

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

CAUSE NO: FSD 273 OF 2020 (IKJ)

**IN THE MATTER OF THE COMPANIES LAW (2020 REVISION)
AND IN THE MATTER OF ENERGICON HOLDINGS (CAYMANS)**



WINDING UP PETITION

To the Grand Court

The humble petition of Tempest PE Fund 6, a company incorporated under the laws of the Cayman Islands, with its registered office at Intertrust Corporate Services (Cayman) Limited, 190 Elgin Avenue, George Town, Grand Cayman, KY1-9005, Cayman Islands (the "**Petitioner**") shows that:

Introduction

- 1 Energicon Holdings (Caymans) (the "**Company**") was incorporated in the Cayman Islands on 10 November 2016 as an exempted company limited by shares under the Companies Law (2020 Revision) ("**Companies Law**"). The registered office of the Company is c/o Intertrust Corporate Services (Cayman) Limited, 190 Elgin Avenue, George Town, Grand Cayman, KY1-9005, Cayman Islands.
- 2 The Company's sole or primary asset comprises all of the shares in Neos Exploration, Inc ("**Neos**"), a Delaware corporation.
- 3 Neos's sole or primary asset comprises all of the shares in Energicon SA, an Argentinian company.
- 4 Neos is a holding company and does not generate any revenue.
- 5 Energicon SA holds oil and gas exploration licences issued by the Argentinian government.
- 6 Energicon SA is not generating any revenue and Rothesay Limited the shareholder of the Petitioner (along with other stakeholders) is funding Energicon SA's working capital requirements.

7 The Company is therefore not generating any revenue, nor is it receiving any dividends from its subsidiaries nor does it have any readily realisable assets;

Particulars of the Debt

8 On 13 August 2018, the Company entered into a Loan Note Instrument constituting up to US\$32,000,000 ten percent (10%) loan notes (the "**Loan Note Instrument**"). On the same date the following loan notes (the "**Loan Notes**") were issued to the Petitioner by the Company under the Loan Note Instrument:

8.1 Tranche 1 Loan Notes in a principal amount of US\$3,000,000 with a redemption date of 30 November 2018 (the "**Senior Notes**");

8.2 Tranche 2 Loan Notes in a principal amount of US\$15,000,000 with a redemption date of 31 May 2019 (the "**Tranche 2 Loan Notes**").; and

8.3 Tranche 3 Loan Notes in a principal amount of US\$7,000,000 with a redemption date of 31 May 2019 (the "**Tranche 3 Loan Notes**" and, together with the Tranche 2 Loan Notes, the "**Junior Notes**").

9 Clause 3 of the Loan Note Instrument states that:

"the Company shall comply with the terms of the Certificates for the Loan Notes and shall perform and observe the conditions and the Loan Notes shall be held subject to the Conditions...In particular, but without limitation, the Company shall in all respects comply with the provisions as to redemption and repayment of the Loan Notes and payment of interest thereon"

10 Paragraph 4 of the Conditions states that:

"the Company shall repay the principal moneys outstanding, and all accrued but unpaid Interest, on the relevant Loan Notes in full on the relevant Final Redemption Date"

11 The Final Redemption Date is set out in paragraph 1.1 of the Conditions and states that in respect of the Senior Loan Notes this was 30 November 2018 and in respect of Junior Loan Notes this was 31 May 2019.

12 As at the date of this Petition, the Company has not made repayments in respect the Loan Notes or accrued interest in breach of clause 3 of the Loan Note Instrument and paragraph 4 of the Conditions.

13 Paragraph 3 of the Conditions provides:

"...the Majority Priority Noteholders shall be entitled to require the Loan Notes to be repaid at par by the Company together with interest accrued thereon up to and including the date of repayment whilst any of the following is continuing:

(a) *The Company fails to observe or perform any of its obligations under this instrument or the Governing Documents if such failure is not capable of remedy or is capable of remedy but continues for 14 days after written notice has been given"*

14 The Petitioner is the Majority Priority Noteholders under paragraph 1.1 of the Conditions.

15 On 27 November 2019, the Petitioner, in accordance with paragraph 3 of the Conditions:

15.1 gave notice that the Company had failed to observe and perform its obligations under the Loan Notes and Loan Note Instrument;

15.2 declared that then outstanding sum of US\$26,285,479 ("**Original Sum Demanded**") (comprising US\$3,000,000 in respect of the Senior Loan Notes; US\$22,000,000 in respect of the Junior Loan Notes; US\$89,589 in respect of accrued interest under the Senior Loan Notes to 30 November 2018; and US\$1,195,890 in respect of accrued interest under the Junior Loan Notes to 31 May 2019) was immediately due and payable;

15.3 demanded that the Company pay the Petitioner the sum of US\$26,285,479 within 14 days; and

15.4 reserved the right also to claim interest for the period post the contractual maturity of the relevant notes if the Company failed to make the payments demanded by the date stipulated.

16 The Company failed to make payment to the Petitioner within the time period stipulated or at all.

Correspondence with the Company

17 The Petitioner served a statutory demand on the Company at its registered office on 8 October 2020, claiming the sum of at least the principal amount of US\$25,000,000 and interest of US\$5,690,748 calculated up to and including 30 September 2020, being a total indebtedness of US\$30,690,748 ("**Updated Sum Demanded**"), requiring payment within 21 days.

18 At the date of the Statutory Demand, the outstanding principal sum was US\$25,000,000, comprising:

18.1 US\$3,000,000 in respect of the Senior Loan Notes; and

18.2 US\$22,000,000 in respect of the Junior Loan Notes.

19 With respect to interest, at the date of the Statutory Demand, the outstanding interest sum was US\$5,690,748, comprising:

19.1 US\$90,411 in respect of accrued interest under the Senior Loan Notes to 30 November 2018;

19.2 US\$592,451 in respect of accrued interest under the Senior Loan Notes from 1 December 2018 to 30 September 2020;

19.3 US\$1,776,860 in respect of accrued interest under the Junior Loan Notes to 31 May 2019;

19.4 US\$3,231,026 in respect of accrued interest under the Junior Loan Notes from 1 June 2019 to 30 September 2020.

20 As at the date of this Petition, the Company has not responded to the Statutory Demand.

Solvency of the company

- 21 Upon the expiry of the 21 day period following service of the Statutory Demand, namely on 6 November 2020, if the Company has failed to pay the Updated Sum Demanded pursuant to section 93(a) of the Companies Law (2020 Revision), the Company shall be deemed to be unable to pay its debts.
- 22 Further or alternatively, the Company is unable to pay its debts because:
- 22.1 From at least 10 December 2019, the Original Sum Demanded has been due and payable;
- 22.2 Since 30 September 2020, the Updated Sum Demanded has been due and payable;
- 22.3 The Company has failed to pay the debts that are due and payable to the Petitioner;
- 22.4 As set out in paragraph 2 to 7 above, the Company has no cash or assets available to pay its debts.

Grounds for Winding Up

- 23 Pursuant to section 92(d) of the Companies Law, the Company should be wound up because it is unable to pay its debts.

Nomination of Joint Official Liquidators

- 24 The Petitioner nominates Kenneth Krys and Neil Dempsey of KRyS Global, Governors Square, Building 3, Ground Floor, 23 Lime Tree Bay Avenue, PO Box 31237, Grand Cayman, KY1-1205, Cayman Islands for appointment as joint official liquidators of the Company.

YOUR PETITIONER THEREFORE HUMBLY PRAYS THAT:

- (1) The Company be wound up in accordance with the Companies Law.
- (2) Kenneth Krys and Neil Dempsey of KRyS Global, Governors Square, Building 3, Ground Floor, 23 Lime Tree Bay Avenue, PO Box 31237, Grand Cayman, KY1-1205, Cayman Islands be appointed as official liquidators of the Company.

This PETITION was presented by Maples and Calder, attorneys for the Petitioner, whose address for service is Po Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands (Ref: CJM/PYS/778182.01/64333809).

- (3) The Liquidators shall not be required to give security for their appointment.
- (4) The Liquidators shall have the power to act jointly and severally in their capacity as Liquidators of the Company.
- (5) No disposition of the Company's property by or with the authority of the Liquidators in carrying out their duties and functions and exercise of their powers under any Order granted pursuant to this Petition shall be voided by virtue of section 99 of the Companies Law.
- (6) The Liquidators shall have the power to engage staff (whether or not as employees of the company) to assist that person in the performance of that person's functions.
- (7) The Liquidators be at liberty to appoint counsel, attorneys and 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 in accordance with Companies Winding Up Rules, O.25.
- (8) The Liquidators be at liberty to apply generally.
- (9) The costs of the Petitioner of and incidental to the Petition be paid out of the assets of the Company as an expense of the liquidation.
- (10) Such further or other relief be granted as the Court deems appropriate.

AND your Petitioner will ever pray etc.

Dated the 5th day of November 2020.

Maples and Calder.

Maples and Calder

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

This PETITION was presented by Maples and Calder, attorneys for the Petitioner, whose address for service is Po Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands (Ref: CJM/PYS/778182.01/64333809).

NOTICE OF HEARING

TAKE NOTICE THAT the hearing of this petition will take place at the Law Courts, George Town, Grand Cayman, on **7th December 2020** 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.