

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION



CAUSE NO: FSD 0002 OF 2018

IN THE MATTER OF SECTIONS 94 AND 159 OF THE COMPANIES LAW (2016 REVISION)
AND IN THE MATTER OF BTU POWER MANAGEMENT COMPANY



PETITION



TO THE GRAND COURT

The humble petition of BTU Power Company (In Official Liquidation) (the "**Petitioner**"), acting by its joint official liquidators, Michael Penner and Stuart Sybersma of Deloitte & Touche, Citrus Grove, 106 Goring Avenue, George Town, Grand Cayman KY1-1109, Cayman Islands, shows that:

Background

1. BTU Power Management Company (the "**Company**") was incorporated in the Cayman Islands on 16 December 2002 as an exempted company with limited liability and with registration number 122051.
2. The last known registered office of the Company was at Maples Corporate Services Limited, PO Box 309, Ugland House, South Church Street, George Town, Grand Cayman KY1-1104, Cayman Islands.
3. The Company was struck off the register of companies (the "**Register**") by the Registrar of Companies on 31 October 2013.
4. The Governor in Council has consented to the reinstatement of the Company
5. The amount of the reinstatement fees and penalties payable upon restoring the Company to the Register total CI\$8,670.00 (the "**Reinstatement Fees**"), which the

Petitioner has agreed to satisfy.

6. The Petitioner was also incorporated in the Cayman Islands as an exempted company with limited liability on 16 December 2002.
7. The Petitioner is a creditor of the Company.
8. Pursuant to a Winding up Order dated 26 January 2012 (the "**Winding Up Order**"), Michael Penner and Stuart Sybersma of Deloitte & Touche, Citrus Grove, 106 Goring Avenue, George Town, Grand Cayman KY1-1109, Cayman Islands, were appointed as the joint official liquidators of the Petitioner (the "**JOLs**"), pursuant to a winding up order dated 26 January 2012 (the "**Winding Up Order**").
9. Prior to the appointment of the JOLs, the Petitioner was controlled by its sole director, Wael Almazeedi, who in turn was the sole director of the Company at the time that it was struck off the Register.
10. Pursuant to Order 102, rule 18 of the Grand Court Rules 1995 (Revised Edition) (as amended), the Petitioner, in its capacity as a creditor of the Company, now seeks:
 - (a) the reinstatement of the Company to the Register pursuant to section 159 of the Companies Law (2016 Revision) (the "**Companies Law**");
 - (b) the winding up of the Company pursuant to section 92(d) of the Companies Law on the ground that the Company is unable to pay its debts; and
 - (c) the appointment of the JOLs as the joint official liquidators of the Company.

The Particulars of the Debt

11. Prior to being struck off the Register, the Company provided certain management services to the Petitioner pursuant to a management agreement entered into between the Company and the Petitioner dated 6 June 2003 (the "**Management Agreement**"). In particular, the Management Agreement provided that the Company was responsible for managing and directing all of the Petitioner's investment activities.
12. Pursuant to clause 7 of the Management Agreement, the Company was permitted to

borrow funds from the Petitioner. In particular, clause 7 of the Management Agreement contained the following provisions:

- (a) the aggregate principal amount of borrowings by the Company could not exceed five percent (5%) of the aggregate capital commitments made by the Petitioner's investors;
- (b) all such borrowings would bear simple interest at the rate of 8% per annum;
- (c) amounts borrowed under the Management Agreement would be due and payable by the Company on the earlier of (a) 12 years after 6 June 2003, being the date of the initial closing of the Petitioner's offering of preference shares (the "**Closing Date**"); or (b) the liquidation of the Petitioner.

13. Prior to the Winding Up Order, Mr Almazeedi had caused the Petitioner to lend a total amount of US\$6,990,000 to the Company (the "**Loan**"). The Loan incurred 8% simple interest per annum in accordance with clause 7 of the Management Agreement until 31 December 2008, at which time the Company purported to vary the terms of the Loan, for no apparent consideration to the Petitioner, such that no commercial rate of interest was payable. The Petitioner reserves the right to claim appropriate interest on the Loan.
14. The Winding Up Order was granted on 26 January 2012. The Loan therefore became repayable on that date.
15. On 6 March 2012, the JOLs issued a statutory demand seeking repayment of the Loan under section 93 of the Companies Law (the "**Statutory Demand**"). The Statutory Demand was served on the Company at its then registered office.
16. As at the date of the Statutory Demand, the sum due and payable from the Company to the Petitioner was US\$9,311,455 (the "**Debt**").
17. The Statutory Demand stated that if no payment was received for the Loan within 21 days, the Company would be deemed insolvent and a winding up petition may be presented against the Company in accordance with section 92(d) of the Companies Law.

18. Notwithstanding the Statutory Demand, the Company has failed to pay or satisfy the Debt or any part thereof, which remains due and payable by the Company to the Petitioner.
19. In the circumstances, the Petitioner believes that the Company should be reinstated to the Register and wound up as it is unable to pay its debts, and it is otherwise just and equitable to do so, and for Michael Penner and Stuart Sybersma of Deloitte & Touche, Citrus Grove, 106 Goring Avenue, George Town, Grand Cayman KY1-1109, Cayman Islands, to be appointed as joint official liquidators of the Company.

Your Petitioner therefore humbly prays that:

1. the Company be restored to the Register, subject to the payment of the Reinstatement Fees by the Petitioner;
2. the Company be wound up by the Court pursuant to the Companies Law;
3. Michael Penner and Timothy Derksen of Deloitte & Touche, Citrus Grove, 106 Goring Avenue, George Town, Grand Cayman KY1-1109, Cayman Islands be appointed as joint official liquidators of the Company (the "**Liquidators**") and that the Liquidators be authorised to do any acts or things considered by them to be necessary or desirable in connection with the liquidation of the Company and the winding up of its affairs;
4. The Liquidators shall not be required to give security for their appointment;
5. The Liquidators shall have the power to act jointly and severally in their capacities as liquidators of the Company;
6. In addition to the powers set out in Part II of the Third Schedule to the Companies Law, the Liquidators be authorised to exercise all of the powers set out in paragraphs 1, 4, 5, 6, 7, 8 and 11 of Part I of the Third Schedule to the Companies Law and section 110(2) thereof without further sanction of the Court.
7. No disposition of the property of the Company by or with the authority of the Liquidators in carrying out their duties and functions and the exercise of their powers under any Order granted pursuant to this Petition shall be voided by virtue of section

99 of the Companies Law.

8. Subject to section 109(2) of the Companies Law and the Insolvency Practitioner's Regulations 2008 (as amended), the Liquidators be authorised to render and pay all invoices out of the assets of the Company for their own remuneration and the Liquidators be at liberty to meet all disbursements reasonably incurred in connection with the performance of their duties;
9. The Petitioner's costs of and incidental to the Petition shall be paid out of the assets of the Company as an expense of the liquidation;
10. The Liquidators be at liberty to apply;
11. Such other order or directions may be made as the Court thinks fit.

AND your Petitioner will ever pray etc.

DATED this 8th day of January 2018

FILED this 8th day of January 2018



WALKERS

Attorneys at Law for the Petitioner

Note: This Petition is intended to be served on:

1. The Registrar of Companies; and
2. The Company at its last known registered office, at Maples Corporate Services Limited, PO Box 309, Ugland House, South Church Street, George Town, Grand Cayman KY1-1104, Cayman Islands
3. The Company's former director, Wael Almazeedi.

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

NOTICE OF HEARING

TAKE NOTICE THAT the hearing of this Petition will take place at the Law Courts, George Town, Grand Cayman, on ^{12th} February 2018 at 10 am/pm.

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, Cayman Islands, telephone 345 949 4296.