

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO. FSD 183 OF 2011 - PCJ

IN THE MATTER OF THE COMPANIES LAW (2012 REVISION)

AND

IN THE MATTER OF BTU POWER COMPANY (IN OFFICIAL LIQUIDATION)



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ORDER

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UPON THE APPLICATION OF Michael Penner and Stuart Sybersma, the Joint Official Liquidators (the "JOLs"), of BTU Power Company (in Official Liquidation) (the "Company") by Ex Parte Summons dated and filed herein on 1 May 2013 (the "Summons")

AND UPON HEARING Counsel for the JOLs

AND UPON READING the Fourth Affidavit of Michael Penner sworn herein including exhibits (the "Penner Affidavit")

IT IS HEREBY ORDERED THAT:

1. Mr Wael Almazeedi of 890 Winter Street, Suite 310, Waltham, Massachusetts, USA ("Mr Almazeedi") in his capacity as sole director of each of the Company, BTU Power Management Company, Ltd. (the "Manager") and Q GEN Industries Limited, ("QGEN" and together with Mr Almazeedi and the Manager, the "Respondents") do attend for oral examination (the "Examination") pursuant to section 103(3)(a) and section 103(5)(b) of the Companies Law (2012 Revision) (the "Companies Law") as follows:
  - a) at the offices of Deloitte at 200 Berkeley Street, Suite 400, Boston, Massachusetts, 02116, USA;
  - b) on 10, 11 and 12 July 2013;

- c) at 9.30am (local time) to be examined orally by or on behalf of the JOLs about the matters described in Schedule 1 to this Order;
- d) the Examination may be adjourned from time to time. Each session of the Examination shall last no more than four (4) hours and the Examination shall not last longer than 30 hours in total without a further order of the Court;
- e) unless otherwise agreed by the parties in writing.



2. Pursuant to section 103(3)(b) of the Companies Law, within 14 days of service of this Order on each of the Respondents, the Respondents shall transfer or deliver up to the JOLs all property belonging to the Company in the possession, custody or control of the Respondents, including but not limited to:

- a) all of the Company's books and records wherever situated and in the possession, custody or control of Mr Almazeedi, the Manager and/or QGEN and for the avoidance of doubt to include the following:
  - i. the physical and electronic accounting records, payment vouchers, payment authorisations and third party invoices for the Company;
  - ii. with respect to any expenditures categorised as recharges to the Company, the copies of any invoices received directly from the third party by the Manager or any other related companies,
- b) all communications and correspondence (including emails) relating to the affairs of the Company including, but not limited to, correspondence in respect of the following:
  - i. the Restructuring Costs (as defined in the Penner Affidavit) incurred by the Company and/or incurred by related companies purportedly on behalf of the Company;
  - ii. the Asset Swap Transaction (as defined in the Penner Affidavit) and correspondence with Marubeni Corporation in respect of the Asset Swap Transaction and/or any other potential disposal of the assets of the Company;

- iii. the general management and potential disposal of the assets of the Company;
  - iv. the purchase and sale documentation of any transactions relating to abandoned restructuring projects; and
  - v. CPC and correspondence with O&M Services and O&M Company in respect of CPC (each term as defined in the Summons),
- c) relevant legal files and related documents from the Company's former legal advisors:
- i. GTC Law in Boston;
  - ii. Wilmer Cutler (in respect of certain litigation involving the Company); and
  - iii. Foley Hoag (in respect of the Company's arbitration with Marubeni Corporation),
- d) supporting information for all payments made by the Company to the Manager during the period 1 January 2008 to 26 January 2012 including, but not limited to, the following:
- i. evidence of the calculation of the annual management fee paid by the Company to the Manager;
  - ii. with respect to third party recharges, copies of the supporting invoices for all legal and professional fees, including a detailed list of work performed which would have accompanied the invoice and all budgets prepared in respect of these costs and approvals obtained in respect of such costs;
  - iii. with respect to internal recharges, copies of supporting invoices and documentation for all reorganisation and disposal costs which total an amount of approximately US\$31,000,000 to include amongst others:
    - a. the detailed methodology of calculating recharged staffing costs, including timesheets;



- b. the detailed methodology of calculating recharged overhead costs, including the basis and reasoning for recharging such costs;
  - c. copies of invoices for all travel and accommodation costs;
  - d. copies of invoices for all professional costs including the detailed list of work performed which accompanying the relevant invoice;
  - e. copies of invoices for any entertainment expenses, including conferences;
  - f. all budgets prepared in respect of these costs and approvals obtained in respect of such costs;
  - g. all and any intercompany agreements in respect of internal recharges;
  - h. any other relevant information in support of recharging the reorganization and disposal costs,
- e) 'Quick Books' data for the Company's Islamic Portfolio in electronic form.
3. Costs reserved.
4. The JOLs have liberty to apply.

DATED the 7 day of May 2013  
FILED the 7 day of May 2013



*Cresswell J*

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**THE HONOURABLE JUSTICE CRESSWELL  
JUDGE OF THE GRAND COURT**

This Order was filed by Walkers, Attorneys at Law for the JOLs whose address for service is that of their said attorneys, 190 Elgin Avenue, George Town, Grand Cayman KY1-9001.

## SCHEDULE 1

### 1. Background

In order to improve the JOLs' knowledge of the Company's history, background and its affairs, the JOLs would ask Mr Almazeedi questions surrounding the following areas:

- a. What was the purpose for incorporating the Company?
- b. How was the Company originally capitalised?
- c. Details of all of the Company's business activities and investments (including any projects that were under consideration and/or implemented by a related party of the Company).
- d. To confirm the holding structure of the Company, the JOLs would ask questions surrounding the shareholdings of, amongst others, the following related companies: (i) Q GEN Industries Limited, (ii) QGEN Ltd., (iii) QGEN Tunisia Holdings Ltd., (iv) BTU Power Management Company Ltd., and (v) BTU Holdings Company.

### 2. Ordinary Shareholder – Q GEN Industries Limited

The JOLs are aware that 100% of the ordinary and voting shares in the Company are held by Q GEN Industries Limited ("QGEN") of which Mr Almazeedi is the sole director. To further understand the holding structure of the Company and the purpose of QGEN, the JOLs would ask Mr Almazeedi the following questions (amongst others):

- a. The JOLs understand that QGEN was formed "for the purpose of implementing a reorganisation of the Company". Given that QGEN was incorporated on 28 May 2008, why was the reorganisation not completed prior to the JOLS being appointed on 26 January 2012?
- b. Is QGEN purely a holding company?
- c. Is MW Partners the sole shareholder of QGEN?
- d. Is Mr Almazeedi the sole director and shareholder of MW Partners?
- e. What was the purpose of incorporating QGEN Ltd. and QGEN Tunisia Holdings Ltd?



- f. Who are the directors and shareholders of QGEN Ltd. and QGEN Tunisia Holdings Ltd?
- g. Did QGEN and/or MW Partners receive any funds from the Company (either directly or through any intermediary including, but not limited, to the Manager)? If so, how much, when and for what purpose?
- h. To the extent that QGEN and/or MW Partners did receive funds from the Company (directly or indirectly), what were those funds used for (including providing full details of any payments, dispositions or transfers thereof).
- i. What is the present net asset position of QGEN?

### 3. Conduct of management

The JOLs would ask questions in relation to the following areas to clarify their knowledge regarding how the Company was operated:

- a. Identify key officers and employees of the Company and provide their contact details;
- b. What was the purpose of delegating the management of the Company from a sole director of the Company to a management company (that is, BTU Power Management Company (the "**Manager**")) that was solely controlled by the same sole director of the Company (that is, Mr Almazeedi)?
- c. Did the Manager enter into any sub-agreements with any other entities?
- d. What was the management structure and responsibilities of the sole director of the Company and the Manager?
- e. Who were the service providers to the Company and the main contacts for those providers and what services did they provide and on what basis?
- f. What was the decision making process employed by the Company as regards to business strategy and investments?



- g. How were conflicts of interest dealt with and/or reconciled given that you were the sole director of both the Company and the Manager?
- h. What is the difference in the 'services' provided by the Manager under the management agreement dated 6 June 2003 (the "**Management Agreement**") and the 'services' purportedly provided under the Services Agreement dated 19 June 2010 (the "**Services Agreement**")? Why was there a need for a separate Services Agreement?
- i. What supporting documentation exists in terms of verifying and detailing the work undertaken by the Manager under the terms of the Management Agreement?
- j. What supporting documentation exists in terms of verifying and detailing the work undertaken by the Manager under the terms of the Services Agreement?
- k. How did the sole director of the Company and/or the Manager keep themselves informed of the Company's financial position, the Company's policies in relation to management and audited accounts including the allocation of responsibility for the preparation of the accounts, the basis of preparation, how regularly they were prepared, who reviewed them and who approved the accounts?
- l. What is the explanation for why the Company failed to provide audited financial statements and unaudited quarterly financial statements on a timely basis to the shareholders thereby breaching the Company's amended and restated articles of association adopted by special resolution on 15 October 2003 (the "**Articles**")?
- m. Why did the Company persistently decline to allow certain of the Company's preference shareholders to exercise their audit rights under the Articles in a timely fashion?
- n. Why did the Company fail to pay any substantial dividends to its shareholders since 2005 in spite of it receiving approximately US\$60 million in cash dividends from its investments prior to it being placed into official liquidation?



- o. How was the Manager paid its salary or management fees? Were management fees arranged to be paid directly from the Company to the Manager or via a reallocation of certain costs incurred by the Manager and recharged back to the Company?
- p. What payments were received by the Manager (or related parties) since its appointment under the terms of the relevant management agreement? What did the Manager do with such receipts? How were expenditures approved and accounted for? Were these expenditures detailed in the accounts?
- q. How were accounting records of the Company maintained and where are these records located?
- r. What is the present net asset position of the Manager?

4. **Amounts paid by the Company to the Manager shortly before the appointment of the JOLs**

The JOLs would ask questions surrounding the reason for the following payments that were made by the Company to the Manager within a few days prior to the JOLs being appointed on 26 January 2012:

- a. The purported prepayment of management fees in an amount of US\$623,000 transferred by the Company to the Manager on or around 23 January 2012;
- b. The "advance" purportedly on account of anticipated legal fees in an amount of US\$650,000 that was transferred by the Company to the Manager on or about 24 January 2012 at a time when the Company's account only held US\$699,660;
- c. The payment of legal fees in an amount of US\$250,000 paid to GTC Law, the Company's former legal advisors in Boston, on or about 24 January 2012 (in circumstances where the relevant partner of GTC law, Mike Webber, subsequently claimed to have only advised the Manager).



5. Loan of US\$9,300,000 provided by the Company to the Manager (the "Loan")

Pursuant to the terms of the Management Agreement dated 6 June 2003, the JOLs understand that the Manager appears to be able to borrow up to 5% of the aggregate capital commitments made by the Company's investors. The JOLs are aware that a number of promissory notes were entered into between the Company (acting by Mr Almazeedi as sole director of the Company) and the Manager (acting by Mr Almazeedi as sole director of the Manager) between July 2003 and September 2006 in relation to the Loan pursuant to which the Manager promised to pay the Company a total approximate amount of US\$9,300,000 (such amount being included in the Company's accounts as the Loan). The JOLs would ask questions surrounding the repayment terms of the Loan as set out in the Management Agreement including, but not limited to, the following:

- a. Pursuant to clause 7 of the Management Agreement, the Loan becomes due and payable on the earlier of: (a) 12 years after 6 June 2003; and (b) the liquidation of the Company. In addition, pursuant to each promissory note, such note becomes due and payable without notice or demand on, amongst other things, the liquidation of the Company. Now that the Company has been in liquidation since 26 January 2012, how can the Manager seriously maintain that the Loan has not been due and payable since at least that date?
- b. On 7 March 2012, the JOLs issued a statutory demand for repayment of the Loan in full within 21 days of such date but the Loan remains unpaid. Why is the Manager not able to repay the Loan?
- c. What was the purpose of entering into each promissory note?
- d. What were the sums borrowed under each promissory note used for?
- e. The JOLs are aware the interest rate on the Loan was purportedly reduced to 0% effective from 1 January 2009. Why was the interest rate reduced to 0%?
- f. From the Company's 2003 financial statements the promissory notes entered into during 2003 appear to relate to certain placement fees being paid to Mr Hayat, Evolvence Capital and BTU Ventures Inc. but the JOLs have no information in



respect of the background to any of the other promissory notes - should these placement fees (which the JOLs understand may have been treated as a loan (and therefore an asset of the Company) have been treated as unpaid capital or an expense? Were the preference shareholders of the Company aware of these placement fees? What is normal industry practice with respect to payment of placement fees?

- g. In a proof of debt submitted in the liquidation of the Company by Mr Almazeedi (in his capacity as a director of the Manager and the Company), Mr Almazeedi makes a serious allegation that a portion of the placement fee paid by the Manager to Mr Hayat and/or Evolence Capital was diverted to certain preference shareholders of the Company on the condition that such preference shareholders would agree to commit their relevant institution to an investment in the Company. Please explain the basis of this allegation and provide evidence (if any) to support such a claim? Please provide full details (including the basis for such payments) of all placement fees paid by the Manager to Evolence Capital or any other party.

**6. Restructuring Costs of US\$31,000,000**

Mr Almazeedi has apparently incurred so-called "reorganisation" or "restructuring" expenses in connection with certain reorganisation or exit schemes in an amount of approximately US\$31,000,000 (the "**Restructuring Costs**"). It has come to the attention of the JOLs that the Restructuring Costs were not authorized by the preference shareholders of the Company and appear to have been largely undertaken for the benefit of Mr Almazeedi and certain affiliated companies.

In order to understand how approximately US\$31,000,000 was incurred by the Company in respect of Restructuring Costs, the JOLs would ask questions surrounding the following:

- a. Explain how the Restructuring Costs were incurred, by whom, for what reason and over which periods of time (to be supported by all documentary evidence including original receipts from the ultimate services provider (i.e. the entity that actually carried out the work required)).



- b. Where a related party has been engaged to carry out any work in connection with the Restructuring Costs, please provide details of the related party, the work carried out, the costs recharged back to the Company and the methodology applied.
- c. Were professional advisors engaged to advise on potential restructuring options and, if so, confirm the identity of such professional advisors and provide any documentation or advice provided to, or in relation to, the Company regarding the same in respect of the proposed restructuring options?
- d. What restructuring options were developed and by which professional advisors to incur such Restructuring Costs?
- e. Were each of these restructuring options provided to the shareholders of the Company for their consideration?
- f. Did Mr Almazeedi and/or the Manager consider that spending approximately US\$31,000,000 was a proportionate amount of money to spend in planning a reorganisation of the Company which has approximately US\$110,000,000 in assets?
- g. Which investment projects are owned by QGEN, BTU Ventures Inc., BTU Holdings Company and BTU Industries Holdings (USA) Inc. and/or any other related entities but were previously expensed or paid for by the Company? Are any of the Restructuring Costs attributable to such projects?
- h. Please explain the different accounting treatment applied with respect to the Restructuring Costs and capitalising expenses.
- i. The JOLs understand that approximately \$7,500,000 in Restructuring Costs was incurred in connection with administration charges (i.e. salaries, rents, business modelling and third party service providers) and a further approximate amount of \$7,500,000 was incurred in connection with project analysis. Please detail and provide documentary evidence in respect of these amounts incurred in respect of



the Restructuring Costs. Also, please explain why such costs were treated as separate expenses rather than being paid out of the management fee.

- j. A large portion of the Restructuring Costs were incurred by related parties and recharged back to the Company. Please explain and detail the internal recharges in respect of the Restructuring Costs.

**7. Carthage Power Company s.à r.l. ("CPC")**

The JOLs understand that an amount of US\$360,000 per annum was paid from CPC to a company controlled by Mr Almazeedi for little or no consideration. In order to gain more clarity on this arrangement, the JOLs would ask questions with regards to the following:

- a. Please confirm the identity of the ultimate beneficial owners of BTU STEAG O&M Services, Ltd. ("**O&M Services**") and BTU O&M Company ("**O&M Company**").
- b. What sums have been paid to O&M Services and O&M Company and during which period of time in connection with CPC?
- c. Were the amounts paid to O&M Services and O&M Company in line with market practice?
- d. Why were payments to O&M Services and O&M Company not disclosed as related party transactions? Were these amounts made known to the Company's auditors?
- e. To whom have the sums (described in (b) above) ultimately been paid?
- f. What services were provided to CPC by O&M Services and O&M Company?
- g. Why were the operating and maintenance services diverted to ultimately a non BTU group entity?
- h. Please list all agreements entered into between the Company or the Manager with O&M Services (and provide copies of the same).



- i. Please explain the ownership structure of the Tunisian companies BTU Mena, BTU Technical Services and QGEN Tunisia Holdings Ltd (and any other BTU related Tunisian entity). The JOLs also require details as to the services provided to CPC by these Tunisian companies and the services fees received in return.

## 8. Asset Swap Transaction

The JOLs are aware that the Company (acting by Mr Almazeedi in his capacity as sole director of the Company) entered into an asset swap (the "**Asset Swap Transaction**") with Marubeni Corporation ("**Marubeni**") wherein the Company would acquire Marubeni's equity interest in CPC in exchange for the Company's indirect interests in Taweelah Asia Project Company P.J.S.C. ("**TAPCO**"). The JOLs have since concluded that the Asset Swap Transaction was not in the best interests of the Company and terminated the same.

In order to further understand the conduct of Mr Almazeedi in his capacity as sole director of the Company and the Manager in connection with the Asset Swap Transaction, the JOLs would ask questions with regard to the following:

- a. What was the provenance of the Asset Swap Transaction?
- b. Was it the opinion of Mr Almazeedi that the proposed Asset Swap Transaction was in the best interests of the Company and its preference shareholders (those shareholders who hold 100% of the economic interest in the Company) (the "**Preference Shareholders**")? If so, why?
- c. Why did Mr Almazeedi never seek approval of the proposed Asset Swap Transaction from the Preference Shareholders and only disclosed its existence after executing the agreements in relation to the Asset Swap Transaction?
- d. As the proposed Asset Swap Transaction did not satisfy the Company's mandated investment criteria, why was the approval of the Preference Shareholders not sought in accordance with the Company's Articles?





- e. Was Mr Almazeedi aware at the time of entering into the Asset Swap Transaction that this would be a conflict of interests and not in the best interests of the Company?
- f. Why was the Asset Swap Transaction structured so that a separate transaction fee deed was entered into pursuant to which an amount of US\$4,700,000 would be paid by the Company to an affiliate company of Marubeni on completion of the Asset Swap Transaction? Which entity was intended to be the ultimate recipient of the US\$ 4,700,000 transaction fee?
- g. Please detail all agreements the Company entered into with Marubeni and/or Axia Holdings B.V. (including any agreements not previously disclosed).

**9. Books and records**

As previously stated, the JOLs do not have in their possession a complete set of the books and records of the Company, which has inevitably hampered the progress of the liquidation. In the absence of the delivery up of a full set of books and records (in both paper and electronic form) for the Company, the JOLs would ask questions with regard to the following:

- a. What records (including electronic records) were kept for the Company, in what format, by whom and where?
- b. Why is it that the Company's former legal advisors have been instructed not to provide their files in connection with the Company to the JOLs?
- c. Which company owns the server(s) on which the electronic data and files relating to the Company is stored on and where is it located?
- d. Please provide details and a complete list of all bank accounts (past and present) held by the Company in all jurisdictions. The JOLs are aware of the Company's bank accounts held with HSBC in Cayman and a previous bank account with HSBC in Monaco that has subsequently been closed but please confirm the details of any other bank accounts.

- e. What was the purpose of engaging auditors located in Dubai with respect to a company located in the Cayman Islands?

