

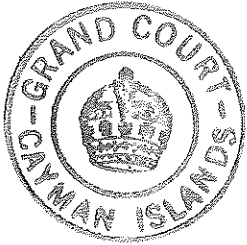
IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NUMBER FSD ⁰⁰³⁵ OF 2014 (AJJ)

IN THE MATTER OF SECTION 94 OF THE COMPANIES LAW (2013 REVISION)

AND IN THE MATTER OF HEALTH CITY DEVELOPMENT LIMITED



WINDING UP PETITION



TO THE GRAND COURT OF THE CAYMAN ISLANDS

The humble petition of Health City Investment, LLC, the registered office of which is situate at Bodden Corporate Services, 802 West Bay Road, Grand Cayman, KY1-1003 Cayman Islands (*HCI* or *the Petitioner*) sheweth that:

The Company

1. Health City Development Limited (company number 268624) (the *Company*) was incorporated on 3 May 2012 as a resident company under the laws of the Cayman Islands.
2. The Registered Office of the Company is situate at Bodden Corporate Services Limited, 802 West Bay Road, Grand Cayman, Cayman Islands.
3. The share capital of the Company is US\$50,000 divided into 50,000 shares with a nominal par value of US\$1.00 each.
4. The principal object for which the Company was established was to acquire, and then potentially undertake the development of land situate in the East End district of Grand Cayman (the *Land*). The Company is licensed under the Local Companies (Control) Law to carry on the business of developer of a Planned Area Development (*PAD*) on land connected to the Shetty Hospital.

5. As further particularised below, the Company has acquired the Land and has acquired approval from the Government of the Cayman Islands for the use of the Land to provide for support facilities to the Shetty Hospital and a hotel complex.
6. The sole director of the Company appearing on the register of directors is Aldin Eugene Thompson (*Mr Thompson*).
7. In total 100 shares in the Company have been issued and allotted. The members of the Company, and the number of shares issued to each member, are as in the table set out immediately below:

Name	Class of share	Number of shares
HCI	A	34
SSK Holdings Ltd	B	30.5
GT Cayman Ltd	B	30.5
Keystone Partners Ltd	B	5

8. Class A shares and Class B shares have equal rights under the Articles of Association of the Company, save that the holders of Class A shares shall have the right to cast at a general meeting of the Company 10 votes for each share held.
9. The principal of SSK Holdings Ltd (*SSK*) is Haresh Chandi (*Mr Chandi*). The principal of GT Cayman Ltd (*GT*) is Mr Thompson. The principal of Keystone Partners Ltd (*Keystone*) is Allen Bernardo (*Mr Bernardo*).
10. The Company is solvent. Accordingly HCI has a tangible interest in the proceeds of the winding-up after the payment of creditors and the costs and expenses of the winding-up.
11. The winding-up of the Company is sought on the basis that it is just and equitable to wind up the Company's affairs on the grounds that HCI has lost confidence in the management of the Company (i.e. Mr Thompson) due to a lack of probity on his part,

further or in the alternative that HCI has suffered oppression at the hands of the other members, further or in the alternative that, the Company being a quasi-partnership, trust and confidence has broken down between the members such that it is just and equitable that the Company be wound up.

Background and the quasi-partnership nature of the Company

12. In or around April 2010 Mr Thompson approached OJ Buigas (*Mr Buigas*), the Chief Executive of Private Equity Group, LLC (*PEG*), an organisation having significant experience and expertise in real estate and master planning projects. Mr Thompson did so with a view to procuring investment of funds and expertise from PEG for the purposes of acquiring the Land and obtaining the necessary sub-divisions of the Land and approvals for changes of use in respect of those sub-divisions (*the Development*) to provide opportunities for the construction of the said support facilities and hotel complex.
13. During the course of Mr Thompson's discussions and negotiations with Mr Buigas in and after April 2010, Mr Thompson made a number of oral representations to Mr Buigas concerning the Development, including representations as to the value of the Development once completed, the access rights to be granted in respect to the Land, other partners whom Mr Thompson and Mr Chandi had identified and agreed to join with in furthering the venture, and as to the existence of purchasers who would be available and willing to purchase the Development or parts of it once the PAD had been approved. In particular, Mr Thompson represented that the value of the Land following approval of the PAD would be C1\$50 per square foot.
14. As a result of and in reliance upon these representations it was agreed between Mr Thompson and Mr Buigas that PEG would provide funding with which to acquire the Land and meet the obligations and liabilities to be incurred in connection with the Development.
15. Pursuant to and in the context of the representations made by Mr Thompson to Mr Buigas and the agreement made between Mr Thompson and Mr Buigas the Company was incorporated and shares were issued and allotted to the members in paragraph 7 above.

16. Following the incorporation of the Company, on 8 June 2012 the Company acquired options to purchase three 50-acre parcels of land adjacent to the planned Shetty Hospital. The options were acquired for US\$50,000 each. The monies necessary to purchase the options were provided by PEG.
17. Prior to the exercise of any of the options, there was a series of conversations in and around April 2013 between Mr Buigas and Mr Thompson in which Mr Thompson told Mr Buigas that the representations which Mr Thompson had made to Mr Buigas were overstated. In particular, Mr Thompson told Mr Buigas that the representation he had made to Mr Buigas in respect of the value of the Development once approved, and the representation made in respect of the availability of purchasers for the Development or parts thereof, were untrue. Further, Mr Thompson was unable to deliver the purchasers of the Development he previously said he was able to deliver at the prices he stated, and did not secure any contracts or agreements with others to support the acquisition and development of, and investment into, the project.
18. As a result of the information given by Mr Thompson to Mr Buigas during these conversations, Mr Buigas stated that HCI was no longer interested in remaining a member of the Company and that he was no longer interested in providing any funding to the Company. During a telephone conversation between Mr Buigas, Mr Thompson and Mr Chandi, Mr Thompson and Mr Chandi asked Mr Buigas to remain involved in the Company until the Company had completed the acquisition of the Land whereupon Mr Thompson and Mr Chandi would identify third parties to purchase HCI's shareholding in the Company. Mr Buigas agreed.
19. Following these discussions the Shareholders' Agreement (referred to in paragraphs 20 and 21 below) was negotiated and executed on 15 July 2013.

Shareholders' Agreement

20. By an agreement made by and between HCI, SSK, GT and Keystone (in which the Company joined) on 15 July 2013 (the *Shareholders' Agreement*), the members agreed by clause 2.1 that from the date of the Shareholders' Agreement, they would undertake to take all appropriate steps forthwith to secure that the Company had the characteristics stated in clause 2.1 and its sub-clause. In particular, by clause 2.1(c) it

was agreed that the Board of Directors of the Company would consist of Mr Thompson, Mr Buigas, Mr Chandi, Andrew Bokan and Howard Baum.

21. By the Shareholders' Agreement it was further agreed:
- (a) By clause 3.4, if in the opinion of the Board the Company required further financing, the Company should first approach PEG (as set out above, an entity affiliated with HCI) for such finance.
 - (b) By clause 4:
 - i. Subject to certain Reserved Matters, provided in clause 5 of the Shareholders' Agreement, the business of the Company shall be managed by the Board, which is to consist of a minimum of three and a maximum of seven directors, the majority of whom were to be elected by the holders of Class A shares.
 - ii. The quorum for the transaction of the business of the Company is a minimum of three Directors.
 - iii. The Chairman of the Board of Directors was Mr Buigas. The Chairman has a casting vote at any meeting of the Board.
 - iv. At least 14 days prior written notice is to be given to each of the members of the Board of any meeting of the Board, provided that shorter notice of such meetings could be given with the written consent of all Directors or notice may be waived by a Director. Notice of a meeting of the Board shall contain, *inter alia*, an agenda identifying in reasonable detail the matters to be discussed at the meeting and accompanied by any papers relevant to the matters to be discussed at the meeting.
 - (c) By clause 5, certain Reserved Matters required the prior approval of members holding a majority of votes at a general meeting of members, including:
 - i. Any issue of shares or securities convertible into shares in the Company.
 - ii. Any alteration of the memorandum of association of the Company.

- iii. Any borrowing by the Company which would result, when taken together with its outstanding loans, in aggregate borrowing by the Company being in excess of US\$500,000.
- (d) By clause 8:
- i. If a member has made a loan to the Company (*Shareholder Loan*), such loan was to be repaid prior to the declaration and distribution of any dividend.
 - ii. Unless otherwise determined by a unanimous resolution of the Board, a Shareholder Loan is to bear interest at the US Prime Rate plus simple interest at 4.75%.
 - iii. Shareholder Loans are to be repaid quarterly out of available cash with interest on the outstanding loan deemed to be paid first ahead of repayment of principal.
- (e) By clause 13, the members confirmed their intention to promote the best interests of the Company and to consult fully on all matters materially affecting the development of the Company's business. Further by that clause, to act in good faith towards the other members in order to promote the success of the Company.
22. Despite the terms of the Shareholders' Agreement and in breach of it, none of the members other than HCI has signed a written resolution of the Company appointing the persons stated in clause 2.1(c) of the Shareholders' Agreement as Directors of the Company. Accordingly, and wrongfully in breach of the Shareholders' Agreement, Mr Thompson remains the only director the Company recorded as such in the register of directors of the Company.
23. Further, decisions relating to Reserved Matters have been taken by Mr Thompson as the director of the Company in breach of clause 5 of the Shareholders' Agreement. Further particulars of these breaches are set out in paragraph 33 below.
24. Yet further, the decisions referred to in paragraph 23 above and other decisions taken by Mr Thompson are void as they were taken by Mr Thompson by himself as the only

director of record of the Company when Mr Thompson knew that the Shareholders' Agreement provided for the appointment of additional directors to the Company and provided for a quorum for the conduct of the business of the directors which quorum was not present when Mr Thompson took those decisions. Further particulars of these additional breaches are set out in paragraph 33 below.

Events following the execution of the Shareholders' Agreement

25. On 23 July 2013 the Company exercised the option it had acquired over one of the 50-acre parcels, being Block 64A Parcel 157. The exercise price paid to the vendor, the legal fees incurred in respect of this acquisition and the purchase price for the parcel were paid from monies advanced by PEG for those purposes.
26. Following the exercise of the option, and subsequent to a dinner attended by Mr Buigas, Mr Thompson and Mr Chandi on 24 September 2013 where the matter was discussed, Mr Buigas raised again with Mr Thompson the sale of HCI's shareholding in the Company. Mr Thompson and Mr Chandi asked Mr Buigas to maintain HCI's involvement with the Company until the Shetty Hospital had itself been completed whereupon Mr Thompson would source potential purchasers for HCI's shareholding. While sceptical of Mr Thompson's and Mr Chandi's ability to deliver any potential purchasers for HCI's interest, Mr Buigas agreed to maintain HCI's position for the present and further agreed with Mr Thompson and Mr Chandi that PEG would continue to provide funding to the Company in the short term to enable work to be done to complete the re-parcelling of the land and obtain approval from Government for the changes of permitted use in respect of the re-parcelled land. Monies were advanced by PEG in order that the Company could meet the costs of this work.
27. Discussions continued orally and in writing between Mr Thompson and Mr Buigas with respect to the terms on which HCI would divest itself of its shareholding in the Company. One option, which was not pursued, was that a portion of Block 64A Parcel 157 immediately adjacent to the Shetty Hospital would be transferred to HCI in consideration of the redemption by the Company of HCI's shares.

28. An email dated 31 January 2014 from Mr Thompson records the agreement which had been reached between all members in early January 2014 in relation to the divestment by HCI of its shareholding in the Company. It was agreed that:
- (a) The Land (being the only substantial asset of the Company) would be valued by two independent valuers and the average of the values arrived at by each valuer would be the agreed value of the Land (*Agreed Value*).
 - (b) The liability of the Company (being the monies advanced by PEG) would be deducted from the Agreed Value to arrive at a net value of the Company (*Net Value*).
 - (c) The Company would pay 34% of the Net Value to HCI, together with repaying to PEG the monies advanced by PEG and the interest which had accrued thereon.
29. On 6 January 2014, and in furtherance of the Divestment Agreement Mr Thompson supplied Mr Buigas with the identities of four valuation firms in Grand Cayman and the names of individual valuers at those firms who were qualified and experienced in the valuation of development land in Grand Cayman and had asked Mr Buigas to select two of those valuation firms. Mr Buigas selected two firms (being BCQS Ltd and Charterland Ltd) on 7 January 2014. Mr Thompson prepared valuation packs for the valuers containing details of the Land. Each firm attended a meeting with Mr Buigas on 14 January 2014 at which they were instructed to prepare valuation reports valuing the present market price of the Land having regard to the permitted uses of the Land. Mr Thompson was unable to attend the meeting with BCQS, but he attended the meeting with Charterland and did not object to the instructions that were given to Charterland.
30. The valuers each provided valuation reports. Pursuant to the respective valuations set out in those reports the Agreed Value (as defined at paragraph 28(a) above) was US\$14,291,463. Accordingly, and pursuant to the Divestment Agreement, the Company was obliged to repurchase HCI's shares for US\$4,237,210 and repay to PEG the total monies advanced by PEG together with interest thereon (as at 27 February 2014 the total amount advanced by PEG was US\$1,741,119 together with interest of US\$87,960).

31. On 14 March 2014 Mr Thompson wrote a letter to Mr Buigas in his capacity as Chief Executive Officer of PEG. Mr Thompson wrote in his capacity “*as director of*” the Company and “*on behalf of Harry [Mr Chandi], Allen [Allen Bernardo] and myself as the holders of Class B shares in [the Company].*”
32. By way of the said letter Mr Thompson reneged on the Divestment Agreement. In the letter from Mr Thompson:
- (a) It was stated that the repayment of the monies advanced by PEG was a matter unrelated to the repurchase of HCI’s shares.
 - (b) The monies advanced by PEG were characterised wrongly and wrongfully as a “Shareholder Loan”.
 - (c) Mr Thompson “agreed” with Mr Buigas that the “Shareholder Loan” was repayable on demand when Mr Buigas had never suggested that it was.
 - (d) Mr Buigas was informed that the Company had secured alternative funding from Mr Thompson, Mr Chandi and Mr Bernardo in an amount sufficient to repay the monies which had been advanced by PEG together with accrued interest and interest to be accrued to 25 March 2014 and that the Company would pay PEG that sum by way of bankers’ draft.
 - (e) It was suggested that the approval of the provision of the alternative finance from Mr Thompson, Mr Chandi and Mr Bernardo could not be withheld as clause 13 of the Shareholders’ Agreement imposed an obligation “*to act in the best interests of the Company.*”
 - (f) Upon repayment of the “Shareholder Loan” HCI would fall under an obligation to serve a notice on the Company under the Articles of Association of the Company converting its Class A shares to Class B shares, failing which the members would treat delivery of the bankers’ draft “*in response to your demand for payment*” (which demand was never made by any of Mr Buigas, PEG or HCI) as Mr Buigas’s/PEG’s “*assent to the conversion of HCI’s shares in any event, 7 days after delivery of the draft.*”

(g) It was stated that “[W]e wish to make clear now that we do not accept that the valuations of BCQS and Charterland adopt an appropriate method for valuation of the property of [the Company] in its present state.”

33. The letter not only served to renege on the Divestment Agreement it also disclosed a number of breaches of the terms of the Shareholders’ Agreement. In particular:

(a) Mr Thompson, Mr Chandi and Mr Bernardo had sought, procured and provided, in breach of clause 5.1(e) of the Shareholders’ Agreement financing in an aggregate amount at least in the sum of [US\$1,839,002], being in excess of US\$500,000 (a Reserved Matter) without the consent of the majority of members holding a majority of the votes at a general meeting of members (i.e. HCI).

(b) The decision to procure the borrowing was made in breach of clause 4 of the Shareholders’ Agreement in that:

i. In breach of clause 4.5 of the Shareholders’ Agreement no notice of any meeting to be convened to consider the borrowing had been served on the directors who by clause 2.1(c) of the Shareholders’ Agreement were directors of the Company.

ii. In breach of clause 4.1, the decision was considered and taken by an improperly constituted board of directors, which board of directors was also inquorate by reason of clause 4.3 of the Shareholders’ Agreement.

(c) The decision was in breach of clause 13 of the Shareholders’ Agreement, which obliges the members “to act in good faith towards the others in order to promote the success of the Company.”

(d) The decision was taken for an improper purpose. The sole object of the decision was to give Mr Thompson, Mr Chandi and Mr Bernardo a purported basis to convert HCI’s Class A shares into Class B shares and thus deny HCI the enhanced voting right attaching to the Class A shares; further to deny HCI the right to wind up the company by resolution; yet further to deny HCI the right to exercise other rights afforded to the holder of the majority of votes at a general

meeting under the Shareholders Agreement and the ability to pass special resolutions at general meetings of the Company.

34. The bankers' draft referred to in the letter was delivered to PEG on 19 March 2014. In an email dated 19 March 2014 Mr Thompson informed Mr Buigas that, whether HCI gave notice or not "*the Company will convert [HCI's] shares to Class B shares on 27 March 2014.*"
35. In the premises Mr Thompson has acted without probity. Mr Thompson misled Mr Buigas (and through Mr Buigas, HCI) as to the financial prospects of the Company. Mr Thompson agreed to HCI's separation from the Company and procured an agreement to defer that separation until the Shetty Hospital had opened on terms as to that separation that he never intended to honour. Mr Thompson agreed to the valuers and the valuation methodology for the valuation of the Company which he then sought to disavow. Mr Thompson has taken decisions as director of the Company which he knew to be in breach of the terms of the Shareholders' Agreement.
36. In the premises HCI is being oppressed by the other members. SSK, GT and Keystone (through their principals) have colluded with Mr Thompson to procure finance sufficient to repay the monies advanced by PEG in order that they can purport to convert HCI's Class A shares to Class B shares and thus deprive HCI of its enhanced rights as a holder of Class A shares and thus effectively to lock HCI in to the Company as a member in circumstances where those members had that HCI's shares would be repurchased on the terms of the agreement recorded in Mr Thompson's email dated 31 January 2014.
37. In the premises the Company is a quasi-partnership and the relationship between HCI on the one hand and the SSK, GT and Keystone on the other has irretrievably broken down.
38. In the premises it is just and equitable that the Company be wound up.

The Petitioner therefore humbly prays that:

- (1) The Company be wound up in accordance with the Companies Law (2013 Revision).

- (2) Mr Gordon Macrae and Ms Eleanor Fisher of Zolfo Cooper (Cayman) Ltd, Suite 776, 10 Market Street, Camana Bay, Grand Cayman KY1-9006, Cayman Islands be appointed as the Joint Official Liquidators of the Company.
- (3) The Joint Official Liquidators shall not be required to give security for their appointment.
- (4) The Joint Official Liquidators shall 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 Law without the further sanction or intervention of the Court.
- (5) The Joint Official Liquidators be authorised to carry out any act or exercise any power 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 Joint Official Liquidators in carrying out their duties and functions and exercise of his powers under this Order shall be voided by virtue of section 99 of the Companies Law.
- (8) The Joint Official Liquidators do file with the Clerk of the Court a report in writing detailing the present position and progress made to date with the winding up of the Company with the realisation of the assets thereof and to any other matters connected to the winding up of the Company, as the Court may direct.
- (9) The Joint Official Liquidators be at liberty to appoint counsel, attorneys, and/or any other 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.

- (10) The Joint Official Liquidators and their staff be remunerated out of the assets of the Company at the usual customary rate.
- (11) The Joint Official Liquidators be at liberty to apply generally.
- (12) The costs of the Petition and the Petitioner be paid out of the assets of the Company.
- (13) The Joint Official Liquidators shall cause a copy of this Petition to be delivered to the Registrar of Companies.
- (14) Such further or other relief as the Court thinks just.

Dated this 26th day of March 2014

Harney Westwood & Riegels

HARNEY WESTWOOD & RIEGELS
Attorneys-at-Law for and on behalf of the Petitioners

NOTE: This Petition is intended to be served on the Company

THIS PETITION was presented by Harney Westwood & Riegels, Attorneys-at-Law for the Petitioners, whose address for service is 4th Floor, Harbour Place, 103 South Church Street, PO Box 10240, Grand Cayman KY1-1002, Cayman Islands (Ref: DWH/045749.0001).

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.