

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 391 OF 2005

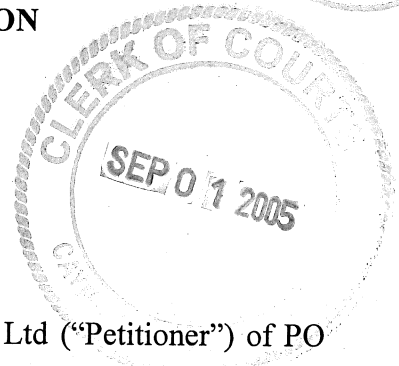
In the matter of SECTION 94 OF THE COMPANIES LAW (2004 REVISION)

And in the matter of SOVEREIGN CAPITAL CORPORATION

PETITION

To: **The Grand Court**

1. The petition of Sovereign Medical Fixed Income Fund Ltd ("Petitioner") of PO Box 1787 GT, Grand Cayman, Cayman Islands acting by Ian Wight and Stuart Sybersma, its Joint Official Liquidators ("the SMFIF Liquidators") shows that:
2. Sovereign Capital Corporation (hereinafter referred to as "the Company") was incorporated as an exempt company no. 106633 on 13<sup>th</sup> December 2000 under the Companies Law.
3. The former registered office of the Company was at Bodden Corporate Services Ltd, Box 10335APO, West Bay Road, Grand Cayman, Cayman Islands, B.W.I. The latter company has withdrawn its services as registered office and the Company currently has no registered office recorded with the Registrar of Companies.
4. The Company holds a trade and business license which seemingly allows it to engage in the business of "*creating and managing mutual and venture capital funds*".
5. The authorized and issued share capital of the Company is US\$750,000 divided into 750,000 shares of US\$1.00 each.



6. As at the date of this Petition the Petitioner believes that the following shareholdings are registered in the share register of the Company:

Brian Kuhn	375,000
B2B Global Specialty Fixed Income Fund ("B2B")	<u>375,000</u>
Total	<u>750,000</u>

7. Brian Kuhn is also a director of the Company, He was appointed on 13<sup>th</sup> December 2000. The other directors of the Company are Kevin Pidwerbeski (appointed 9<sup>th</sup> August 2002) and Douglas Lamb (appointed 9<sup>th</sup> August 2002). David Bodden was appointed a director on 12<sup>th</sup> September 2001 and resigned on 9<sup>th</sup> August 2002.
8. The Petitioner relies upon the facts and particulars set out in the paragraphs below in support of its Petition to wind up the Company on just and equitable grounds.
9. The Petitioner was incorporated in the Cayman Islands on 24<sup>th</sup> April 2002 as an exempt company. It was registered as a mutual fund on 1<sup>st</sup> May 2002. It was placed in Official Liquidation on the petition of the Cayman Islands Monetary Authority by an Order of the Grand Court dated 5<sup>th</sup> September 2003.
10. One of the Petitioner's directors was Brian Kuhn. Kuhn, a Canadian citizen who resided in the Cayman Islands, at all material times, and who by order of the British Columbia Securities Commission dated 11<sup>th</sup> September 2002 was barred from the British Columbia securities markets for 7 years from that date for failure to exercise proper due diligence on his clients' behalf and for misappropriation of client monies, owned and/or controlled the Company and the following other relevant entities:

i. B2B: B2B is a company incorporated in the Cayman Islands on 13<sup>th</sup> March 2000 which, on 18<sup>th</sup> February 2003, changed its name from B2B Global Internet Fund Ltd to B2B Global Specialty Fixed Income Fund. Ltd. The directors are Kuhn (appointed on 4<sup>th</sup> May 2001) and Ricky Lopez (appointed on 3<sup>rd</sup> February 2003). At a time unknown to the Petitioner, Kuhn (who was previously the sole shareholder) purported to transfer B2B's entire share capital to his wife, Dana Ratzlaff ('Ratzlaff'). At all material times, the entire share capital of B2B has been held by Kuhn and/or Ratzlaff. B2B is currently in voluntary liquidation pursuant to a shareholder's resolution dated 15<sup>th</sup> August 2003. The Joint Voluntary Liquidators of B2B, who are also Ian Wight and Stuart Sybersma, are in the process of applying to the Court for Court supervision of the liquidation of B2B.

ii. Sovereign Asset Management Corporation ('SAMC'): SAMC is a company incorporated in the Cayman Islands on 23<sup>rd</sup> April 2002. It is a wholly owned subsidiary of SCC. Its directors are Kuhn (appointed on 23<sup>rd</sup> April 2002), Kevin Pidwerbeski (appointed on 9<sup>th</sup> August 2002) and Douglas Lamb (appointed on 23<sup>rd</sup> September 2002). David Bodden was appointed on 23<sup>rd</sup> April 2002 and resigned on 9<sup>th</sup> August 2002. SAMC holds the voting shares of the Petitioner.

11. The Petitioner's offering memorandum dated 19<sup>th</sup> June 2002 (herein after the "Offering Memorandum") stated that the Petitioner's investment objective was to "*provide current income to investors by investing in asset-backed fixed income securities collateralized by health care receivables...*". At least 90% of the Petitioner's assets were to be invested in "Notes" as defined in the Offering Memorandum. Up to 10% of the Petitioner's assets could be invested in "*other securities.*"

12. The Cayman Islands law firm of Walkers prepared the Offering Memorandum and was listed therein as the Petitioner's Cayman legal advisor.
13. Aall Asset Management (Cayman) Limited ("AAM") was listed in the Offering Memorandum as the investment manager.
14. AAM entered into two written agreements with the Petitioner by which it undertook obligations to it in two capacities:
  - i. by a written Investment Management Agreement dated 30 July 2002, AAM became Investment Manager of the Petitioner; and
  - ii. by a written Administration Agreement (on its face) dated 11 March 2002 but executed at a time unknown to the Petitioner ("the Administration Agreement") AAM became Administrator of the Petitioner.
15. Pursuant to a sub-Investment Management Agreement dated (on its face) 30 July 2002, AAM delegated investment management responsibility to SAMC, controlled by Kuhn who also oversaw the investment management of the Petitioner.
16. From on or around 1 August 2002 until 21 May 2003 a number of investors ("the Investors") advanced monies amounting to a total US\$3,355,146 ("the Subscription Monies") to subscribe for shares in the Petitioner for investment in accordance with the provisions of the Offering Memorandum.
17. The SMFIF liquidators have identified that a substantial proportion of the Petitioner's assets were diverted into the Company and B2B on the instruction of or with the knowledge of Mr. Kuhn, the *de facto* investment manager of the Petitioner.

18. At a meeting convened of the Petitioner's shareholders on 29<sup>th</sup> May 2003, Mr Kuhn admitted through his attorney that the majority of the Fund's assets had been "*used for an improper purpose*".
19. The Subscription Monies advanced by the Investors were not invested by AAM and/or SAMC and/or Kuhn in accordance with the Offering Memorandum but were misapplied, as follows:
  - i. Subscription Monies in the total sum of US\$1,941,413 were credited to the Petitioner's account at Aall Bank ("the Aall Account") and the subscribing shareholders entered in the Petitioner's register of members by AAM in accordance with the Offering Memorandum. Of these monies, a sum of US\$775,841 was paid to B2B and a sum of US\$73,282 was paid to SCC by AAM on the instructions of Kuhn and/or SAMC ('the Misapplied Aall Account Monies').
  - ii. Subscription Monies in the total sum of US\$1,413,733 were not credited to the Aall Account, but, on Kuhn's instructions, were advanced to other companies owned and/or controlled by Kuhn ("the Misapplied Subscription Monies"). In particular, a total sum of US\$1,000,000 was advanced by various investors who were eventually registered by AAM as shareholders of the Petitioner, but (on the instructions of Kuhn and/or SAMC) paid to an account in the name of SCC for no consideration.
  - iii. Additional sums were advanced by various investors who were not registered as shareholders of the Petitioner, and these monies were (on the instructions of Kuhn and/or SAMC) credited to accounts in the names of B2B and SCC. The SMFIF believe that in respect of the Company these sums total at least US\$89,984.00

20. The payments referred to above were contrary to the Offering Memorandum and consisted of fraud, wilful misconduct and gross negligence by Kuhn and/or SAMC in that the payments (for which the Fund received no valuable consideration) were made, not for the proper purposes of the Petitioner, but for the benefit of other companies owned and/or controlled by Kuhn. The payments were contrary to the restrictions set out in the Offering Memorandum, which required that (at most) only 10% of the Fund's assets were to be invested other than in Notes issued by Medical Receivables Companies.
21. On 3 September 2003, Kuhn pleaded guilty before the Grand Court of the Cayman Islands to five charges of obtaining property by deception and five charges of theft arising out of his role as a director of the Petitioner. Pursuant to a Writ of Summons issued on 23<sup>rd</sup> February 2004 the Petitioner commenced proceedings against AAM for damages for breaches by AAM of the Investment Agreement and the Administration Agreement and for loss caused by AAM's negligence as Investment Manager and Administrator pursuant to the Agreements. Pursuant to a Consent Order dated 6<sup>th</sup> July 2005 Aall Bank was joined to the proceedings and the action was stayed as a result of the parties reaching a settlement.
22. The Misapplied Aall Account Monies and the Misapplied Subscription Monies were misappropriated by Kuhn, SCC and/or B2B for the personal benefit of Kuhn, SCC and/or B2B.
23. The Company is therefore a creditor of the Petitioner in respect of the Misapplied Aall Account Monies and the Misapplied Subscription Monies that were paid to the Company. The SMFIF Liquidators believe that the Company has no other creditors.

24. As a result of the intermingling of the affairs and records of the Petitioner and the Company the SMFIF Liquidators have identified assets of the Company in the sum of US\$457.00. They are not aware of any other assets of the Company.
25. B2B issued many debentures to various individuals and companies. The Company is the holder of a debenture issued by B2B dated 30<sup>th</sup> April 2002 in the sum of US\$300,000.00 (“the SCC Debenture”).
26. The Shareholder’s resolution dated 15<sup>th</sup> August 2003 which placed B2B into Voluntary Liquidation had the effect of crystallizing the floating charges contained within these debentures over B2B’s assets. Although other debentures exist which theoretically rank in priority to this debenture, the Voluntary Liquidators have received legal advice (in respect of which they do not waive privilege) to the effect that the debentures are invalid or that B2B is not required to repay the various debenture holders because B2B did not receive any consideration from them. Accordingly, the Company’s debenture ranks first in priority and is the first debenture that B2B is required to pay.
27. However, the Company also issued debentures totaling C\$12,000.00 and US\$100,000.00 to B2B (“The Company Debentures”) and is therefore a debtor of B2B in respect of these debentures. If the Company receives any payment from B2B in respect of the SCC Debenture to the extent that it is able to do so it will then be required to repay B2B in respect of the Company Debentures.
28. The SMFIF Liquidators therefore propose that B2B repays the Company in respect of the SCC Debenture and that it then provides a release to the Company in respect of the Company Debentures. The Company will then have additional assets with which to repay the Petitioner, which in turn will result in higher dividend payments for the Petitioner’s shareholders.

**THE PETITIONER THEREFORE HUMBLY PRAYS THAT:**

1. That the Company be wound up by the Court under the provisions of the Companies Law (2004 Revision).
2. That Ian Wight and Stuart Sybersma of Deloitte, Citrus Grove, George Town, Grand Cayman be appointed as Joint Official Liquidators of the Company.
3. That the Joint Official Liquidators be at liberty to exercise any of the powers contained within Section 109 of the Companies Law (2004 Revision) without the further sanction of this Honourable Court.
4. The Joint Official Liquidators shall have power:
  - (a) to bring or defend any action, suit, prosecution or other legal proceedings, whether criminal or civil, by way of court process or arbitration, in the name and on behalf of the Company.
  - (b) to take possession of, collect and get in all property or assets (of whatever nature) to which the Company is or appears to be entitled;
  - (c) to do all things as may be necessary or expedient for the protection of the Company's assets;
  - (d) to do all things (including the carrying on of the business of the Company) so as may be necessary or expedient for the beneficial realisation of the property or assets of the Company (including power to borrow money);
  - (e) to appoint attorneys, solicitors and other professional qualified persons both in the Cayman Islands and elsewhere to assist them in the performance of their duties;

- (f) to appoint agents both in the Cayman Islands and elsewhere to do any business which they are unable to do themselves or which can more conveniently be done by an agent and power to employ and dismiss officers and employees of the Company;
- (g) to make any power which is necessary or incidental to the performance of their duties;
- (h) to open and maintain bank accounts in the name of the Company or themselves anywhere in the world as may be necessary for the better performance of their duties;
- (i) to exercise and execute all the powers set out in Section 109 of the Companies Law (2004 Revision) without sanction or intervention of the court and unprejudiced by the generality hereof;
- (j) to compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims whether present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the Company and any contributory or alleged contributory or other debtor or person apprehending liability to the Company, upon receipt of such sums payable at such times and generally on such terms as may be agreed upon, with power to take securities for the discharge of such debts or liabilities and to give complete discharges in respect of all or such calls debts, or liabilities; and to give complete discharges in respect of all or such calls debts, or liabilities; and
- (k) to do and execute all such other things as may be necessary for winding-up the affairs of the Company and distributing its assets;

and for the avoidance of doubt the powers bestowed on the Liquidators may be exercised by them within and outside the Cayman Islands.

5. The Joint Official Liquidators be at liberty to apply for further directions relating to the winding-up of the affairs of the Company and the distribution of its assets.
6. The reasonable costs of and incidental to this Petition be paid forthwith from the assets of the Company.
7. The Liquidators shall be entitled to receive remuneration for their services by reference to the time properly given by them and their staff in attending to matters arising in the winding-up and the hourly rates and the amount of remuneration shall be determined in accordance with Insolvency Rule 4.148A.
8. This Order shall not prevent the Company in general meeting or the creditors from agreeing that the Liquidators' remuneration be fixed as a percentage of the value of the assets which are realised or distributed.
9. The remuneration of any other agents, employed or instructed by or on behalf of the Joint Official Liquidators in connection with the performance of their duties be fixed and approved at the rate or rates in the country in which such person is ordinarily employed or engaged in practice.
10. The Liquidators be at liberty to pay themselves, their agents, employees, attorneys, solicitors and whomsoever else they employ or instruct either weekly or monthly or at such other intervals as they consider appropriate.
11. The Liquidators be at liberty to meet all disbursements reasonably incurred in connection with the performance of their duties.

12. For the avoidance of doubt all payments made pursuant to paragraphs 7 - 11 above shall be made as and when they fall due out of the assets of the Company and shall be expenses in the Liquidation.
13. That the costs of an incidental to the Petition be an expense of the liquidation of the Company.
14. Such further and/or other relief as the Court thinks fit.

DATED this 14 day of September 2005.

  
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**CAMPBELLS**

Note: It is intended to serve this Petition on the Petitioner at its registered office.

#### INDORSEMENT

This Petition having been presented to the Court on \_\_\_\_\_ will be heard at the Law Courts, George Town, Grand Cayman on 28 Sept 05 at 10 a.m./p.m. or as soon thereafter as the Petition can be heard.

**This Petition** is filed by Campbells, Attorneys-at-Law for the Petitioner, whose address for service is that of its Attorneys-at Law, Fourth Floor, Scotiabank Building, P.O. Box 884, George Town, Grand Cayman, Cayman Islands B.W.I. (Ref: AJW/MDJ)