

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO. FSD 0135 OF 2012

IN THE MATTER OF THE COMPANIES LAW (2011 REVISION)

AND

IN THE MATTER OF FOCUS CHINA ABSOLUTE RETURN FUND LIMITED



WINDING UP PETITION



The humble petition of Timothy Loh Solicitors of Suite 1409-11, Leighton Centre, 77 Leighton Road, Causeway Bay, Hong Kong, shows that:

Preamble

1. The Petitioner presents this petition for the winding up of Focus China Absolute Return Fund Limited (the “**Company**”) and the appointment of joint official liquidators.
2. The Petitioner is a creditor of the Company and seeks the winding up of the Company pursuant to section 92(d) of the Companies Law (2011 Revision) (the “**Companies Law**”) on the grounds that the Company is unable to pay its debts.

Background and Corporate Structure of Company

3. The Company was incorporated on December 11, 2007 in the Cayman Islands as an Exempted Company with limited liability under registration number CB-201229. The registered office of the Company is at c/o Campbell Corporate Services Limited, PO Box 268, 4th Floor, Scotiabank Building, George Town, Grand Cayman, Cayman Islands.

4. The Company is and was at all material times, an investment fund managed by Focus Asset Management International Limited (“FAMIL”), an Exempted Company incorporated in the Cayman Islands. FAMIL appointed Focus Asset Management Company Limited (“FAMCL”), a Hong Kong incorporated company, to be its investment advisor. Through FAMCL, the Company raised capital from investors in Hong Kong.
5. In December 2007, the Company opened a prime brokerage account with a group (“Lehman Group”) of companies operating under the Lehman Brothers brand name. The prime broking services included the custody of securities and cash.
6. The Company's prime brokerage account with the Lehman Group was carried by Lehman Brothers International Europe (“LBIE”) and serviced by Lehman Brothers Asia Limited (“LBAL”).
7. In September 2008, LBIE went into administration and the winding-up of LBAL followed.
8. As at September 15, 2008, the assets held by the Lehman Group, comprised all of the Company's long positions and cash valued at just under US\$10 million.

Part I

Contractual Background

9. On or about September 23, 2008, the Company entered into a retainer agreement (“Retainer Agreement”) with the Petitioner to advise and represent the Company in the recovery of its assets from the Lehman Group. The Retainer Agreement stated that:
 - (a) In the event of a dispute concerning the amount of a statement of account, the Client has the right to make an application to the courts to have the statement of account taxed within 1 month of the delivery of the statement of account. Subject to the court's ruling, the Client may be obliged to pay the costs of the taxation;
 - (b) In the event that the Petitioner has not received payment in full of a statement

of account within 30 days from the date of the statement of account, without prejudice to any other remedy the Petitioner may have:

- (i) the statement of account shall be referred to as an “**Unpaid Statement**”; and
 - (ii) the amount unpaid on each Unpaid Statement shall be referred to as the “**Amount in Arrears on the Unpaid Statement**”.
- (c) The Petitioner reserves the right to charge, and the Client is liable to pay on demand, interest on the Amount in Arrears on the Unpaid Statement at the annual rate of 12% or the prime rate set by the Hongkong and Shanghai Banking Corp. Ltd. on the date of the Unpaid Statement plus 4 per cent., whichever is higher. Interest is to be calculated on the basis of the number of actual days elapsed from the date of the Unpaid Statement and on a 360 day year. Interest is to compound monthly.
10. The Petitioner provided to the Company the legal services requested under the Retainer Agreement.

Sub-Part A

Billing

11. Between October 6, 2008 and July 19, 2012, the Petitioner issued and delivered to the Company a number of bills showing amounts being due from the Company to the Petitioner for the Retainer. As set out below, the Company made certain payments to the Petitioner but despite oral and written requests, a number of bills (“**Outstanding Bills**”) remain outstanding:

<u>Bill No.</u>	<u>Bill Date</u>	<u>Bill Amount (HK\$)</u>	<u>Amount Paid (HK\$)</u>
9900569	Nov 13, 2008	179,567.00	34,032.30
9900578	Nov 30, 2008	12,382.70	0.00
9900623	Mar 10, 2009	<u>99,402.40</u>	<u>0.00</u>
	Sub-Total:	291,352.10	34,032.30

Net Overdue Amount: **257,319.80**

9901118	Jul 18, 2012	135,995.47	0.00
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(interest incurred on the above net overdue amount)

Total Overdue Amount: **393,315.27**

12. After taking into account payments made, the Outstanding Bills total HK\$393,315.27, comprised of outstanding professional fees of HK\$257,319.80 and interest of HK\$135,995.47 calculated up to July 18, 2012 on the basis of a rate of interest of 12 per cent. per annum as set out in the Retainer Agreement.

Sub-Part B

No Complaint as to Quantum of Bills

13. Throughout the retainer relationship, the Company expressly approved of the Petitioner's work. By email dated January 5, 2009, the representative of the Company instructing the Petitioner expressed genuine appreciation for the Petitioner's work, stating "*I could not deny that your advices and services are really superb*".
14. Over 3 years has elapsed since the Petitioner delivered to the Company the Outstanding Bills in respect of professional fees. At no time has the Company complained as to the amount of these Outstanding Bills. At no time has the Company suggested that these Outstanding Bills are in any way improper or unreasonable for the services rendered. At no time has the Company indicated any desire to tax the bills.
15. To the contrary, the Company had indicated to the Petitioner that they had difficulties paying these Outstanding Bills as a result of their financial difficulties stemming from the insolvency of the Lehman Group. By email dated January 5, 2009, the representative of the Company instructing the Petitioner, in discussing payment of these Outstanding Bills, asked for the Petitioner's understanding of "*our dire and difficult financial situation*".

16. The Petitioner invited the Company a number of times to propose a payment schedule but, whilst the Company continued to instruct the Petitioner, it did not respond to any of these invitations.

Part II
Statutory Demand

17. Given the Company's reluctance to address the payment issues, the Petitioner served two statutory demands on the Company. They were specifically drafted in compliance with Hong Kong laws and Cayman Islands laws respectively.
18. On June 5, 2009, the Petitioner served on the Company at its registered office a written demand ("**Statutory Demand 1**") under its hand requiring the Company to pay the sum of HK\$269,365.89. This sum covered the amounts due under the Petitioner's Bill Nos. 9900569, 9900578, 9900623 and 9900635, being interest on the unpaid bills as provided for in the Retainer Agreement.
19. Over three years have now elapsed since the Petitioner served Statutory Demand 1. During this time, the Company has neglected or otherwise failed to pay the amount due to the Petitioner or to secure or compound the amount due to the Petitioner's satisfaction and has not commenced proceedings to set aside Statutory Demand 1.
20. On July 19, 2012, the Petitioner served on the Company at its registered office a further written demand ("**Statutory Demand 2**") under its hand requiring the Company to pay the sum of HK\$393,315.27, being the amounts due under the Petitioner's Bill Nos. 9900569, 9900578 and 9900623 together with interest as provided for under the Retainer Agreement to July 18, 2012.
21. Over 3 weeks have now elapsed since the Petitioner served Statutory Demand 2. The Company has neglected or otherwise failed to pay the amount due to the Petitioner or to secure or compound the amount due to the Petitioner's satisfaction and has not commenced proceedings to set aside Statutory Demand 2.
22. In the premises, the Company is deemed to be unable to pay its debts.

Part III
Inability to Pay Debts

23. Shortly before the insolvency of the Lehman Group, almost the whole of the Company's cash had been deposited by the Company in its prime brokerage account with the Lehman Group. On August 19, 2008, the Company's fund administrator informed the Company that:

“The bank account of Focus has no cash, please be kind to arrange some cash from Lehmann [Lehman] back to Barcalys's [Barclays'] bank account”

24. The Company has admitted that it is unable to pay its debts. It admitted on or about January 5, 2009 that it was in a “dire and difficult financial situation” (see paragraph 13 above). By telephone on or about October 8, 2009, the representative of the Company instructing the Petitioner admitted that the Company had no money to pay the Outstanding Bills and that it had no objection to the winding-up of the Company.
25. In the premises, it is apparent that the Company is in fact unable to pay its debts.

Part IV
Qualified Insolvency Practitioner

26. Margot MacInnis and Kenneth KryS both of KRyS Global Cayman Ltd. (“**KRyS Global**”), whose business address is at Governors Square, Building 6, 2nd Floor, 23 Lime Tree Bay Avenue, PO Box 31237, Grand Cayman KY1-1205, Cayman Islands, have agreed to be appointed as the joint official liquidators of the Company. Ms. MacInnis and Mr. KryS both are qualified insolvency practitioners.

Part V
Order

Your Petitioner therefore humbly prays that:-

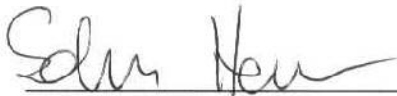
- (a) the Company be wound up in accordance with the Companies Law; and
- (b) Margot MacInnis and Kenneth KryS both of KRyS Global, whose business address is

at Governors Square, Building 6, 2nd Floor, 23 Lime Tree Bay Avenue, PO Box 31237, Grand Cayman KY1-1205, Cayman Islands, be appointed as the joint official liquidators of the Company.

- (c) the joint official liquidators be granted sanction to exercise such powers under Part I of Schedule 3 of the Companies Law as the Court deems necessary or expedient;
- (d) the costs of and incidental to this Petition be paid out of the assets of the Company; and
- (e) the Court make such other orders and directions as it deems necessary or expedient.

AND your Petitioner will ever pray etc.

Dated the 21st day of September 2012.



SOLOMON HARRIS
ATTORNEYS-AT-LAW FOR THE PETITIONER

NOTE: This Petition is intended to be served on the Company at its registered office at c/o Campbells Corporate Services Limited, PO Box 268, 4th Floor, Scotiabank Building, George Town, Grand Cayman, Cayman Islands.

This Petition was presented by **SOLOMON HARRIS** of 3rd Floor, FirstCaribbean House, P.O. Box 1990, Grand Cayman, KY1-1104, Cayman Islands, Attorneys-at-law for and on behalf of the Petitioner whose address for service is that of their said Attorneys.

NOTICE OF HEARING

TAKE NOTICE THAT the hearing of this Petition will take place at the Law Courts, George Town, Grand Cayman, on the day of 2012 at 10:00am.

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