

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 21 OF 2017 ( )

IN THE MATTER OF THE COMPANIES LAW (2016)

AND IN THE MATTER OF BANGKOK LAND (CAYMAN ISLANDS) LIMITED



WINDING UP PETITION



To the Grand Court

The humble petition of LONSIN Global Credit Fund, c/o - Intertrust Corporate Services (Cayman) Limited, 190 Elgin Avenue, George Town, Grand Cayman, KY1-9005, LONSIN Capital Limited, 21 Bedford Square, WC1B 3HH London, United Kingdom, Elser & Company Limited, c/o- LJ Skye, Rue Du Seyon 2, Nevchatel 2001, Switzerland, Carlisle Investments Inc., Trident Trust Company (B.V.I.) Limited, Trident Chambers, P.O. Box 146, Road Town, Tortola, British Virgin Islands, Mr Mario Campello, Via Sistina 121, 00187, Rome, Italy, Watersfield Limited, Burns House, 19 Town Range, Gibraltar and Advicorp Plc, 21 Bedford Square, WC18 3HH London, United Kingdom (together, the Petitioners and each a Petitioner) shows that:-

**A. Preamble**

1. The Petitioners present this petition for the winding up of Bangkok Land (Cayman Islands) Limited (the Company). The Company is incorporated in the Cayman Islands with registration number 44573, and is a wholly owned subsidiary of Bangkok Land Public Company Limited, a real estate development company incorporated in Thailand and listed on the Stock Exchange of Thailand. Its current registered office is c/o - Sterling Trust (Cayman) Limited, P.O. Box

1043, Whitehall House, 238 North Church Street, George Town, Grand Cayman, KY1-1102, Cayman Islands.

2. The Petitioners are each a creditor of the Company in the total sum of CHF 14,600,000 plus interest calculated up to and including the date of this Petition (which accrues at an annual rate of 3.125% per annum pursuant to clause 3 of the Terms of the CHF Notes), made up of:
  - a. CHF 3,800,000 of principal plus interest owing to LONSIN Global Credit Fund;
  - b. CHF 100,000 of principal plus interest owing to LONSIN Capital Limited;
  - c. CHF 550,000 of principal plus interest owing to Elser & Company Limited;
  - d. CHF 8,500,000 of principal plus interest owing to Carlisle Investments Inc.;
  - e. CHF 250,000 of principal plus interest owing to Mr Mario Campello;
  - f. CHF 1,000,000 of principal plus interest owing to Watersfield Limited; and
  - g. CHF 400,000 of principal plus interest owing to Advicorp Plc.
3. The Petitioners seek the winding up of the Company pursuant to section 92(d) of the Companies Law (2016) on the grounds that the Company is unable to pay its debts.

**B. The Company**

4. The Company was incorporated on 13 October 1992 as an exempt limited company with registration number 44573. Its registered office is at c/o – Sterling Trust (Cayman) Limited, P.O. Box 1043, Whitehall House, 238 North Church Street, George Town, Grand Cayman, KY1-1102, Cayman Islands.
5. The Company is a wholly owned subsidiary of Bangkok Land Public Company Limited, a real estate development company incorporated in Thailand and listed on the Stock Exchange of Thailand.

### C. The CHF Notes

6. On 14 February 1998, pursuant to a Note Purchase, Paying and Exchange Agreement dated 31 January 1994, the Company signed and delivered 8,000 Swiss Franc Guaranteed Exchangeable Notes (CHF Notes). The principal amount of each of the CHF Notes is CHF 50,000.
7. The Petitioners are together the holders of 292 CHF Notes bearing ISIN number CH0001597464, made up of:
  - a. 76 CHF Notes held by LONSIN Global Credit Fund (72 at the time of service of the statutory demand);
  - b. 2 CHF Notes held by LONSIN Capital Limited;
  - c. 11 CHF Notes held by Elser & Company Limited;
  - d. 170 CHF Notes held by Carlisle Investments Inc.;
  - e. 5 CHF Notes held by Mr Mario Campello;
  - f. 20 CHF Notes held by Watersfield Limited; and
  - g. 8 CHF Notes held by Advicorp Plc.
8. Pursuant to clause 4(a) of the terms of the CHF Notes, the Company undertook to repay the principal amount of the CHF Notes at par, without further notice on 31 March 2001, subject to certain terms which would have permitted early redemption of the CHF Notes by the Company.
9. Pursuant to clause 17 of the terms of the CHF Notes the CHF Notes are subject to, and governed by, Swiss law. The holders of the CHF Notes are at liberty to institute legal proceedings before the competent courts of Cayman Islands.

### D. Non-payment of debt

10. In breach of its obligations under the terms of the CHF Notes, the Company has not paid interest on the CHF Notes since 30 September 1997. The Company has therefore been in default since the next interest payment fell due on 31 March 1998.

11. In May 1998, Nomura Bank (Switzerland) Limited (**NBS**), the agent in respect of the CHF Notes, gave the Company and the Guarantor written notice of default in relation to the CHF Notes declaring the then outstanding principal amount of the notes to be due and payable, together with interest accrued until the payment date, pursuant to clause 10(a) of the terms of the CHF Notes (**Default Notice**). Pursuant to clause 10, the principal and unpaid interest outstanding became immediately due and payable seven days after receipt by the Company and the Guarantor of the Default Notice.
12. Pursuant to clause 10 of the terms of the CHF Notes, the remedies provided in clause 10 of the terms of the CHF Notes are available to the noteholders under the CHF Notes against the Company for any default. Pursuant to clause 12 and for the purpose of noteholders enforcing their rights against the Company, NBS arranged for the printing of the CHF Notes and for delivery of the Notes to SEGA Schwoizerische Effekten-Giro, Zurich for distribution to noteholders.
13. As a result of the Company's failure to make payment in breach of its obligations under the terms of the CHF Notes, the amount due and owing to the Petitioners as at the date of this Petition is the sum of CHF 14,600,000 being the principal due to the Petitioners pursuant to the terms of the CHF Notes together with interest.

**E. Statutory demand**

14. LONSIN Capital Limited acts as a discretionary investment advisor to the other Petitioners pursuant to separate Investment Management Agreements entered into between it and each of the other Petitioners respectfully. On 9 August 2016, LONSIN Capital Limited wrote to the directors of the Company (both on its own behalf and on behalf the other Petitioners) expressing its concern as to the solvency of the Company and requesting information as to its financial position. To date, LONSIN Capital Limited has not received a response.
15. On 13 September 2016, LONSIN Capital Limited served seven statutory demands (the **Statutory Demands**) on the Company under cover letter dated 13 September 2016, being one for each of the Petitioners. The Statutory Demands

demanded payment of the sum due and owing to the relevant Petitioners as at the date of the Statutory Demands within 21 days of service thereof.

16. To date, the Petitioners have not received a response to the Statutory Demands, nor has the Company disputed the fact that it has failed to make any payment to the Petitioners of the sum demanded therein.
17. 21 days have passed since the service of the Statutory Demand upon the Company and the Company has failed to pay the sum due or to negotiate or secure a settlement with the Petitioners.
18. In the premise, and in the absence of any real or substantial defence, the Company is deemed unable to pay its debts as and when they fall due in accordance with s.93(a) of the Companies Law (2016 Revision).
19. In the circumstances, the Company should be wound up as it is unable to pay its debts and that Cosimo Borrelli and Margot MacInnis of Borelli Walsh (Cayman) Limited, G/F Harbour Place, 103 South Church Street (Mail: Suite 731, no. 10 Market Street), Camana Bay, Grand Cayman, KY1-9006, Cayman Islands, both of whom are qualified insolvency practitioners, be appointed jointly and severally as Official Liquidators of the Company.

**YOUR PETITIONERS THEREFORE HUMBLY PRAY(S) THAT:-**

- (a) The Company shall be wound up by the Court in accordance with the Companies Law (2016) Revision.
- (b) Cosimo Borrelli and Margot MacInnis of Borelli Walsh (Cayman) Limited, G/F Harbour Place, 103 South Church Street (Mail: Suite 731, no. 10 Market Street), Camana Bay, Grand Cayman, KY1-9006, Cayman Islands, have agreed to be appointed as the joint official liquidators of the Company (**the Joint Official Liquidators**).
- (c) The Joint Official Liquidators shall not be required to give security for their appointment.

(d) The Joint Official Liquidators are hereby authorised to take such steps as may be necessary or expedient for the protection of the Company's assets, and for that purpose may exercise any of the powers specified in Part I and II of the Third Schedule to the Companies Law (2016 Revision), and for the avoidance of doubt such powers may be exercised within and outside the Cayman Islands. Specifically, but without prejudice to the generality of the foregoing, the Joint Official Liquidators shall have the power to:

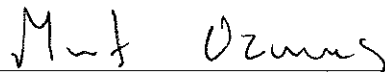
- i. bring or defend any action or other legal proceeding in the name and on behalf of the Company;
- ii. take possession of, collect and get in the property of the Company and for that purpose to take all such proceedings as they consider necessary;
- iii. carry on the business of the Company so far as may be necessary for the presentation of a compromise or arrangement to its creditors and/or its beneficial winding up; and
- iv. enter into discussions and/or negotiations for and on behalf of the Company for the purpose of, but not limited to:
  - a. restructuring the Company's business and operations;
  - b. restructuring and/or rescheduling the Company's indebtedness; and
  - c. making any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim (whether present or future, certain or contingent, ascertained or sounding only in damages) against the Company or for which the Company may be rendered liable;
- v. sell any of the Company's property by public auction or private contract with power to transfer the whole of it to any person or to sell the same in parcels;
- vi. raise or borrow money and grant securities therefor over the property of the Company;

- vii. take any action as may be desirable to obtain recognition of their appointment in any relevant jurisdiction;
  - viii. engage staff (whether or not as employees of the Company) to assist them in the performance of their functions, and
  - ix. engage attorneys and other professionally qualified persons to assist them in the performance of their functions, and
- (e) That the Joint Official Liquidators be authorised to act jointly and severally in their capacity as Joint Official Liquidators.
  - (f) That the Joint Official Liquidators be at liberty to apply for further directions concerning their functions and the exercise or proposed exercise of their powers.
  - (g) No suit, action or other proceeding shall be proceeded with or commenced against the Company except with leave of the Court and subject to such terms as the Court may impose.
  - (h) 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 their powers under this Order shall be voided by virtue of section 99 of the Companies Law (2016 Revision).
  - (i) The remuneration and expenses of the Joint Official Liquidators shall be paid out of the assets of the Company.
  - (j) The costs of and incidental to the Petition shall be paid from the assets of the Company as expenses within the liquidation.

(k) Such further or other relief as this Honourable Court deems appropriate.

AND your Petitioners will ever pray etc.

Dated the 31 day of January 2017



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**Mourant Ozannes**  
Attorneys-at-law for the Petitioners

This Petition is intended to be served on the Company.

This Petition was filed by Mourant Ozannes Attorneys-at-law for and on behalf of the Petitioner whose address for service is 94 Solaris Avenue, Camana Bay, PO Box 1348, George Town, Grand Cayman KY1-1108 (Ref: 8025955/69463255/1)

**NOTICE OF HEARING**

TAKE NOTICE THAT the hearing of this petition will take place at the Law Courts,  
George Town, Grand Cayman, on *7<sup>th</sup> March 2017* at *10:00 AM*

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.