

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION

CAUSE NO. FSD 71 OF 2017

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

AND IN THE MATTER OF IC HOLDING CAYMAN LTD (IN VOLUNTARY LIQUIDATION) \$5,000-

PETITION

To: The Grand Court of the Cayman Islands (the "Court")

The humble petition of Graham Robinson of Chris Johnson Associates, Ltd., PO Box 2499, Elizabethan Square, 80 Shedden Road, George Town, Grand Cayman, Cayman Islands, KY1-1104 (the "Petitioner"), shows that:

**Particulars of Incorporation**

1. IC Holding Cayman Ltd (in Voluntary Liquidation) (the "Company") is an exempted company limited by shares incorporated on 27 April 2006 and organised pursuant to the Companies Law of the Cayman Islands (as revised) (the "Law"). The registration number of the Company issued by the Registrar of Companies is 166568.
2. The registered office of the Company was, prior to the commencement of the voluntary liquidation of the Company, at Intertrust SPV (Cayman) Limited, 190 Elgin Avenue, George Town, Grand Cayman, KY1-9005, Cayman Islands. The registered office of the company is now care of Chris Johnson Associates Ltd., PO Box 2499, 80 Elizabethan Square, George Town, Grand Cayman, Cayman Islands, KY1-1104.
3. The most recent version of the Memorandum and Articles of Association (the "Articles") were adopted by the Company on 16 January 2013. The objects for which the Company was established are unrestricted.
4. The directors of the Company prior to the commencement of the voluntary liquidation of the Company were Michael Pearson, Christopher Rowland and Caroline Moore (the "Directors").
5. The Company has an authorised share capital of €100,000,000.10 divided into 10 ordinary shares of a nominal value or par value of €0.01 each and 100,000,000 preferred shares of a nominal or par value of €1.00 each (the "Shares").

6. Intertrust SPV (Cayman) Limited is the registered holder of 10 ordinary shares (the "Shareholder"). 13,013,368 preferred shares were issued by the Company to certain investors.

#### **Commencement of the voluntary liquidation of the Company**

7. Article 158 of the Articles provides that the Company shall be wound up upon the earlier to occur of:
  - (a) the Termination Date<sup>1</sup> and the passing of an Ordinary Resolution of the Company requiring it to be wound up voluntarily; or
  - (b) A Special Resolution of the Company having been passed requiring the Company to be wound up.
8. Article 1 defines an Ordinary Resolution as "*a resolution:*
  - (a) *passed by a simple majority of such Members as, being entitled to do so, vote in person or, where proxies are allowed, by proxy at a general meeting of the Company and where a poll is taken regard shall be had in computing a majority to the number of votes to which each member is entitled; or*
  - (b) *approved in writing by all of the Members entitled to vote at a general meeting of the Company in one or more instruments each signed by one or more of the Members and the effective date of the resolution so adopted shall be the date on which the instrument or the last of such instruments if more than one, is executed.*"
9. On 15 March 2017, the Shareholder (being the only voting shareholder of the Company) passed the following unanimous written resolutions:
  - (i) that the Company be placed in voluntary winding up;
  - (ii) that the Petitioner be appointed voluntary liquidator of the Company;
  - (iii) that the Petitioner be authorised to distribute in specie or in kind the whole or any part of the assets of the Company (whether they shall consist of

---

<sup>1</sup> Article 1 of the Articles defines Termination Date as 31 December 2016 or the Varied Termination Date. There has been no variation to the Termination Date and accordingly, the winding up of the Company was to occur, subject to the passing of an Ordinary Resolution, on 31 December 2016

property of the same kind or not) and may, for such purpose, set such value as the Petitioner deems fair upon any property to be distributed; and

- (iv) that the Petitioner is to be remunerated out of the assets of the Company for all work and expenses reasonably and properly undertaken and incurred in the voluntary winding up of the Company at an agreed fixed fee of US\$7,500 plus disbursements and that the Petitioner shall be authorised to pay such time, costs and expenses on account of his remuneration and expenses pending the completion of the liquidation.

10. In the premises:

- (a) the Company duly resolved by unanimous written resolution that it be wound up voluntarily pursuant to Article 158; and
- (b) the voluntary winding up of the Company is deemed to have commenced on 15 March 2017 February 2017 pursuant to section 117(1)(a) of the Law.

11. The Petitioner filed a notice of winding up and consent to act as the voluntary liquidator of the Company with the Registrar of Companies on 17 March 2017 in accordance with sections 123(1)(a) and 123(1)(b) of the Law and Order 13, rules 2(a) and 2(b) of The Companies Winding Up Rules 2008 (as amended) (the "**CWR**"). Accordingly, the Petitioner's appointment took effect on 17 March 2017 pursuant to section 119(3) of the Law and Order 13, rule 3(2) of the CWR.

#### **Declaration of solvency**

12. As at the date of this Petition, the Petitioner has not received an executed declaration of solvency from any of the Directors in the form required by section 124(2) of the Law and Order 14, rule 1 of the CWR (a "**Declaration of Solvency**"), nor, to the best of the knowledge of the Petitioner, have any of the Directors filed an executed Declaration of Solvency with the Registrar of Companies in accordance with section 123(1)(c) of the Law and Order 13, rule 2(2) of the CWR.

13. The Petitioner emailed the Directors on 23 March 2017 inquiring as to whether the Directors would be providing an executed Declaration of Solvency. On 23 March 2017, Michael Pearson, on behalf of the Directors, confirmed that they were not able to sign such a declaration as the Company is technically insolvent and highly unlikely to ever

become solvent in the future. Accordingly, as of the date of the Petition, the Petitioner has received confirmation from all of the Directors that they will not provide an executed Declaration of Solvency.

### **Insolvency**

14. The Company's net assets are valued, as at 31 December 2016, at Euro 69,877,504<sup>2</sup>.
15. The Company's net liabilities, as at 31 December 2016, are Euro 136,831,721. The Company's liabilities are predominantly comprised of a series of bonds issued by the Company which are currently due and owing and total Euro 136,831,721.
16. The Company's net position is Euro (66,954,217).
17. The Petitioner understands that the Company has no secured creditors.
18. In the light of the outstanding liabilities set out above, it appears that the Company is insolvent and is unable to pay its debts within the meaning of section 93 of the Law.

### **Requirement for Court supervision**

19. Under section 124(1) of the Law, the Petitioner is required to present a petition seeking that the winding up of the Company continue under the supervision of the Court if a Declaration of Solvency executed by all of the Directors is not provided within 28 days of the commencement of voluntary liquidation.
20. As at the date of this Petition, all of the Directors have confirmed that they will not provide an executed Declaration of Solvency. The Petitioner is therefore required to present a petition seeking that the winding up of the Company continue under the supervision of the Court.

### **Consent to Appointment as Joint Official Liquidators**

21. Graham Robinson is a qualified insolvency practitioner (as that term is defined in section 89 of the Law) and consents to his appointment as joint official liquidator of the Company.

---

<sup>2</sup> The Company's and its subsidiaries assets and liabilities have been consolidated to demonstrate the true financial position of the Company noting that the Company's only assets are its shares in subsidiaries (which own the income generating assets, being commercial properties located in Europe).

22. Russell Homer is a qualified insolvency practitioner (as that term is defined in section 89 of the Law) and consents to his appointment as joint official liquidator of the Company.

**Your Petitioners therefore humbly pray that:**

1. The winding up of the Company continue under the supervision of the Court.
2. Graham Robinson and Russell Homer of Chris Johnson Associates Ltd., PO Box 2499, Elizabethan Square, 80 Shedden Road, George Town, Grand Cayman, Cayman Islands, KY1-1104 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 be authorised to take any such action as may be necessary or desirable to obtain recognition of the appointment of the JOLs and/or bring commence liquidation proceedings against creditors in any other relevant jurisdiction and to make applications to the courts of such jurisdictions for such purpose.
5. The JOLs be authorised to exercise any of the following powers within and outside the Cayman Islands specified in Part I and Part II of the Third Schedule to the Companies Law (2016 Revision) (the "Law") without further sanction or intervention of the Court, namely the powers:
  - (a) to bring or defend any action or other legal proceeding in the name and on behalf of the Company;
  - (b) to carry on the business of the Company so far as may be necessary for its beneficial winding up;
  - (c) to sell any of the Company's property by public auction or private contract at market value with power to transfer the whole of it to any person or to sell the same in parcels;
  - (d) to engage staff (whether or not as employees of the Company) to assist them in the performance of their functions;
  - (e) to engage attorneys and other professionally qualified persons to assist them in the performance of their functions;

- (f) to 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;
  - (g) to do all acts and execute, in the name and on behalf of the Company, all deeds, receipts and other documents and for that purpose to use, when necessary, the Company seal;
  - (h) to prove, rank and claim in the bankruptcy, insolvency or sequestration of any contributory for any balance against his estate, and to receive dividends in the bankruptcy, insolvency or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent and rateably with the other separate creditors;
  - (i) to draw, accept, make and indorse any bill of exchange or promissory note in the name and on behalf of the Company, with the same effect with the respect of the Company's liability as if the bill or note had been drawn, accepted, made or indorsed by or on behalf of the Company in the course of its business;
  - (j) to promote a scheme of arrangement pursuant to section 86 of the Law;
  - (k) to convene meetings of creditors and contributories; and
  - (l) to do all other things incidental to the exercise of his powers.
6. The JOLs' remuneration and expenses be paid out of the assets of the Company in accordance with section 109 of the Law, the Insolvency Practitioner's Regulations 2008 (as amended) and Order 20 of the CWR.
7. The JOLs be at liberty to meet all disbursements reasonably incurred in the performance of their functions.
8. The JOLs shall have the authority to appoint Cayman Islands attorneys, and if necessary, legal representation in any other jurisdiction where the Company has or may have assets, as they may consider necessary to advise and assist them in the performance of their duties and to remunerate them for their reasonable fees and expenses out of the assets of the Company as an expense of the liquidation.
9. The JOLs be at liberty to and do pay their agents, employees, attorneys, solicitors and whomsoever else they may employ or instruct, remuneration and costs, 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 expenses of the winding up.

10. No suit, action or other proceedings, including criminal proceedings, shall be proceeded with or commenced against the Company except with leave of the Court pursuant to section 97 of the Law.
11. No disposition of the Company's property by or with the authority of the JOLs in the carrying out of their duties and functions and the exercise of his powers shall be avoided by virtue of section 99 of the Law.
12. Any act required or authorised to be done by the JOLs may be done by any one of them.
13. The Petitioner's costs of and incidental to this Petition be paid from the assets of the Company, to be taxed on the indemnity basis if not agreed.
14. Such further or other orders or directions as the Court thinks fit.

AND your Petitioner will ever pray etc.

DATED the 12<sup>th</sup> day of April 2017

*Walkers*

---

**WALKERS**

Attorneys-at-Law for the Petitioners

**NOTE:** This Petition will be served in accordance with any order of the Court requiring the Petitioners to do so.

This Petition was presented by Walkers, Attorneys-at-Law for the Petitioners whose address for service is care of their said Attorneys 190 Elgin Avenue, George Town, Grand Cayman KY1-9001, Cayman Islands.