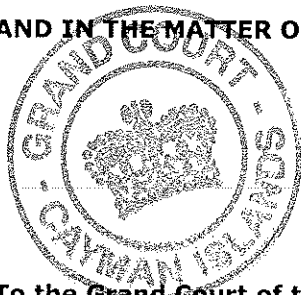


IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION

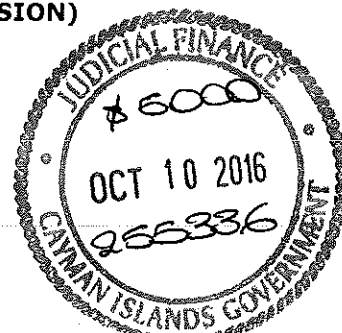
CAUSE NO: FSD 164 OF 2016

IN THE MATTER OF SECTION 124 OF THE COMPANIES LAW (2016 REVISION)

AND IN THE MATTER OF BES FINANCE LTD



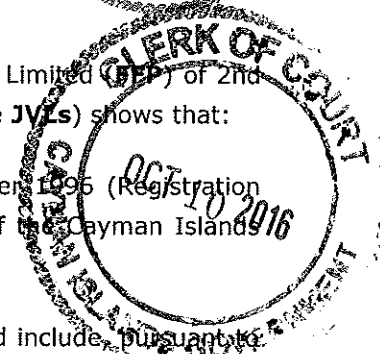
PETITION FOR SUPERVISION



To the Grand Court of the Cayman Islands

The humble petition of Andrew Joseph Childe and Michael John Pearson, of FFP Limited (FFP) of 2nd Floor Harbour Centre, 42 North Church Street, George Town, Grand Cayman (the **JVs**) shows that:

1. BES Finance Limited (the **Company**) was incorporated on 15 November 1996 (Registration number 69526) as an exempted company under the Companies Law of the Cayman Islands (as Revised) for an unlimited duration;
2. The objects for which the Company was established are unrestricted and include, pursuant to clause 3(a) of its Memorandum of Association, "to carry on the business of a finance and investment company".
3. The registered office of the Company is 2nd Floor Harbour Centre, 42 North Church Street, George Town, Grand Cayman.
4. The authorised share capital of the Company is €600,100,000 consisting of 100,000 Ordinary Shares of par value €1.00 each (**Ordinary Shares**) and 600,000 Non-cumulative Guaranteed Step-Up Preference Shares of a par value of €1,000 each (the **Preference Shares**).
5. The Company is a wholly owned subsidiary of Banco Espírito Santo S.A. (in liquidation) which holds all of the issued Ordinary Shares (**BESSA**). The Preference Shares have certain voting rights unless BESSA is in liquidation or winding up.
6. The Company's directors until 7 August 2015 were Isabel Maria Carvalho de Almeida and Jose Leal de Faria (the **Portuguese Directors**).
7. The audited accounts of the Company to 31 December 2014 showed a loss of €198,010,978, with total assets of €1,195,011,970, total liabilities of €1,213,451,023, ordinary and preferences shares issued to a value of €163,150,000 and reserves and retained earnings of €16,421,925.



8. BESSA suffered significant financial distress in 2013 and 2014 following which, on 3 August 2014, the Bank of Portugal applied a resolution measure to BESSA in accordance with article 145-H of the Portuguese Banking Act (Decree-Law No. 298/92 dated 31 December 1992, as amended) (the **Resolution Measure**) pursuant to which the general activity of BESSA, including most of its assets and liabilities, was immediately transferred to Novo Banco S.A. (**Novo Banco**). The Resolution Measure purported to include the shares of the Company owned by BESSA. Certain assets and liabilities remained with BESSA which was to undertake an orderly wind-down.
  9. As a result of the Resolution Measure, the Portuguese Directors implemented a reorganisation of the Company's finances whereby certain senior loans guaranteed by Novo Banco were transferred to NB Finance Ltd (the **Issuer Substitution**). The Issuer Substitution was implemented by a Transfer Agreement dated 7 July 2015 between the Company, Novo Banco and NB Finance Ltd.
  10. Following the Issuer Substitution the following liabilities remained with the Company, guaranteed by BESSA:
    - 10.1 Series 18 Euro 500,000,000 Undated Subordinated Notes unconditionally and irrevocably guaranteed by BESSA, acting through its London branch under the EMTN Programme (ISIN: XS0147275829);
    - 10.2 Series 38 Euro 500,000,000 Undated Subordinated Notes guaranteed by BESSA, acting through its London branch under the EMTN Programme (ISIN: XS0207754754) (together with 10.1 the **Subordinated Notes**);
    - 10.3 EUR 600,000,000 non-cumulative guaranteed step-up preference shares (ISIN: XS0171467854) (i.e. the Preference Shares).
- Each of the Subordinated Notes and Preference Shares are held pursuant to various trust deeds by The Bank of New York Depository (Nominees) Limited (the **Trustee**).
11. The Portuguese Directors, acting on advice, took the view that payment obligations pursuant to the Subordinated Notes and the Preference Shares were suspended as a result of the potential insolvency of BESSA.
  12. The Portuguese Directors resigned on 7 August 2015 following the implementation of the Issuer Substitution.
  13. On 25 August 2015, Mr Childe and Mr Pearson, the now JVLs, were appointed as directors of the Company, together with Christopher Rowland, also of FFP (the **Cayman Directors**).
  14. Shortly after their appointment, the Cayman Directors received a transfer of €26,672,095 from Novo Banco that was held to the credit of the Company. At that point in time, all payments under the Subordinated Notes and Preference Shares continued to be suspended in accordance with their terms and therefore the Company was able to pay its debts as they fell

due. However, given that the Company was ultimately balance sheet insolvent and had come to the end of its purpose, the Cayman Directors considered it appropriate for the Company to begin the process of organising its affairs for an orderly winding up.

15. On 29 December 2015 the Bank of Portugal passed a further measure which, amongst other things, sought to effect a re-transfer of the shares in the Company from Novo Banco to BESSA. Having taken appropriate advice on the effect of the re-transfer, the Cayman Directors consented to the re-transfer on 28 April 2016.
16. The Company's directors are not empowered to petition for the winding up of the Company pursuant to its articles of association and, until such time as BESSA was in liquidation or winding up, the consent of a majority of the holders of the Preference Shares was required in order to propose that the sole shareholder pass a resolution for the winding up of the Company, notwithstanding the Company's obvious insolvency.
17. Accordingly, on 13 May 2016 the Cayman Directors gave notice of a meeting of the holders of the Preference Shares to be held on 7 June 2016 to consider and approve a resolution that the affairs of the Company be wound up and that the Company be placed into voluntary liquidation. On 7 June 2016, a majority of the holders of the preference shares in attendance by proxy at the meeting voted against the resolution.
18. On 13 July 2016 the European Central Bank decided to withdraw BESSA's license for the pursuit of banking activity. That decision resulted in the commencement of the liquidation of BESSA under Portuguese Law.
19. On 22 July 2016 the Court of Lisbon confirmed the liquidation of BESSA (the **BESSA Liquidation**). Following the BESSA Liquidation:
  - 19.1 Pursuant to the articles of association of the Company, the approval of the holders of the Preference Shares was no longer required for any resolution that the affairs of the Company be wound up;
  - 19.2 On 26 July 2016 the Cayman Directors passed a resolution to recommend to the sole shareholder that the Company be wound up voluntarily in accordance with section 116 of the Companies Law.
  - 19.3 On 26 August 2016 the Trustee gave notice of acceleration of the Subordinated Notes on the basis that the BESSA Liquidation was an Event of Default in accordance with the terms of the Subordinated Notes (the **Acceleration Notice**);
  - 19.4 On 23 September 2016 BESSA passed a written resolution resolving by special resolution that the affairs of the Company be wound up and that the Company be placed into voluntary liquidation, and by ordinary resolution appointing the JVLs as voluntary liquidators of the Company.

20. Following the Acceleration Notice, the Trustee has informed the JVLs that the amount due under the Subordinated Notes is €42,782,000 whereas the cash available to the Company as at 31 August 2016 was €25,814,437. Given the Acceleration Notice and this cash deficiency, the Cayman Directors consider that they are unable to swear the declaration of solvency in the prescribed form pursuant to section 124(2) of the Companies Law (2016 Revision).
21. In the circumstances it is necessary that the liquidation of the Company should continue under the Supervision of the Court pursuant to section 124(1) of the Companies Law (2016 Revision).
22. The JVLs consider that they meet the independence, residency, eligibility and insurance requirements of the Insolvency Practitioner's Regulations (as amended). Both Mr Childe and Mr Pearson are willing and properly able to accept appointments as official liquidators of the Company, if such is approved by this Honourable Court.
23. On 30 September 2016, the JVLs wrote to the Trustee, being the only known creditor of the Company, informing it of the JVLs' appointment and the circumstances of their appointment and accordingly their intention to apply to the Court for a supervision order by 7 October 2016. Conscious that the Trustee is a nominee creditor, the JVLs have asked it to circulate this to the underlying note holders. The only response to this notice has been an indication of support for the JVLs' ongoing appointment.
24. The JVLs therefore seek an order that the voluntary liquidation be continued subject to the supervision of the Grand Court and that the JVLs be appointed as joint official liquidators.


**YOUR PETITIONERS THEREFORE HUMBLY PRAY THAT:**

- (1) The voluntary winding up of the Company be continued subject to the supervision of the Grand Court under the provisions of the Companies Law (2016 Revision).
- (2) Andrew Joseph Childe (tel: +1 (345) 640 5858, email Andrew.Childe@ffp.ky) and Michael John Pearson (tel: +1 (345) 640 5860, email Michael.Pearson@ffp.ky), both of FFP Ltd of 2nd Floor Harbour Centre, 42 North Church Street, George Town, Grand Cayman (Mailing address: 10 Market Street, #769 Camana Bay, Grand Cayman, KY1-9006, Cayman Islands) be appointed as joint official liquidators of the Company (the **JOLs**).
- (3) The JOLs shall not be required to give security for their appointment.
- (4) The JOLs shall have the power to act jointly and severally in their capacity as liquidators of the Company.
- (5) The JOLs be authorised to take any such action as may be necessary or desirable to obtain recognition of the JOLs and/or their appointment in any other relevant jurisdiction and to make applications to the courts of such jurisdictions for that purpose.

- (6) The JOLs be authorised to do any act or thing considered by them to be necessary or desirable in connection with the liquidation of the Company and the winding up of its affairs in the Cayman Islands or elsewhere.
- (7) The JOLs be authorised to engage staff (whether or not as employees of the Company) to assist them in the performance of their functions.
- (8) The JOLs be at liberty to appoint such 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 in accordance with CWR Order 25 and to continue the engagement of Appleby (Cayman) Ltd. (in respect of Cayman law issues), Jones Day (in relation to issues of the laws of England and Wales) and Macedo Vitorino & Associados (in respect of Portuguese Law) and Linklaters (in relation to Luxembourg listing issues).
- (9) Subject to section 109(2) of the Companies Law and the Insolvency Practitioners Regulations 2008 (as amended), the JOLs be authorised to render and pay invoices out of the assets of the Company for their own remuneration.
- (10) The JOLs be at liberty to meet all disbursements reasonably incurred in connection with the performance of their duties and, for the avoidance of doubt, all such payments shall be made as and when they fall due out of the assets of the Company as an expense of the liquidation.
- (11) The JOLs shall report to this Court in accordance with the Companies Winding Up Rules and at such other times or intervals as the Court may from time to time direct.
- (12) The costs of and incidental to this petition shall be paid out of the assets of the Company as an expense of the liquidation.
- (13) The requirement for the JOLs to form a liquidation committee pursuant to CWR Order 9 rule 1(1) be dispensed with but the JOLs shall form an advisory committee of the beneficial holders of the Subordinated Notes that shall perform the same function as a liquidation committee.
- (14) Such further or other relief be granted as the Court deems appropriate.

Dated this 7<sup>th</sup> day of October 2016

Filed this    day of October 2016

  
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**Appleby (Cayman) Ltd.**  
Attorneys-at-Law for the Petitioners

**NOTE: This petition is intended to be served on the Company at its registered office and it is intended that the Court will be invited to make the order sought without the need for a hearing pursuant to CWR O. 15 r.5(1)**

This Petition is presented by Appleby (Cayman) Ltd, Attorneys-at-Law for the Petitioners, whose address for service is 71 Fort Street, PO Box 190 GT, Grand Cayman, KY1-1104, Cayman Islands (Ref: 433780.0001/THW/JS)

