

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

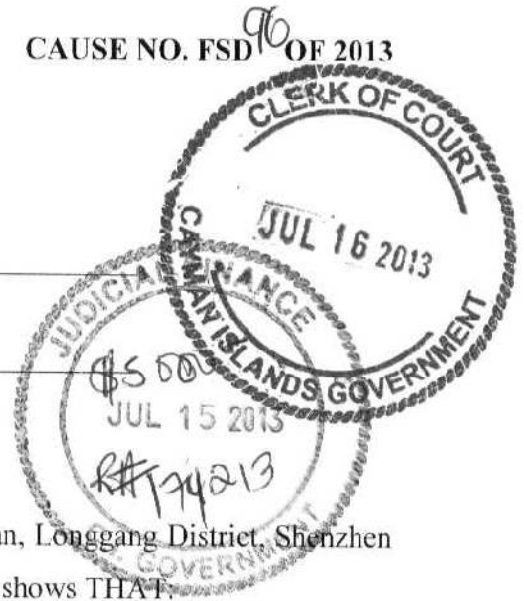
CAUSE NO. FSD ⁹⁶ OF 2013

IN THE MATTER OF THE COMPANIES LAW

AND IN THE MATTER OF HITS AFRICA LTD



WINDING UP PETITION



To: The Grand Court of the Cayman Islands

The humble petition of Huawei Technologies Co., Ltd of Bantian, Longgang District, Shenzhen 518129, People's Republic of China ("PRC") (the "**Petitioner**") shows THAT:

BACKGROUND

1. HiTs Africa LTD (the "**Company**") is a Cayman Islands exempted company established on 24 May 2007 under the laws of the Cayman Islands.
2. The registered office of the Company is situated at the offices of Trident Trust Company (Cayman) Limited, PO Box 847 GT, One Capital Place, Shedden Road, Grand Cayman, Cayman Islands.
3. The Company is engaged in business operations in the Sub-Saharan telecom markets predominantly in the United Republic of Tanzania, the Democratic Republic of the Congo and the Republic of Equatorial Guinea.
4. The Company is 92.82% owned by HITS Telecom Holding Company K.S.C. ("HITS Telecom"), a telecom holding company listed on the Kuwait Stock Exchange, with market capitalization of approximately KD 90 million as of September 2009.

THE PETITIONER

5. The Petitioner is a multi-national networking, telecommunications, services and consumer electronics company based in Shenzhen, PRC and is one of the largest manufacturers of telecommunications equipment in the world.
6. The Petitioner presents this Petition as a creditor of the Company and is entitled to do so pursuant to section 94(1)(b) of the *Companies Law (2012 Revision)* (as amended) (the “**Law**”), and does so on the basis that the Company is unable to pay its debts within the meaning of section 93 of the Law.

EVENTS

7. Pursuant to a Purchase Long Form Agreement dated 28 April 2008 (as amended by the First Amendment to the Purchase Long Form Agreement dated 27 January 2009 (the “**First Amendment**”) and the Amendment to Purchase Long Form Agreement dated 24 June 2009 (the “**Second Amendment**”), and as supplemented by the Binding Letter of Intent dated 29 April 2008 (the “**Binding Letter**”) (together with the First Amendment, Second Amendment and the Binding Letter, the “**Agreement**”), entered into between the Company, Excellentcom Tanzania (“**Excellentcom**”), the Petitioner and Huawei Technologies (Tanzania) Co., Ltd (“**Huawei Tanzania**”) (a related company of the Petitioner):
 - a) the Petitioner and Huawei Tanzania were to provide telecom equipment and services to Excellentcom; and
 - b) the Company was to be “*jointly and severally responsible with Excellentcom...in respect of all obligations including but not limited to payments, repayments and provision of security.*” (paragraph 2 of the Binding Letter)
8. Furthermore, pursuant to clause 42.4 of the Purchase Long Form Agreement, the Company was to make payment in respect of offshore portions and onshore portions of the work done under the Agreement to the Petitioner and Huawei Tanzania respectively.

“Onshore” work represents work done within the United Republic of Tanzania while “offshore” work represents work done elsewhere, including in respect of the manufacturing and shipping of telecommunications equipment from China.

9. In accordance with the Agreement and as acknowledged by the Acknowledgment Letter dated 25 June 2010 (the “**Acknowledgment Letter**”), Excellentcom has accepted receipt of equipment and services in the amount of USD34,001,148.88. Against this, the Petitioner has set off the sum of USD12,697,680.62 (of which USD4,070,000 was deposited into the bank account of the Petitioner and USD8,627,680.12 was deposited into the bank account of Huawei Tanzania) which had already been paid as a deposit in accordance with Clause 1.2 of the Second Amendment. The resulting sum of USD21,303,468.26 (the “**Outstanding Debt**”) remains due and owing despite several requests for payment.
10. Pursuant to Clause 4 of the Second Amendment, *“the Company accepts and agrees to pay the penalty at the rate of 0.03% of the outstanding amount calculated on a daily basis from the due date until full settlement of such outstanding amount.”*
11. From the date of the Acknowledgement Letter (i.e. 25 June 2010) to the date hereof (9 July 2013), interest has accrued in the sum of USD7,094,054.93 (i.e. $(0.03\% \times 21,303,468.26) \times 1110$ days), and continues to accrue at the rate of USD6,391 per day.
12. The sum of the Outstanding Debt and the accrued interest is USD28,397,523.19.

GROUNDS FOR THE PETITION

13. The Petitioner presents this Petition on the ground that the Company is insolvent and unable to pay its debts (s.92(d) and s.93(a) and (c) of the Law).
14. On 30 October 2010, the Petitioner and its related company, Huawei Tanzania sent a letter to the Company and Excellentcom which sought payment of various debts due and owing to them (including the Outstanding Debts) under the Agreement. No response

whatsoever was received from either the Company or Excellentcom in that regard to that letter or earlier letters to the Company in 2009.

15. The Petitioner has also taken steps (in 2010) to recover the Outstanding Debt (plus interest) from Excellentcom in Tanzania and issued a winding up petition in that regard, as well as litigation in Kuwait against Hits Telecom. To date none of the actions taken by the Petitioner have resulted in the recovery of any of the Outstanding Debt or interest.
16. On 6 February 2013, the Petitioner sent a further letter to the Company which set out the basis upon which the Outstanding Debt was due and owing and sought payment of that amount by 11 February 2013.
17. By letter dated 7 February 2013 the Company denied that the Outstanding Debt was due and owing however it is the Petitioner's case that there is no *bona fide* basis for that denial. Certain goods and services were provided by the Petitioner to the Company, as is acknowledged by Excellentcom. Pursuant to the Agreement, the Company was jointly and severally liable with Excellentcom for payment of those goods and services.
18. On 25 March 2013, the Petitioner served the Company with a Statutory Demand (the "**Statutory Demand**") under section 93 of the Law which sought payment of the Outstanding Debt plus accrued interest in accordance with the terms of the Agreement.
19. On 2 April 2013, the Petitioner received a letter from the Company which again denied the particulars of the debt set out in the Statutory Demand but which did not identify the basis for disputing that debt. Further, the Company did not apply to set aside the Statutory Demand, either within 21 days or at all.
20. Accordingly, in accordance with section 93 of the Companies Law, the Petitioner brings this Winding Up Petition against the Company on the grounds that the Company is insolvent and unable to pay its debts.

YOUR PETITIONER THEREFORE HUMBLY PRAYS THAT:

1. the Company be wound up by the Court under the provisions of the Law;

2. Mr Keiran Hutchison of Ernst & Young Ltd of 62 Forum Lane, Camana Bay, P.O. Box 510, KY1-1106 Grand Cayman be appointed as Official Liquidator of the Company (the “**Liquidator**”);
3. the Liquidator shall not be required to give security for his appointment;
4. the Liquidator shall be authorised to exercise any of the powers conferred on him by the Court pursuant to Section 110(2) and Parts I and II of the Third Schedule of the Law without the further sanction or intervention of the Court;
5. the Liquidator be authorised to carry out any act or exercise any power considered by him to be necessary or desirable in connection with the liquidation of the Company and the winding-up of its affairs and to prevent the dissipation of the Company’s assets;
6. no suit, action or other proceeding shall be proceeded with or commenced against the Company except with the leave of the Court and subject to such terms as the Court may impose;
7. No disposition of the Company’s property by or with the authority of the Liquidator in carrying out his duties and functions and exercise of his powers shall be voided by virtue of section 99 of the Law;
8. the Liquidator do file with the Clerk of the Court a report in writing detailing the present position and progress made to date with the winding up of the Company with the realisation of the assets thereof and to any other matters connected to the winding up of the Company, as the Court may direct;
9. the Liquidator be at liberty to appoint counsel, attorneys, and/or any other professional advisors, whether in the Cayman Islands or elsewhere as he may consider necessary to advise and assist him in the performance of his duties and on such terms as he may think fit and to remunerate them out of the assets of the Company;
10. the Liquidator and his staff be remunerated out of the assets of the Company in accordance with Part III of the Insolvency Practitioners Regulations 2009 (as amended);

11. the Liquidator be at liberty to apply generally;
12. the costs of the Petition and the Petitioner be paid out of the assets of the Company on the indemnity basis; and
13. such further or other relief be granted as the Court deems appropriate.

Dated the 9th day of July 2013

Filed the day of July 2013

Harney Westwood & Riegels

Harney Westwood & Riegels
Attorneys-at-Law for the Petitioner

NOTE:
It is intended to serve this Petition upon:
The Registrar
HiT's Africa Ltd, at its registered office

THIS PETITION is filed by Harney Westwood & Riegels, Attorneys-at-Law for the Petitioner, whose address for service is 4th Floor, Harbour Place, 103 South Church Street, PO Box 10240, Grand Cayman KY1-1002, Cayman Islands (Ref: INM/JJN/044187 0004).

NOTICE OF HEARING

TAKE NOTICE THAT the hearing of this Petition will take place at the Law Courts, George Town, on *28th August,* 2013 at *9.30 a.m*

Any correspondence or communication with the Court relating to the hearing of this Petition should be addressed to the Registrar of the Financial Services Division of the Grand Court at PO Box 495, Grand Cayman KY1-1106, Telephone 345-949-4296.