

The Insolvency Act 2003
The Insolvency Rules 2005

Originating Application
(Company)

Rule 14



The Eastern Caribbean Supreme Court In the High Court of Justice, Commercial Division	
Matters No.	BVIHCV (COM) 154 OF 2017
Applicant:	KEXBY FINANCE LIMITED
Respondent:	ASIA HARIMAU INVESTMENTS LIMITED

IN THE MATTER OF:-

ASIA HARIMAU INVESTMENTS LIMITED

For Court Use Only

To: ASIA HARIMAU INVESTMENTS LIMITED c/o Vistra (BVI) Limited, formerly Offshore Incorporations Limited, of Vistra Corporate Services Centre, Wickhams Cay II, Road Town, Tortola, British Virgin Islands

This application will be heard by the Master/Judge at

on the 9th day of October 2017 at _____ o'clock with a time estimate of 1 hour.

If you do not attend at the time shown the Court may make an order in your absence.



We, HARNEY WESTWOOD & RIEGELS of Craigmuir Chambers, Road Town, Tortola on behalf of the Applicant, Kexby Finance Limited apply for an order under Sections 159(1)(a) and 162(1)(a) of the Insolvency Act 2003 that:

- 1 Ms. Nilani Perera of Borrelli Walsh, 4/F Palm Grove House, P.O. Box 3339, Road Town, Tortola VG1110, British Virgin Islands be appointed liquidator of the Respondent, Asia Harimau Investments Limited;
- 2 The costs of this Application be costs in the liquidation of the Respondent; and
- 3 Such further or other relief as this Honourable Court deems fit.

A draft of the order sought is attached.

The grounds upon which we seek the order are set out in the affidavit of Patrick Selley, attached, and are as follows:

- 1 The Respondent is a British Virgin Islands (BVI) business company, which was incorporated in the BVI on 17 July 2009 and allocated company number 1540543. Its Registered Agent is Vistra (BVI) Limited and its Registered Office is at Vistra Corporate Services Centre, Wickhams Cay II, Road Town, Tortola, British Virgin Islands. The Applicant is also a BVI business company, which was incorporated in the BVI on 18 September 2001.
- 2 The Respondent issued to the Applicant a loan note certificate dated 15 April 2016, which represents 25 notes forming an aggregate principal amount of US\$250,000 (the *Loan Note Certificate*).
- 3 The principal amount of the loan notes, US\$250,000, together with quarterly payments of interest was due to be paid by the Interest Due Dates as defined in the Loan Note Certificate.
- 4 The Interest Due Dates were varied pursuant to a Loan Notes Variation Agreement (the *Variation Agreement*) dated 4 July 2017. The default provisions in clause 2 of the Variation Agreement provides that the Respondent would be considered in default if payment of any of the sums due was not received by the Applicant in

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MAY 2017

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cleared funds within 3 business days of the due date and the Applicant shall be entitled to immediate payment of all sums due regardless of the payment dates provided in clause 2 of the Variation Agreement.

- 5 An interest payment of US\$72,696.43 was due on 14 July 2017 but was not paid. Therefore by three business days thereafter on 19 July 2017 the Respondent was in default of the Variation Agreement. The sum of US\$72,696.43 was only received by the Applicant on 24 July 2017, five days after the default, which default under the terms of the Variation Agreement was irremediable.
- 6 On 31 July 2017 the principal payment of US\$ 50,000 was not paid and this non-payment constituted a further default by 4 August 2017. In recognition of these two events of default and the fact that all sums owing under the Variation Agreement fell immediately due, the parties sought to calculate the full amount payable as a result of the defaults.
- 7 After the calculations were provided by the Applicant, the Respondent made a further payment of US\$49,695.82 on 23 August 2017, again, not in full and final settlement of the outstanding sum.
- 8 Mr Mark Pawley, signed the Variation Agreement on behalf of the Respondent as a Director and also entered into a Personal Guarantee of the Respondent's liabilities under the Variation Agreement.
- 9 A demand was made on Mark Pawley, pursuant to his Personal Guarantee of sums due under the Variation Agreement. The demand was made on 28 August 2017 by Singapore solicitors David Lim & Partners, who were instructed by the Applicant. On 30 August 2017 Mark Pawley responded to the demand letter served on him by David Lim & Partners by saying "We are not (btw) disputing the sums your client claims, there were some issues with the banking system".
- 10 Mark Pawley is a director of the Respondent and he has thereby acknowledged and agreed that the Respondent owed \$225,821.57 plus daily interest at the date of the demand letter. Notwithstanding Mark Pawley's acknowledgement and agreement to settle the outstanding balance in full, the balance has not been paid and remains

outstanding from the Respondent. The Respondent therefore remains in breach of its obligations pursuant to the Variation Agreement, is indebted to the Applicant and is unable to pay its debts as they fall due.

- 11 The Respondent is insolvent pursuant to section 8(1)(c)(ii) of the Insolvency Act, 2003.

The names and addresses of the persons on whom it is intended to serve this application are as follows:

ASIA HARIMAU INVESTMENTS LIMITED
c/o Vistra (BVI) Limited
Vistra Corporate Services Centre
Wickhams Cay II
Road Town, Tortola
British Virgin Islands

The names and addresses of the persons required to be given notice of this application pursuant to the Act and the Rules (if any) are as follows:-

ASIA HARIMAU INVESTMENTS LIMITED
c/o Vistra (BVI) Limited
Vistra Corporate Services Centre
Wickhams Cay II
Road Town, Tortola
British Virgin Islands

This application is filed by Harney, Westwood & Riegels, Legal Practitioners for the Applicant,
whose address for service is:

Craigmuir Chambers
P.O. Box 71
Road Town, Tortola
British Virgin Islands

Dated 31 August 2017



Kimberly Crabbe-Adams
Harney Westwood & Riegels
Legal Practitioners for the Applicant

OffshoreAlert

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IN THE MATTER OF:-

ASIA HARIMAU INVESTMENTS LIMITED

Harney Westwood & Riegels
Legal Practitioners for the Applicant
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HARNEYS