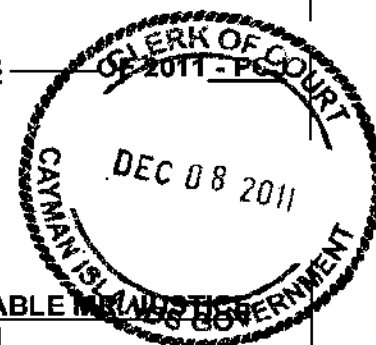


**IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION**

CAUSE NO. FSD 183



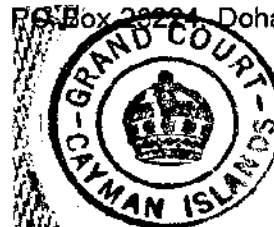
**IN THE MATTER OF THE COMPANIES LAW (2011 REVISION)**

**AND IN THE MATTER OF BTU POWER COMPANY**

**AMENDED WINDING UP PETITION**  
**AMENDED PURSUANT TO THE ORDER OF THE HONOURABLE JUSTICE**  
**CRESSWELL DATED 8 DECEMBER 2011**

**TO:** The Grand Court of the Cayman Islands

**THE HUMBLE PETITION** of Qatar Investment Authority and the Supreme Council for Economic Affairs and Investment, for themselves and on behalf of Qatar Foundation Fund (together, the "Petitioners") of 9<sup>th</sup> Floor, Q-Tel Tower, Diplomatic Area Street, P.O. Box 20224, Doha, State of Qatar, shows that:



**Summary**

1. The Petitioners and the Supporting Preference Shareholders (as defined below) – who together represent approximately 93% of the equity in BTU Power Company ("BTU" or the "Company") – consider it is just and equitable for the Company to be wound up in the manner prayed for below for at least the following reasons:
  - (a) The Manager and Almazeedi (as those terms are defined below) have conducted the business of the Company in such a way that the rights and interests of the Petitioners and the Supporting Preference Shareholders - the principal economic stakeholders in the Company – have been oppressed, disregarded and/or undermined such that it would be unjust and inequitable for them to be forced to remain as members in the Company or to be forcibly redeemed upon the terms proffered:
    - (i) The Manager and Almazeedi have consistently refused to provide the Petitioners and the Supporting Preference Shareholders with crucial information pertaining to their investments in the Company to which they are contractually entitled.

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- (ii) In breach of its contractual obligations, the Company (acting through Almazeedi) refuses to allow the Petitioners to exercise their audit rights in a timely fashion, or at all.
  - (iii) The relationship between the Company, Almazeedi and the Manager, on the one hand, and the Petitioners and the Supporting Preference Shareholders, on the other hand, has irretrievably broken down. The Petitioners and the Supporting Preference Shareholders have justifiably lost all confidence in Almazeedi and the Manager to manage the Company's affairs and its investments in the best interests of the Preference Shareholders.
  - (iv) The Manager and Almazeedi are misusing their positions to benefit themselves to the detriment of the Company and the Preference Shareholders.
  - (v) Other than by presenting the Petition, due to their limited voting rights, the Petitioners and the Supporting Preference Shareholders have no ability to remove Almazeedi and/or the Manager.
  - (vi) Since the inception of the Company, the Manager and Almazeedi have distributed to the Petitioners only US\$576,000 in dividends (despite the Company's underlying assets generating substantial earnings during that time). In stark contrast during this time the Manager and Almazeedi have apparently:
    - (1) spent Company funds in an amount of approximately US\$12-\$15m on expenses relating to an exit or restructuring of the Company; and
    - (2) borrowed an additional US\$9.3m from the Company.
- (b) Almazeedi (or companies controlled by him) is the subject of multiple lawsuits involving other stakeholders in the BTU Group (as defined below) which include particularised allegations of serious misconduct, including self-dealing, mismanagement and corporate malfeasance, concerning Almazeedi and others employed by or connected to the BTU Group which, if substantiated, would have

a material impact on the Company and the Petitioners and other Preference Shareholders' investment therein.

- (c) The Petitioners and the Supporting Preference Shareholders believe that the Company is poised to transfer certain of the Company's assets in respect of which:
  - (i) Almazeedi has provided no evidence that the proposed transaction represents a good commercial bargain and/or is in the best interests of the Company and the Preference Shareholders, the principal economic stakeholders.
  - (ii) No stakeholder consents have been obtained, or even sought.
  - (iii) Almazeedi appears to have a conflict of interest.
  - (iv) Almazeedi has not demonstrated that the transaction satisfies the Company's contractually mandated internal rate of return ("IRR") threshold.
- (d) Almazeedi has incurred significant costs and expenses of approximately US\$12-15m in pursuit of reorganisation and exit alternatives that he has admitted are outside the purpose of the Company, but which he has proposed should be borne by the Company.
- (e) The Company's substratum has been lost as it no longer has any ability to require the Preference Shareholders to provide further capital due to the expiry of the mandated investment period. Without further capital, the Company cannot make additional investments in accordance with the purposes set forth in the Constituent Documents (as defined below) and it therefore seeks to restructure itself in breach of its contractual obligations and against the wishes of a significant majority of the Preference Shareholders, who hold the ultimate economic interest in the Company.
- (f) It is abundantly clear that independent investigation of the Company's affairs by suitably qualified professionals is required on an urgent basis.

**A. The Company**

2. The Company was incorporated on or about 16 December 2002 as an exempted limited company under the laws of the Cayman Islands to operate as a private investment fund. The Company was assigned company number 122018 by the Cayman Islands Registrar of Companies. Pursuant to the Company's Offering Memorandum (as defined below), 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.
3. The registered office of the Company is situated at Maples Corporate Services Limited, PO Box 309, Ugland House, South Church Street, George Town, Grand Cayman, Cayman Islands.
4. The business of the Company is managed by the Company's board of directors (the "Board of Directors"). The Company currently only has one director, Wael Almazeedi ("Almazeedi"). The Board of Directors has largely delegated the management of the Company to BTU Power Management Company (the "Manager") pursuant to a management agreement between the Company and the Manager, dated 6 June 2003 (the "Management Agreement"). The Petitioners understand that the Manager was formerly named BTU Holdings Company.
5. The Manager is an exempted limited company incorporated under the laws of the Cayman Islands. The Manager has been appointed to provide certain management services to the Company pursuant to the Management Agreement. The Manager manages and directs all of the business activities and decisions of the Company, including with respect to the Company's investments. Almazeedi is understood to be the chief executive officer and sole director of the Manager.
6. The Company and the Manager were formed by Almazeedi as part of a larger affiliated group of companies that he owns or controls (the "BTU Group"). The BTU Group includes, but is not limited to:
  - (a) BTU Industries Holdings (USA) Inc. ("BTU Industries"), a Delaware company that may own or control the Manager;
  - (b) BTU Holdings Company ("BTU Holdings"), an exempted limited company organised under the laws of the Cayman Islands that formerly owned or

controlled the Manager (and which is now in voluntary liquidation, subject to the supervision of this Honourable Court); and

- (c) BTU Ventures, Inc., a Delaware entity that is owned or controlled by BTU Holdings and may have formerly been an affiliate of the Manager and party to a management subcontract with the Manager to manage the Company.
7. The Company currently holds equity stakes in two independent power projects: Carthage Power Company ("CPC") and Taweelah Asian Power Company ("TAPCO"). CPC is a gas turbine plant located in Tunisia, with the Company holding a 60% equity interest. TAPCO is an independent water and power project located in Abu Dhabi, UAE, with the Company holding a 10% combined equity interest in TAPCO through (i) a 25% ownership in Asia Gulf Power Holding Company Limited ("AGPH"), a special purpose holding company responsible for implementing a certain extension project of TAPCO and (ii) a 25% ownership interest in Asia Power Gulf Service Company Limited ("AGPS"), which is responsible for the operation and maintenance of the TAPCO plants.
  8. The assets described in the preceding paragraph have significant remaining value and there is no issue with the Company's immediate solvency. Pursuant to Articles 116, 117 and 135 of the Amended Articles, on a liquidation of the Company, the Preference Shareholders are entitled to recover (i) their net invested capital and (ii) an 8% per annum "Preferred Return" before the holder of the Ordinary Shares is entitled to receive any dividend or distribution. The Petitioners and the Supporting Preference Shareholders therefore have a tangible interest in a liquidation of the Company.

**B. The Petitioners and the Supporting Preference Shareholders**

9. The Company has a share capital of US\$4,100 divided into 100 ordinary shares with a par value of US\$1.00 each (the "Ordinary Shares") and 4,000 preference shares with a par value of US\$1.00 each (the "Preference Shares"). The Petitioners believe that all of the Ordinary Shares are held by either the Manager or an entity wholly controlled by it, Q Gen Industries Limited ("QGEN"). The Ordinary Shares have full voting rights.
10. The investors of the Company, including the Petitioners, hold Preference Shares. In addition to the Petitioners, the balance of the Preference Shareholders are understood to be a mix of Middle Eastern banks and sovereign wealth funds or similar entities. The

Preference Shares have very limited voting rights and, in particular, the Preference Shareholders have no ability to remove Almazeedi as a director of the Company or terminate the Management Agreement.

11. The Petitioners hold a combined total of ~~248,243,724~~ fully paid Preference Shares ~~valued at approximately US\$70m as of February 2009 (the last date for which the Company provided valuation information).~~
12. The Petitioners initially acquired the first tranche of their Preference Shares on or about February 6, 2003 pursuant to the terms of:
  - (a) The BTU Power Company Offering Memorandum, dated 27 December 2002 (as amended or modified, including with respect to the offering memorandum, investor questionnaire and subscription agreement dated 20 January 2003) (the "Offering Memorandum").
  - (b) The Amended and Restated Articles of Association of the Company dated 15 October 2004 (the "Amended Articles").

(together, the "Constituent Documents").

At all material times the Petitioners' and the Supporting Preference Shareholders' (save for DIB (as defined below)) investments into the Company were made on the basis of, and governed by, the Constituent Documents.

13. This Petition is fully supported by the following ~~entities~~ ~~Preference Shareholders~~:
  - (a) Broog Trading Company which holds ~~424,421,862~~ Preference Shares ~~valued at approximately US\$35m as of February 2009.~~
  - (b) Qatar National Bank ("QNB") which is understood to hold ~~49,786,014~~ Preference Shares.
  - (c) Dubai Islamic Bank ("DIB") which is understood to hold an interest, through the Shariah Vehicle (as defined below), equivalent to ~~approximately 248,430,073~~ Preference Shares (see further below).

(together, the "Supporting Preference Shareholders").

In total the Petitioners and the Supporting Preference Shareholders represent approximately 93% of the Company's equity. The Petitioners are unaware of any Preference Shareholders who support Almazeedi and the Manager continuing to run the Company and who would therefore oppose the Petition.

14. The Petitioners understand that ~~DIB's Dubai Islamic Bank ("DIB") also has an interest in the Company which was intended to be structured in such a way as to comply with Shariah law and involved the use of a parallel investment vehicle, the BTU Power Islamic Portfolio (the "Shariah Vehicle"). The funded equity capital in the Shariah Vehicle was US\$43,007,241 as of December 2008. The Petitioners understand that DIB was the only party to invest through the Shariah Vehicle. In any event, ~~the Petitioners understand that DIB fully supports the Petition.~~~~

### **C. Background**

#### ***Preference Shareholder Rights***

15. The Manager, formerly as the holder of all of the (voting) Ordinary Shares (which the Petitioners now understand are held by QGEN – an entity wholly controlled by Almazeedi), and in any event pursuant to the Board of Directors' delegation of their management responsibilities to the Manager, generally controls the operations of the Company and manages the Company's investments, subject "to the direction and supervision" of the Board of Directors.
16. The Preference Shareholders have only limited voting rights, but have a number of important and substantive rights with respect to monitoring the Company's investments and protecting against any mismanagement of the Company's assets. They are entitled to receive and access certain financial information about the Company and its investments. The Amended Articles provide that:

*"[w]ithin 90 days after the end of the Company's fiscal year, each Member shall be entitled to receive the Company's annual audited financial statements, prepared in accordance with international generally accepted accounting practices, and an annual statement of the aggregate gains and losses of the Company's investments for the year. Each Member shall also be entitled to receive, within*

*45 days after the end of each quarter, unaudited quarterly financial statements, including a description of the status of each of the Company's material investments."*

(Amended Articles, art. 129.1). A "Member" is defined in the Amended Articles to have the same meaning as provided for in the Companies Law (2004 Revision) of the Cayman Islands, which defines members to include subscribers of a company's memorandum of association.

17. Furthermore, the Company is also required to regularly provide Preference Shareholders with information about the Company's investments. Specifically, the Company is obliged to "provide to each Member a report at or about the time of each material investment by the Company and will inform each Member in writing of *any material change* affecting any of the Company's material investments." (Amended Articles, art. 129.1) (emphasis added).
18. The Preference Shareholders also have the right to, on not less than 30 days notice to the Company and the Manager, require the Company to permit a prompt audit of the books and records of the Company to be conducted by a firm of independent certified public accountants of established international reputation selected by the Preference Shareholders requesting the audit. (Amended Articles, art. 129.2).
19. The Preference Shareholders must approve certain investments made by the Company. The Amended Articles provide that the Company may only invest in "IPP Assets or Follow-on Opportunities with the approval of the Directors." "IPP Assets" are the pre-selected investment assets described in the Offering Memorandum, and "Follow-on Opportunities" means the "expansion and other follow-on opportunities that may become available with respect to the IPP Assets." Any other investment transactions must be approved by "the prior consent of the Preference Holders Committee or with the prior consent of Independent Investors holding at least two-thirds of all Preference Shares held by Independent Investors."
20. The "Preference Holders Committee" was formed to, among other things, "approve valuations of investments and other securities and assets if an appropriate third party is not engaged to make an independent valuation [and] approve material transactions between the Company (or its subsidiaries) and the Manager (or its other Affiliates) to the

extent such transactions are not contemplated by the BTU Power Documentation.” (Amended Articles, art. 110). The Preference Holders Committee consists of three voting members representing the three “Independent Investors” (meaning the holders of Preference Shares other than the Manager and its affiliates) holding the largest number of Preference Shares. At all relevant times, the Preference Holders Committee has included a voting member designated by the Petitioners.

21. The Amended Articles also provide for an “Investment Advisory Committee” to “advise and consult with the Manager and the Directors and other management of the Company regarding potential investments of the Company and as otherwise requested by the Manager or the Directors.” The Investment Advisory Committee included at least one member designated by each of the three Independent Investors holding the largest number of Preference Shares. (Amended Articles, art. 111). At all relevant times, the Investment Advisory Committee has included at least one member designated by the Petitioners.
22. Additionally, the Company is not permitted to invest in any projects where the projected internal rate of return is less than 11% unless such investment is approved by Independent Shareholders representing at least three-fourths of all Preference Shares held by the Independent Shareholders.
23. The Constituent Documents also expressly acknowledge the risk of conflicts of interest and provide that any “material transaction between the Company, on the one hand, and the Manager and its Affiliates, on the other hand, that are not specifically addressed by [the Constituent Documents] will be conducted only on terms (a) not less favourable to the Company than those available to the Company from independent third parties (supported, where appropriate, by an independent valuation), or (b) approved by the Preference Holders Committee or Independent Investors holding at least two-thirds of all Preference Shares held by Independent Investors.” Thus, any transaction involving a conflict of interest that is not specifically allowed by the Constituent Documents must be equivalent to an arms-length transaction with a third party or approved by the Preference Holders Committee or Independent Investors representing at least two-thirds of all Preference Shares.

***The Proposed Share Redemption and Asset Swap***

24. During the period between or about July 2010 and August 2011, the Company proposed two significant transactions that would have a material impact on the Company and the Preference Shareholders' interests in the Company.
25. In or about late 2008 and continuing through 2010 and 2011, Almazeedi, acting in his capacity as the sole director of the Company, proposed a share redemption transaction to the Preference Shareholders that would transfer all of the Company's assets to a newly formed Cayman Islands company, QGEN, and issue new equity interests in QGEN to the Preference Shareholders and/or purchase the Preference Shares of those investors wishing to exit the fund (the "Proposed Share Redemption"). Significantly, QGEN was formed, and is owned or controlled, by Almazeedi, who is also the Chairman and CEO of QGEN. Thus, in offering the Proposed Share Redemption, it appears that Almazeedi had, and continues to have, a conflict of interest because he stands to materially benefit from the proposed transaction personally.
26. Almazeedi has also alleged that he incurred approximately US\$12 - 15m in costs and expenses in connection with preparing the Proposed Share Redemption and certain other reorganisation alternatives and has indicated that he expects those costs to be borne by the Company. However, the Petitioners never agreed to bear any costs in connection with any share redemption or other restructuring transaction, particularly any transaction involving Almazeedi forming his own company to personally benefit from such a transaction. Nor are the Petitioners aware of any other authorisation for Almazeedi to incur such costs in connection with any reorganisation of the Company. Furthermore, as Almazeedi has acknowledged, his actions in connection with the Proposed Share Redemption were not provided for under the Constituent Documents and were outside the scope of the Manager's authority.
27. Furthermore, in or about July 2011, Almazeedi disclosed to the Preference Shareholders for the first time that the Company had apparently entered into an agreement to transfer certain assets of the Company (the "Proposed Asset Swap"). The Proposed Asset Swap would involve an asset swap with Marubeni Corporation ("Marubeni"), a shareholder in both CPC and TAPCO, whereby the Company would purchase Marubeni's interest in CPC at the same time that Marubeni acquired all of the Company's interest in TAPCO, resulting in the entirety of the Company's capital being invested and concentrated in one asset (CPC) in Tunisia. Almazeedi did not previously

disclose to the Petitioners that he was negotiating a transfer of the Company's assets, nor did he notify or consult with the Preference Holders Committee or the Investment Advisory Committee about the Proposed Asset Swap.

28. The Company has failed to provide the Preference Shareholders with sufficient information for them to be able to make an informed decision as to whether or not either of these options is in their best interests. Despite the contractual requirements for the Company to provide the Preference Shareholders with adequate information and secure the relevant consents from the Preference Holders' Committee and/or the Independent Investors, the Petitioners understand that the Company intends to proceed with the Proposed Asset Swap in any event. Almazeedi has also proposed that the share redemption transaction with his company QGEN go forward in conjunction with the Proposed Asset Swap.

**D. Serious Allegations of Misconduct, Mismanagement and Corporate Malfeasance**

29. Almazeedi and certain entities within the BTU Group, including the Company, have been involved in a number of ongoing lawsuits, all of which allege serious mismanagement and misconduct on the part of Almazeedi and other directors and employees of the BTU Group (the "BTU Litigation"). The nature of these allegations, which are set forth in a myriad of pleadings and other court papers, indicates that the entire BTU Group is in complete disarray and gives rise to serious concerns about the probity of management of the Company and the status of its investments.
30. Almazeedi, the principal manager and founder of the BTU Group, sole director of the Company and the chief executive office and sole director of the Manager, is in protracted litigation with his former partner in the BTU Group and a former director in the Company, Abdel Moshan Hayat ("Hayat"). The claims they have asserted against one another include misappropriation, breach of fiduciary duty, misuse of assets, fraudulent transactions among BTU Group entities and other corporate misconduct. Specifically, Mr. Hayat has alleged that:
  - (a) Almazeedi and the other defendants misappropriated funds from companies in the BTU Group for their own purposes;

- (b) Almazeedi and the other defendants engaged in extensive self-dealing with respect to transactions involving companies in the BTU Group;
  - (c) Almazeedi wasted corporate funds belonging to companies in the BTU Group;
  - (d) Almazeedi awarded himself a significant pay bonus and caused BTU Holdings to pay his personal expenses rather than declaring a dividend; and
  - (e) Almazeedi and BTU Holdings breached their contract with Hayat by withholding payments due to Hayat.
31. Almazeedi, in turn, brought an action against Hayat for breach of fiduciary duty, alleging, among other things, that:
- (a) Hayat failed to disclose that he was (or was soon to become) a shareholder and/or director of Evolvence Capital ("Evolvence"), a company that was retained by the Manager to act as a placement agent for the BTU Group;
  - (b) the terms of the agreement with Evolvence were not suited to a business with BTU Group's business model and financial structure; and
  - (c) Hayat induced the BTU Group to provide him with \$250,000 for the ostensible purpose of making a charitable contribution to an unnamed charity, and then misappropriated this money for himself.
32. The Petitioners further understand that Almazeedi has also been involved in arbitration disputes with Marubeni, a co-owner/partner in both CPC and TAPCO, and also the counterparty on the Proposed Asset Swap.
33. In addition, a number of BTU Group employees have been sued for allegedly stealing or misusing confidential information. Each of these employees has, in turn, accused Almazeedi of various forms of serious misconduct, including misappropriation, awarding himself improper bonuses and expense reimbursements, failing to make required dividends, and engaging in other acts of corporate malfeasance.
34. While the purpose of each of the entities in the BTU Group is unclear, it appears that the only significant assets of the entire BTU Group are the Company's investments which were funded by the Petitioners and the other Preference Shareholders. Thus, should

the allegations of misconduct be substantiated, particularly in respect of Almazeedi (the sole director of the Company and the chief executive officer and director of the Manager), notwithstanding that certain of the impugned transactions involve other entities in the BTU Group, it follows that this would have a material impact on the Company itself and the Petitioners' investment therein.

**E. The Company's Failure to Provide Information Concerning its Investments**

35. In order to investigate the allegations in the BTU Litigation and to generally exercise their rights as Preference Shareholders to obtain information regarding their investments in the Company, the Petitioners contacted the Company in early 2010 to request information regarding the Company and its investments. Since at least that time, the Company has repeatedly failed and refused to provide the Petitioners with required information regarding the Company's investments and certain proposed transactions that threaten to materially impact the Petitioners and the other Preference Shareholders' economic interests in the Company.

36. The Preference Shareholders are entitled to receive certain information from the Company regarding its investments, including:

- (a) within 90 days after the end of each fiscal year, (i) annual audited financial statements and (ii) an annual statement of the aggregate gains and losses of the Company's investments for the year;
- (b) within 45 days after the end of each quarter, (i) unaudited quarterly financial statements and (ii) a description of the status of each of the Company's material investments;
- (c) a report at or about the time of each material investment by the Company; and
- (d) information regarding "any material change affecting any of the Company's material investments."

(Amended Articles, art. 129.1).

37. Despite repeated requests, the Company has consistently refused to provide the Petitioners with information regarding the Company's investments, in violation of its

obligations under the Constituent Documents. The Company has either refused to provide the information or manufactured excuses to delay or withhold the requested information.

38. By way of example only, on or about 8 July 2010, the Company refused to provide the Petitioners and the other Preference Shareholders with the unaudited quarterly financial statements that are required under the Constituent Documents. The Company acknowledged that it has "not been in a position to issue such statements for some time now", but claimed that providing such quarterly statements "would be prohibitively expensive and inaccurate" because the underlying assets used different accounting methods or did not issue quarterly financial statements that could be incorporated into a quarterly report. As a result, the Petitioners and other Preference Shareholders have not received any of the required quarterly financial statements in years.
39. Similarly, in connection with a meeting on 28 July 2011, the Company initially agreed to provide the Petitioners and the other Preference Shareholders with (i) information regarding the Proposed Asset Swap, (ii) a breakdown of the US\$12 - 15m in alleged costs and expenses incurred by the Company in connection with certain proposed reorganisation transactions, (iii) the Company's annual audited 2010 financials, and (iv) financial information related to the Company's 2011 performance YTD. However, the Company ultimately refused and/or failed to produce any of this information in a timely fashion.<sup>1</sup>
40. It is apparent that there has been an irretrievable breakdown in the relationship between the Company and its investors, with the Company consistently failing to comply with its obligations under the Constituent Documents and applicable law to provide the Petitioners and the other Preference Shareholders with even the most routine information regarding their investments in the Company. As of the date of this Petition, the Company has refused or failed to provide the Petitioners and other Preference Shareholders with at least the following information that is required under the Constituent Documents and is necessary to ensure that the Company's investors are adequately informed regarding their investments:

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<sup>1</sup> The Company has now disclosed certain information regarding the Asset Swap in connection with seeking a validation order with respect to the Proposed Asset Swap (the "Validation Application"). Remarkably, the Company's Validation Application includes some of the very information that the Petitioners have repeatedly requested but which the Company had claimed was not available. The Petitioners are still in the process of reviewing the Validation Application and intend to respond in due course.

- (a) Unaudited quarterly financial statements;
- (b) The Company's annual audited financial statement for 2010<sup>2</sup>;
- (c) Information regarding the Company's performance in 2011 YTD;
- (d) An annual statement of the aggregate gains and losses of the Company's investments for 2010;
- (e) A full description of the status of each of the Company's investments; and
- (f) Adequate information regarding the Proposed Asset Swap.

41. The Company's refusal to provide the requested information to the Petitioners and other Preference Shareholders is particularly concerning given the serious allegations of misconduct and mismanagement in the BTU Litigation and the proposed transactions, including the Proposed Asset Swap and Proposed Share Redemption, which would have a material impact on the Petitioner's interests in the Company and its investments.

42. The Petitioners and the Supporting Preference Shareholders have justifiably lost faith in the ability of incumbent management and have serious concerns as to the multiple allegations of impropriety made against Almazeedi. Independent professionals should be appointed to take control of the Company and its assets on an urgent basis.

#### **F. The Company's Failure to Allow the Petitioners' Audit**

43. In addition to seeking information from the Company, the Petitioners also notified the Company in early 2010 that it was exercising its right to conduct an audit of the Company's books and records pursuant to article 129.2 of the Amended Articles. However, since July of 2010, the Company has delayed and prevented the Petitioners from exercising their right to conduct an audit of the Company's books and records, further prejudicing the Petitioners' ability to protect the value of their investments in the Company.

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<sup>2</sup> The Company's annual audited financial statement for 2010 was belatedly provided to the Petitioners by the Company on 30 November 2011, even though it appears that such information was available as of at least 16 October 2011 if not earlier. The Petitioners are still in the process of reviewing this information, but the Company's belated disclosure of the 2010 financial statement raises further serious concerns with respect to the Company's performance and conduct of its affairs.

44. In delaying and otherwise interfering with the Petitioners' audit rights, the Company, acting through Almazeedi, has:
- (a) repeatedly refused to agree to any definitive date for the audit to proceed;
  - (b) asserted that the Petitioners must prepay the costs of the proposed audit, including the costs of the Company's lawyers and accounting service provider in connection with any proposed audit; and
  - (c) purported to require the Petitioners and their proposed auditor to execute an onerous confidentiality stipulation that sought to discharge and hold harmless the Company, Almazeedi and any of their affiliates for any misconduct that might be uncovered as a result of the audit.
45. The Petitioners reiterated their request to conduct an audit in July 2011. Since that time the Company and Almazeedi have refused to provide a confirmed date by which the audit would go forward.
46. The Company's consistent delay and interference with the Petitioners' audit rights further reflects the breakdown in the Company's relationship with its investors, with the Petitioners and the other Preference Shareholders unable to even exercise their self-help rights to investigate the state of their significant economic interests in the Company.

**G. The Company's Failure to Provide Information or Seek Approval of the Proposed Asset Swap**

47. Remarkably, Almazeedi has never sought approval from any of the Preference Shareholders regarding the Proposed Asset Swap and only disclosed the bare existence of the proposed transaction after apparently already executing an agreement to swap the assets and materially reconfigure the Company's investments. Furthermore, the Company has refused to provide the Petitioners or any of the other Preference Shareholders with the underlying transaction documents or any other relevant information regarding the Proposed Asset Swap.
48. In any event, there is no evidence that the Proposed Asset Swap is in the best interests of the Company or the Preference Shareholders. Instead, it appears to have been proposed to benefit the Manager to the detriment of the Preference Shareholders' interests in the Company:

- (a) The Company did not obtain an adequate independent valuation of the underlying assets subject to the Proposed Asset Swap. The Company claimed during or about July 2011 to have "updated" a prior valuation, but only provided that "updated" valuation to the Petitioners on 1 December 2011 and has not provided the Preference Shareholders with any other information concerning any effort to value the Company's investments or the assets to be acquired as part of the Proposed Asset Swap.
- (b) It appears that the Proposed Asset Swap may not satisfy the Company's requisite 11% IRR threshold, and Almazeedi has offered no evidence to demonstrate that the proposed transaction meets the Company's mandated investment criteria. To the extent the Company is proposing to go forward with a transaction where the projected IRR is less than 11%, it must first obtain the approval of Independent Shareholders representing at least three-fourths of all Preference Shares held by the Independent Shareholders, which it has not done.
- (c) The Proposed Asset Swap may also be a product of self-dealing or a conflict of interest. Almazeedi has asserted that one of the primary reasons to pursue the Proposed Asset Swap is to capitalise on certain opportunities which Almazeedi has admitted will only be available should the Preference Shareholders agree to the Proposed Share Redemption. Almazeedi faces an intractable conflict of interest to the extent he is pursuing the Proposed Asset Swap in order to force the Preference Shareholders into the Proposed Share Redemption and a transaction with QGEN, a company that he owns or controls. Almazeedi did not obtain an independent valuation of the Proposed Share Redemption and did not seek the approval of the Preference Shareholders with respect to the Proposed Asset Swap. It appears that Almazeedi is not pursuing the transactions in the best interests of the Company and/or its Preference Shareholders, but rather seeking to materially benefit himself with respect to the proposed QGEN transaction.
- (d) The Petitioners understand that Almazeedi and/or his affiliates have recently been engaged in an arbitration dispute with Marubeni. It is critical to determine if the consideration in the Proposed Asset Swap bears any relation to the settlement of that dispute. For example, the Petitioners understand that the

Proposed Asset Swap apparently includes an unexplained US\$4m transaction fee to be paid to Marubeni. As Almazeedi has refused to allow the Preference Shareholders to review the contracts relating to the Proposed Asset Swap, the Petitioners have been unable to properly assess this issue.

49. Despite the numerous deficiencies with the Proposed Asset Swap, the Petitioners believe that the Company is seeking to consummate the transaction in the near future and that completion is scheduled for as early as the week commencing 5 December 2011. Such an outcome is likely to seriously prejudice the interests of the Preference Shareholders and have a detrimental impact on the value of the Company's investments, and further highlights the urgent need for the relief sought in this Petition.

#### **H. Other Factors**

50. Since the formation of the Company, the Manager has been richly compensated and also the beneficiary of significant loans from the Company. The Petitioners understand that between 2003 and 2009, the Manager received approximately US\$16.3m in management fees and borrowed US\$9.3m in unsecured loans from the Company. (BTU Power Company Consolidated Financial Statements for the years 2003-2009). These significant loans and compensation amounts stand in stark contrast to the fact that the Petitioners have only received a total of US\$576,000 in dividends since their initial investment in the Company.
51. The two assets currently held by the Company have been performing and income producing for some time. Notwithstanding this, the Manager has made only one distribution to the Petitioners – in the total amount of US\$576,000 in 2005 – some six years' ago. The Petitioners have received no other distributions on their substantial investment in the Company over this lengthy period of time.
52. At the same time, the Manager has apparently expended approximately US\$12-15m of Company funds on expenses relating to Almazeedi's pursuit of exit or restructuring alternatives. Moreover, Almazeedi borrowed another US\$9.3m in a loan from the Company which he has recently proposed he be released from repaying. Almazeedi has also stated in the past that he is owed an approximately US\$9m "carry" payment. The link, if any, between these amounts is unclear to the Petitioners although it appears

likely that Almazeedi is attempting to engineer a transaction that generates him a carry comparable in value to the loan he has previously drawn on account of earnings.

## **Conclusion**

53. For the reasons set out above, it is contended that there is no appropriate alternative to liquidation for the Company and that the Company should be wound up on one or more of the following grounds:

### *Just and equitable basis*

- (a) **Oppression, Wilful Disregard and Undermining of the Petitioners' and Preference Shareholders' Rights and Interests**
  - (i) Almazeedi and the Manager have conducted the business of the Company in such a way that the rights and interest of the Petitioners and the other Preference Shareholders – the principal economic stakeholders in the Company – have been oppressed, disregarded and/or undermined such that it would be unjust and inequitable for them to be forced to remain as members in the Company or to be forcibly redeemed upon the terms proffered:
    - (1) Almazeedi and the Manager have consistently refused to provide the Petitioners and the Supporting Preference Shareholders with crucial information pertaining to their investments in the Company to which they are contractually entitled.
    - (2) In breach of its contractual obligations, the Company (acting through Almazeedi) and the Manager refuse to allow the Petitioners to exercise their audit rights in a timely fashion, or at all.
    - (3) The relationship between the Company, Almazeedi and the Manager, on the one hand, and the Petitioners and the Supporting Preference Shareholders, on the other hand, has irretrievably broken down. The Petitioners and the Supporting Preference Shareholders have justifiably lost all confidence in Almazeedi and

the Manager to manage the Company's affairs and its investments in the best interests of the Company and the Preference Shareholders.

(4) Almazeedi and the Manager are using their positions to benefit themselves to the detriment of the Company and the Preference Shareholders.

(5) Other than by presenting the Petition, due to their limited voting rights, the Petitioners and the Supporting Preference Shareholders have no ability to remove Almazeedi and/or the Manager.

(6) Since the inception of the Company, the Manager and Almazeedi have distributed to the Petitioners only US\$576,000 in dividends (despite the Company's underlying assets generating substantial earnings during that time). In stark contrast during this time the Manager and Almazeedi have apparently:

(A) spent Company funds in an amount of approximately US\$12-\$15m on expenses relating to an exit or restructuring of the Company; and

(B) borrowed an additional US\$9.3m from the Company.

(b) **Alleged Misfeasance, Lack of Probity and Loss of Confidence in Management**

(i) The serious allegations of misconduct asserted in the BTU Litigation, which include allegations of misappropriation, breach of fiduciary duty, misuse of assets, fraudulent transactions and mismanagement, coupled with the failure of the Company to provide adequate explanation or other information to the Petitioners has caused the Petitioners and the Supporting Preference Shareholders a justifiable and complete loss of confidence in the Company and in the Manager.

(ii) The Petitioners' confidence in the management of the Company has been further eroded by:

- (1) The Company's continued refusal to provide the Petitioners and the Supporting Preference Shareholders with sufficient information pertaining to their investments in the Company to which they are contractually entitled.
- (2) The Company's continued refusal to allow the Petitioners to conduct an audit of the Company's books and records pursuant to article 129.2 of the Amended Articles.
- (3) The Petitioners and the Supporting Preference Shareholders believe that the Company is poised to consummate the Proposed Asset Swap in respect of which:
  - (A) Almazeedi has failed to provide any evidence that the proposed transaction represents a good commercial bargain and/or would be in the best interests of the Company or the Preference Shareholders as the Company's principal economic stakeholders.
  - (B) No stakeholder consents have been obtained, or even sought.
  - (C) Almazeedi appears to have a conflict of interest.
  - (D) Almazeedi has failed to demonstrate that the proposed transaction satisfies the Company's contractually mandated IRR threshold.
- (4) The Company's intention to consummate the Proposed Asset Swap despite failing to obtain the requisite approvals and where the proposed transaction appears to be a product of self-dealing and intended to benefit the Manager to the detriment of the Preference Shareholders.
- (5) The Company's payment of only one nominal dividend to the Petitioners during the term of their investment whilst the Manager and Almazeedi were contemporaneously:

- (A) spending US\$12-\$15m in Company funds on expenses relating to an exit or restructuring of the Company; and
  - (B) borrowing an additional US\$9.3m from the Company.
- (c) The Need for an Independent Investigation
  - (i) For the reasons particularised in paragraph 53(a) and (b) above, it is abundantly clear that independent investigation of the Company's affairs by suitably qualified professionals is required on an urgent basis in order to protect the interests of the Preference Shareholders who have the ultimate economic interest in the Company.
- (d) Loss of Substratum
  - (i) The Company's substratum has been lost as it no longer has any ability to require the Preference Shareholders to provide further capital due to the expiry of the mandated investment period. Without further capital, the Company cannot make additional investments in accordance with the purposes set forth in the Constituent Documents and it therefore seeks to restructure itself in breach of its contractual obligations and against the wishes of a significant majority of those holding the ultimate economic interest.

54. In the circumstances, it is just and equitable that the Company should be wound up.

**YOUR PETITIONERS THEREFORE HUMBLY PRAY THAT:**

- (1) The Company be wound up in accordance with the Companies Law (2011 Revision) (the "Companies Law") to allow the JOLs (as defined below) to pursue a solvent restructuring or reorganisation of the Company which may include, but shall not be limited to:-
  - (a) The JOLs promoting a scheme of arrangement amongst the Company and its members or any class of its members in accordance with paragraph 5 of Part II of the Third Schedule to the Companies Law and section 86 of the Companies Law.

- (b) Further, or in the alternative, to sub-paragraph (a) above 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 or 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.
- (c) The JOLs investigating the claims made in the Petition against Almazeedi and the Manager and, if the JOLs are so advised, bringing such action or actions in the name of the Company as against Almazeedi and/or the Manager as may be considered appropriate.
- (2) Stuart Sybersma and Michael Penner of Deloitte & Touche, One Capital Place, George Town, Grand Cayman KY1-1109, Cayman Islands be appointed as joint official liquidators of the Company (the "JOLs").
- (3) The JOLs be authorised to exercise any of the powers listed in the Third Schedule to the Companies Law without further sanction or intervention of the Court.
- (4) The JOLs be authorised to do any act or thing considered by them to be necessary or desirable in connection with the liquidation-winding up of the Company and the winding up of its affairs for the purpose set out in paragraph 1 above.
- (5) The JOLs do file with the Clerk of the Court a report in writing of the position of the Company and the progress which the liquidators have made with the winding up of the Company, with the realisation of its assets and in relation to any other matters connected to the winding up of the Company, at such time and in such manner as the Court may direct.
- (6) The JOLs 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 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 under this Order shall be voided by virtue of section 99 of the Companies Law.
- (8) The JOLs and their staff be remunerated for their professional services and time in accordance with Part III of the Insolvency Practitioners Regulations 2008 (as amended).
- (9) The JOLs be at liberty to apply generally.
- (10) The costs of the Amended Petition and the Petitioners be paid forthwith out of the assets of the Company on the indemnity basis.
- (11) Such further or other relief, including alternative relief pursuant to section 95(3) of the Companies Law, be granted as the Court deems appropriate.

AND your Petitioners will ever pray etc.

DATED this 14<sup>th</sup> 8<sup>th</sup> day of ~~November~~ December 2011

FILED this 14<sup>th</sup> day of ~~November~~ December 2011



WALKERS

Attorneys at Law for the Petitioners

**NOTE:** This amended petition is intended to be served on the Company at its registered office.

This amended petition was presented by Walkers, Attorneys at Law for the Petitioners, whose address for service is care of their said Attorneys at Walker House, 87 Mary Street, George Town, Grand Cayman KY1-9001, Cayman Islands.

**NOTICE OF HEARING**

TAKE NOTICE THAT the hearing of this Amended Petition will take place at the Law Courts, George Town, Grand Cayman on at 10.00am.

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.