

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: <sup>509</sup> OF 2003

IN THE MATTER OF SECTION 94 OF THE COMPANIES LAW (2003 REVISION)

AND IN THE MATTER OF KOSMO CORPORATION

**PETITION**



TO THE GRAND COURT

The petition of Duncan John Ritchie shows that:

1. Kosmo Corporation (the "Company") was incorporated on 22<sup>nd</sup> February 2002 under the Companies Law (2001 Second Revision) under the name of Cosmo Corporation. The Company's name was changed to Kosmo Corporation in or around mid-2002.
2. The registered office of the Company is situate at the offices of M&C Corporate Services Limited, P.O. Box 309 GT, Ugland House, South Church Street, George Town, Grand Cayman, Cayman Islands, B.W.I.
3. The capital of the Company is US\$100,000,000 divided into 10,000,000,000 shares of nominal or par value of US\$0.01 each. 8,536,004 of the said shares have been issued and are fully paid up.
4. The objects for which the Company was established were unrestricted, but to include without limitation:
  - (a) To carry on the business as an investment company and to act as promoters and entrepreneurs and to carry on business as financiers, capitalists, concessionaires, merchants, brokers, traders, dealers, agents, importers and exporters and to undertake and carry on and execute all kinds of investment, financial, commercial, mercantile, trading and other operations.
  - (b) To engage in or carry on any other lawful trade, business or enterprise which may at any time appear to the directors of the Company capable of being

conveniently carried on in conjunction with any of the aforementioned businesses or activities or which may appear to the Directors of the Company likely to be profitable to the Company.

5. In February 2002, the Petitioner was approached by Mr. C.A. Lim ("Mr. Lim") to become a founding shareholder and Chief Financial Officer of the Company. The other shareholders, directors and members of management are, or were at the time of establishing the Company, substantially relatives or friends of Mr. Lim.
6. Mr Lim was the sole director of the Company until 18 December, on which date Mr. Duncan Ritchie, Ms. Fion Lin and Ms. Anna Lee were appointed directors of the Company.
7. The arrangement between the founding shareholders involves a personal relationship involving mutual trust and confidence between them sufficient to regard the Company as a quasi-partnership.
8. Differences have arisen between the Petitioner and the other shareholders/directors of the Company, details of which are set out in the Petitioner's First Affidavit. Without prejudice to the generality of the foregoing, the Petitioner has:
  - (a) been excluded from the management of the company without justification;
  - (b) not been invited to, or made aware of, meetings of the directors of the Company;
  - (c) been denied repeated requests to meet with Company management to discuss resolving the differences among management and the Company business;
  - (d) been locked out of the Company offices and been denied access to his Company e-mail account and to the books and records of the Company;
  - (e) been denied access to any financial or other information in relation to the business of the Company;
  - (f) been removed from his position as CFO without his prior knowledge or consultation;
  - (g) been denied remuneration and reimbursement of expenses incurred;

- (h) been subject to false and damaging allegations against him regarding his conduct and ethics in the running of the business.

In the circumstances there has been a breakdown of trust and confidence between the Petitioner and other members of management, which renders it impossible for the Petitioner to have any confidence in the ability of the directors to continue to manage the Company.

9. In May of 2003 the Petitioner proposed that the Company's shareholders acquire his interests in the Company at a price of US\$0.45 per share. The Petitioner was advised by Mr. Lim that such a proposal could not be considered because the Petitioner's involvement in the management of the Company is "critical to the success of the business". Notwithstanding the foregoing, the Petitioner has been unjustly excluded from the management of the Company. The shareholders have not made any offer to purchase the Petitioner's interest in the Company.
10. In the premises it is submitted that:
- 10.1 The Company is and was at all material times a quasi-partnership company;
- 10.2 There was formerly a relationship of trust and confidence which has now broken down; and
- 10.3 It is and was at all material times unjust or inequitable to exclude the Petitioner from the management of the Company without making a fair offer for his shares.
14. In the circumstances it is just and equitable that the Company should be wound up.

Your Petitioner therefore humbly prays that:

1. Kosmo Corporation may be wound up by the Court under the provisions of s94 (d) of the Companies Law (2003 Revision);
2. that the Petitioner be paid his costs of this application.

DATED the 30<sup>th</sup> day of July, 2003.

*Walkers*

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**WALKERS**  
Attorneys-at-Law for the Petitioner

**NOTE:** This petition is intended to be served on the Registrar of Companies

NOTWITHSTANDING THE PRESENTATION OF THE PETITION HEREIN the Petitioner does not object to a Section 127 Order in standard form, namely that:

“Notwithstanding the presentation of the said petition:

- (i) Payments made into or out of the bank accounts of the Company in the ordinary course of the business of the Company; and
- (ii) Dispositions of the property of the Company made in the ordinary course of its business for proper value (with the express exception of any transfer of the assets of the Company to any successor of the Company)

between the date of presentation of the petition and the date of judgment on the petition or further order in the meantime should not be void by virtue of the provision of S.156 of the Companies Law (2003 Revision) in the event of an order for the winding up of the company being made on the said petition.”

This Petition is presented by Walkers, Attorneys-at-Law, Walker House, Mary Street, P.O. Box 265 GT, George Town, Grand Cayman, for the Petitioner whose address for service is care of his said Attorneys-at-Law.