquidation file shall be preserved pending further order by the Court.
- (4) That the Company's books and records shall be preserved by the Joint Voluntary Liquidators pending further Order of the Court.
- (5) That the voluntary liquidation shall carry on subject to the supervision of the Court in order to facilitate a more economic or expeditious liquidation of the Company in the interests of the Petitioner and the other two contributories.
- (6) That notwithstanding any Supervision Order the Court may make, that the Petitioner be granted leave to commence proceedings against the Company and/or in the name of the Company against Mr. Kumar derivatively and the automatic stay shall not operate as a bar to such proceedings.
- (7) Such further Orders and directions as the Court shall think fit.

AND your Petitioner will ever pray etc.



Stuarts Walker Hersant

Amended this 30th day of April 2012

Filed this 30th day of April 2012

Dated this 26th Day of April 2012

Filed this 26th day of April 2012

NOTE: This Amended Petition is intended to be served on the Company and upon the Joint Voluntary Liquidators, David Walker and Ian Stokoe of PWC Corporate Finance & Recovery (Cayman) Limited, Strathclyde House, 90 North Church Street, George Town, Grand Cayman and on the Registrar of Companies.

This Amended Petition is presented by Stuarts Walker Hersant, Attorneys for the Petitioner, whose address for service is 4th Floor, Cayman Financial Centre, 36A Dr. Roy's Drive, George Town, Grand Cayman, KY1-1104. Ref:- AA/SED/RTWA.

NOTICE OF HEARING

TAKE NOTICE THAT the Hearing of this Petition will take place at the Law Courts, George Town, Grand Cayman on 30th April 2012 at 2.00pm.

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.