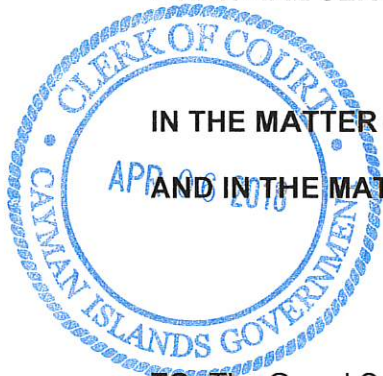


IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION



CAUSE NO. FSD 58 OF 2018 ( ) *res*

IN THE MATTER OF SECTION 131 OF THE COMPANIES LAW (2018 REVISION)  
AND IN THE MATTER OF BTU POWER COMPANY (IN VOLUNTARY LIQUIDATION)



PETITION

TO: The Grand Court of the Cayman Islands (the "**Court**")

The humble petition of Michael Penner and Stuart Sybersma of Deloitte & Touche, Citrus Grove, 106 Goring Avenue, PO Box 1787, George Town, Grand Cayman, KY1-1109, Cayman Islands as joint voluntary liquidators (the "**JVLs**" and the "**Petitioners**") of BTU Power Company (in Voluntary Liquidation) (the "**Company**") shows that:

1. The purpose of this Petition is to seek an order that the voluntary liquidation of the Company continue under the supervision of this Honourable Court pursuant to section 131 of the Companies Law (2018 Revision) (the "**Law**") and Order 15, rule 1(2) and Order 15, rule 3 of The Companies Winding Up Rules, 2018 (the "**CWR**").

**Incorporation**

2. The Company was incorporated as an exempted company with limited liability under the laws of the Cayman Islands on or around 16 December 2002 to operate as a private investment fund. The registration number of the Company issued by the Cayman Islands Registrar of Companies is 122018.
3. The registered office of the Company is situated at Deloitte and Touche, Citrus Grove, Goring Avenue, PO Box 1787, Grand Cayman, KY1-1109, Cayman Islands.
4. The Company was incorporated for the purpose of acquiring equity interests in pre-selected power generation and water desalination projects in the Middle East region.
5. The Company has a share capital of US\$4,100.00 divided into 100 ordinary shares with a par value of US\$1.00 each and 4,000 preference shares with a par value of US\$1.00 each.

## **Background to the voluntary winding up**

6. On 26 January 2012, the Company was placed into official liquidation pursuant to an Order of the Honourable Justice Cresswell (the "**Winding Up Order**") and Michael Penner and Stuart Sybersma of Deloitte & Touche were appointed as joint official liquidators of the Company with effect from the date of the Winding Up Order (the "**Liquidation Proceedings**").
7. In June 2016, the Company's former sole director, Mr Wael Almazeedi ("**Mr Almazeedi**"), issued proceedings in the Judicial Committee of the Privy Council (the "**Privy Council**") pursuant to which he sought to set aside all decisions and Orders made by the Honourable Justice Cresswell in the Liquidation Proceedings on the basis of an alleged lack of independence and apparent bias on the part of the supervising Judge (the "**Appeal**").
8. On 26 February 2018, the Privy Council promulgated its judgment in the Appeal (the "**Judgment**"), with a majority of the Board determining that the Appeal should be upheld and all Orders made by the Honourable Justice Cresswell in the Liquidation Proceedings (including the Winding Up Order) set aside. As at the date of this Petition, the Privy Council has not yet issued an Order giving effect to the Judgment, although this is expected to follow shortly.

## **Commencement of the voluntary winding up**

9. By a special resolution of the Company's preference shareholders passed at a duly convened Extraordinary General Meeting of the Company held on 15 February 2018 (the "**EGM**"), it was resolved that in the event that the Appeal was upheld by the Privy Council, the Company would immediately be placed into voluntary liquidation and the JVLs appointed to act for the purposes of winding-up the Company.
10. The JVLs' appointment became effective immediately upon the promulgation of the Privy Council's Judgment in the Appeal on 26 February 2018.
11. The JVLs have filed consents to act as voluntary liquidators of the Company with the Registrar of Companies pursuant to section 119(3) of the Law, such filing occurring on 27 February 2018.

12. The sole director of the Company as at the date of the commencement of the voluntary liquidation was Timothy Derksen of Deloitte & Touche, Citrus Grove, 106 Goring Avenue, PO Box 1787, George Town, Grand Cayman, KY1-1109, Cayman Islands. Mr Derksen has signed a declaration of solvency in the prescribed form in accordance with section 124(2) of the Law.

**Supervision will result in a more effective, economic and expeditious liquidation process**

13. The JVLs have determined that bringing the Company's voluntary liquidation proceedings under the supervision of the Court will facilitate a more effective, economic and expeditious liquidation of the Company. In particular, proceeding by way of a court supervised process will, *inter alia*:
  - (a) allow for the *status quo* previously existing under the Liquidation Proceedings to be effectively maintained in accordance with the wishes of all of the preference shareholders, who together hold 100% of the economic interest in the Company;
  - (b) allow the JVLs (in their capacities as Court appointed joint official liquidators) to attend to various material outstanding matters on behalf of the Company with the express sanction of the Court;
  - (c) allow the JVLs (in their capacities as Court appointed joint official liquidators) to adjudicate any proof of debt claims submitted in the Company's liquidation in accordance with the procedure prescribed by Order 16 of the CWR; and
  - (d) assist in the orderly distribution of the Company's assets, which include substantial power generation assets in the Middle East.
14. In the premises, the JVLs seek an order pursuant to section 131 of the Law that the liquidation of the Company continue under the supervision of the Court and that the JVLs be appointed as the joint official liquidators of the Company.

**Consent to appointment as Official Liquidators**

15. The JVLs are qualified insolvency practitioners (as that term is defined in section 89 of the Law) and consent to their appointment as official liquidators of the Company.

**Your Petitioners therefore humbly pray that:**

1. The winding up of the Company continue under the supervision of the Court for the purposes of a fully solvent restructuring or reorganization of the Company and/or the realisation of its assets which may include, but shall not be limited to:
  - (a) the JOLs (as defined below) promoting a scheme of arrangement amongst the Company and its members or any class of its members in accordance with paragraph 5 and Part II of the Third Schedule to the Law and section 86 of the Law;
  - (b) the JOLs investigating and, if thought appropriate, implementing any other form of solvent restructuring or reorganisation of the Company's affairs which they may consider to be in the best interests of the Company and its members or any class of its members, including, without limitation, and subject to the Court's direction, a restructuring or reorganisation involving the redemption or purchase by the Company of the preference shares in the Company, either in cash or *in specie*, and/or a reduction of the Company's capital; and
  - (c) the JOLs investigating the claims made in the Winding Up Petition presented in the Liquidation Proceedings on 11 November 2011 as amended on 8 December 2011 against Mr Almazeedi and BTU Power Management Company (the "**Manager**"), and if so advised, bringing such actions or actions in the name of the Company as against Mr Almazeedi and/or the Manager as may be considered appropriate,provided that this shall be without prejudice to all other powers that the JOLs would otherwise have under the Law.
2. Michael Penner and Stuart Sybersma of Deloitte & Touche, Citrus Grove, 106 Goring Avenue, PO Box 1787, George Town, Grand Cayman, KY1-1109, 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 be authorised to exercise all of the following powers within and outside the Cayman Islands without further sanction of the Court, namely the powers:
  - (a) to bring or defend any action or legal proceedings in the name 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 dispose of any property of the Company to a person who is or was related to the Company;
  - (d) to pay any class of creditors in full;
  - (e) to make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim (present or future, certain or contingent, ascertained or sounding only in damages) against the Company or for which the Company is rendered liable;
  - (f) to compromise on such terms as may be agreed all debts and liabilities capable of resulting in debts, and all claims (present or future, certain or contingent, ascertained or sounding only in damages) subsisting or supposed to subsist between the Company and a contributory or alleged contributory or other debtor or person apprehending liability to the Company;
  - (g) to 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;
  - (h) to raise or borrow money and grant securities therefor over the property of the Company; and
  - (i) to engage staff (whether or not as employees of the Company) to assist the JOLs in the performance of their functions.
5. The JOLs be authorised to do any act or thing considered by them to be necessary or desirable in connection with the winding up of the Company for the purpose set out in paragraph 1 above.

6. The JOLs shall 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 and on such terms as they may think fit and to remunerate them for their reasonable fees and expenses out of the assets of the Company.
7. No disposition of the Company's property by or with the authority of the JOLs in carrying out their duties and functions and exercise of their powers shall be avoided by virtue of section 99 of the Law.
8. No suit, action or other proceeding shall be proceeded with or commenced against the Company except with the leave of the Court pursuant to section 97 of the Law and subject to such terms as the Court may impose.
9. The JOLs' remuneration and expenses be paid out of the assets of the Company in accordance with section 109 of the Law, Part III of the Insolvency Practitioner's Regulations, 2018 and Order 20 of the CWR.
10. Any act required or authorised to be done by the JOLs may be done by any one of them.
11. The JOLs be at liberty to apply generally.
12. The costs of, and incidental to, the Petition shall be paid out of the assets of the Company as an expense of the liquidation.

13. Such further or other orders or directions as the Court thinks fit.

AND your Petitioners will ever pray etc.

DATED the 17<sup>th</sup> day of March 2018

FILED the 6<sup>th</sup> day of April 2018



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**WALKERS**

Attorneys at Law for the Petitioners

Notice of this petition is intended to be provided to all of the Company's known and suspected stakeholders

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

**NOTICE OF HEARING**

**TAKE NOTICE THAT** the hearing of this petition will take place at the Law Courts, George Town, Grand Cayman, Cayman Islands on the *5* day of *JUNE* 2018 at *10 a.m.*

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.