



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

**CAUSE NO: FSD OF 2021 ( )**

**IN THE MATTER OF SECTIONS 129 AND 151(3) OF THE COMPANIES ACT (2021 REVISION)  
AND IN THE MATTER OF KE NAMIBIA COMPANY (IN VOLUNTARY LIQUIDATION)**

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**PETITION FOR DIRECTIONS**

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**TO THE GRAND COURT OF THE CAYMAN ISLANDS**

The humble petition of Appleby Global Services (Cayman) Limited (**AGS**) in its capacity as voluntary liquidator of the Company (**VL**) of 71 Fort Street, George Town, Grand Cayman, Cayman Islands shows that:

1. KE Namibia Company (**Company**) was incorporated on 17 August 2020 (Registration number 365398) as an exempted company under the Companies Act of the Cayman Islands (as Revised) (the **Act**) for an unlimited duration.
2. The objects for which the Company was established are unrestricted and the Company has full power and authority to carry out any object not prohibited by the laws as provided by Section 7(4) of the Act.
3. The registered office of the Company is care of AGS of 71 Fort Street, George Town, Grand Cayman, Cayman Islands.
4. Portfolio Holdings (**PH**) is the sole member of the Company.

**Voluntary liquidation and the pathway to dissolution**

5. On 19 August 2021 AGS was appointed as VL.
6. On 21 September 2021 a report and account was prepared by the VL (**Final Account**). The Final Account stated among other matters that the Company had no assets or liabilities and that there were no surplus assets available for distribution.

7. The Final Account was subsequently approved at the duly convened final general meeting of the Company held on 21 September 2021.
8. On 21 September 2021 a Companies Winding Up Rules Form 37 was filed with the Registrar of Companies (**ROC**) and a certificate of dissolution was ordered.
9. On 24 September 2021, the ROC returned a certificate of dissolution (**Dissolution Certificate**) which stated that the Company would be deemed to be dissolved on 21 December 2021 (**Dissolution Date**).

#### **Late discovery of Receivable**

10. On 1 October 2021, the VL became aware that a transaction (which would involve a \$15 million receivable being passed through the Company) had been overlooked by the Company's directors and had not been drawn to the attention of the VL. The Final Account, therefore, took no account of a \$15 million asset of the Company (**Receivable**).
11. The details how the Receivable arose and how the Company, SNU (as defined below), PH and DPM (as defined below) intended that the Receivable should be treated are set out below.
  - (a) On 9 February 2021, the Company and Shell Namibia Upstream B.V. (**SNU**) entered a deed of assignment pursuant to which among other matters the Company agreed to transfer to SNU its 45% participating interest in a petroleum exploration license granted under the Petroleum (Exploration and Production) Act of Namibia (the **Transfer**). As consideration for the **Transfer**, SNU agreed to pay the Receivable to the Company;
  - (b) Following the above payment of the Receivable by SNU to the Company, it is intended that the following steps would be taken:
    - (i) The Company would distribute and transfer the Receivable to PH (a group company);
    - (ii) PH would subsequently distribute and transfer the Receivable to B.V. Dordtsche Petroleum Maatschappij (**DPM**, another group company); and
    - (iii) DPM would subsequently contribute the Receivable to SNU in a form of investment in SNU (which has been previously recognized in PH).
12. The above treatment of the Receivable (the **Agreed Transaction**) therefore involves the Company (momentarily) receiving and divesting itself of the Receivable as part of an arrangement wholly between companies in the group of which the Company is a part.

**Approach to ROC**

13. Following the discovery of the Receivable and the need to effect the Agreed Transaction, the Company took legal advice from its Cayman attorneys Appleby (Cayman) Ltd. (**Appleby**) who subsequently approached the ROC requesting its approval to the Agreed Transaction being effected prior to the Dissolution Date.
14. In its correspondence with ROC, Appleby noted that (a) section 151(3) of the Act provides for an application to be made for a deferral of the date at which the dissolution is to take effect, but that (b) it is not necessary, in the present case, to seek a deferral of the dissolution date in order to complete the transaction required to distribute the asset (because the Agreed Transaction could be effected prior to the Dissolution Date), and (c) the Act does not mandate the re-issue of the Final Account in circumstances such as these. In light of these considerations, Appleby inquired *'whether ROC would be comfortable in allowing the subject distribution to occur and for no further action to be taken or Court order to be sought'* as it appeared was permissible under, not prohibited by, the Act.
15. On 25 November 2021, the ROC replied to Appleby's inquiry in the following terms:

Following our recent discussion regarding discovery of an asset of substantial value subsequent to filing the final return and whether or not an Order of the Court is necessary to stay the dissolution to allow for the said asset to be disposed of; a review of the relevant legislation failed to identify a provision which confers powers on the Registrar to make a decision relating to the winding-up of the Company subsequent to the final return being submitted for recording. In view of the foregoing, I respectfully suggest that any queries relating to the aforementioned matter of disposition of an asset be re-directed to the Court.
16. Given the above response by ROC, the VL issued this application for orders approving the consummation of the Agreed Transaction, before the Dissolution Date.

**YOUR PETITIONER(S) THEREFORE HUMBLY PRAY(S) THAT:**

1. The VL be authorised to facilitate the receipt by the Company of the Receivable and subsequently the completion of the distribution and transfer of the Receivable to PH, provided that such transfer to PH be completed by no later than 20 December 2021.
2. The VL shall be relieved of any obligation to prepare a revised Final Account, hold an additional final general meeting of the Company or file a fresh Form 37 with the ROC.
3. The Company shall be dissolved on 21 December 2021, as provided in the Dissolution Certificate.

4. Such further or other relief be granted as the Court deems appropriate.

Dated this 30th day of November 2021

Filed this 30th day of November 2021



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**APPLEBY (CAYMAN) LTD.**  
Attorneys-at-Law for the Petitioners

**NOTE:** It is not intended to serve this petition on any party

**THIS PETITION** was presented by Appleby (Cayman) Ltd., of 71 Fort Street, PO Box 190, Grand Cayman KY1-1104, Cayman Islands (Ref. 450225.0002/THW) Attorneys-at-Law for the Petitioner.

**NOTICE OF HEARING**

**TAKE NOTICE THAT** the hearing of this Petition will take place at the Law Courts, George Town, Grand Cayman on \_\_\_\_\_ at \_\_\_\_\_ am/pm.

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 no. 349 949 4296.