



Vladimir Gusinski  
Second Affidavit  
Exhibit "VG-2"  
Sworn: 8<sup>th</sup> January 2019  
Filed: January 2019

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 6 of 2019 (CRJ)

IN THE MATTER OF THE COMPANIES LAW (2018 REVISION)

AND IN THE MATTER OF NEW MEDIA DISTRIBUTION COMPANY SEZC LIMITED



SECOND AFFIDAVIT OF VLADIMIR GUSINSKI

I, **VLADIMIR GUSINSKI** of 4 Via Maistra, St Moritz, 7500, Switzerland, do hereby **MAKE OATH AND SAY** as follows:-

**A. Introduction**

1. I am the Chief Executive Officer of New Media Distribution Company SEZC Limited (the "**Company**"), an exempted company with limited liability incorporated initially in Delaware in June 2001 and then registered by way of continuation on 13 January 2010 in the Cayman Islands as an exempted company and as a special economic zone company under the laws of the Cayman Islands, and having its registered office at Maples Corporate Services Limited, P.O. Box 309, Ugland House, South Church Street, George Town, Grand Cayman, KY1-1104, Cayman Islands.
2. I am duly authorised to make this affidavit in support of the ex parte summons seeking, *inter alia*, an order that David Griffin and Andrew Morrison both of FTI Consulting (Cayman) Ltd of Suite 3212, 53 Market Street, Camana Bay, PO Box 30613, Grand Cayman, KY1-1203 be appointed as joint provisional liquidators ("**JPLs**") pursuant to section 104(3) of the Companies Law (2018 Revision) (the "**Companies Law**").
3. In my above noted capacity, I have been closely involved in this matter on behalf of the Company at all material times and, save where the contrary is stated to be the case, the facts

and matters to which I depose are within my own knowledge and are true. Where the facts and matters are not within my own knowledge, the source of my knowledge is stated and the facts and matters concerned are true to the best of my knowledge and belief. Nothing in this affidavit is intended to waive privilege in respect of the matters referred to and privilege is not being waived.

4. There is now produced and shown to me a paginated bundle of documents marked "VG-2" which I shall refer to in this affidavit. Where I refer to a document in exhibit VG-2, I am referring to the paginated page reference.
5. By virtue of the special resolution passed by a majority of the preferred shareholders and a special majority of the ordinary shareholders at an Extraordinary General Meeting ("EGM") of the Company, held on 8 January 2019 at 3:30pm, it was resolved to authorise the directors to present a winding-up petition in respect of the Company and to seek the appointment of provisional liquidators to investigate the possibility of a restructuring of the Group. At **pages 1 to 10** is a copy of the minutes of the EGM, as well as various waivers of notice from the Company's shareholders.
6. The contents of this affidavit are as follows:
  - A. The Ex Parte Summons [at page 3]
  - B. The Company as petitioner [at pages 3 to 5];
  - C. The Group [at pages 5 to 6];
  - D. The Credit Facility Agreement, including:
    - (i) Relevant terms of the Agreement [at page 6 to 7];
    - (ii) Negotiations between the parties [at pages 7 to 8].
  - E. The English proceedings, including:
    - (i) The High Court proceedings [at page 8 to 9];
    - (ii) The Arbitral Tribunal proceedings [at page 9];

- F. The Company's financial position and creditors [at pages 9 to 12];
- G. Proposed Restructuring [at page 12]; and
- H. Conclusion [at page 12].

**A. The Ex Parte Summons**

- 7. I make this affidavit in support of the Ex Parte Summons (the "**Summons**"), which seeks the following orders:
  - 7.1 David Griffin and Andrew Morrison both of FTI Consulting (Cayman) Ltd of Suite 3212, 53 Market Street, Camana Bay, PO Box 30613, Grand Cayman, KY1-1203 be appointed as joint provisional liquidators ("**JPLs**") of the Company;
  - 7.2 The costs of and incidental to this summons be paid out of the assets of the Company as an expense of the liquidation, to be taxed if not agreed; and
  - 7.3 Such further orders and directions as the Honourable Court deems just.
- 8. The JPLs have consented to the filing of the Summons and have consented to act as the JPLs of the Company.
- 9. In addition, the Company has been informed by the JPLs that they will, should this Honourable Court be minded to appoint them as such, shortly engage with all creditors of the Company and look to present a compromise to those creditors, in order to maximise returns to the Company's stakeholders. In that respect, the Company is proposing to restructure the Group (as defined below) in the manner set out below, in order to enable it to allocate sufficient funds to finance the ongoing (and future, new) TV productions that will, in turn, enable it to generate sufficient cash-flow and profits and to repay outstanding debts to its creditors, which will guarantee a better return to all of its stakeholders.

**B. The Company as petitioner**

- 10. The Company was initially incorporated in Delaware June 2001 and then registered (ROC 235939) in the Cayman Islands by way of continuation on 13 January 2010 as an exempted

company and as a special economic zone company under the laws of the Cayman Islands. By special resolution of the Company dated 13 January 2010, the Company changed its name from New Media Distribution Company L.L.C. to New Media Distribution Company Ltd. **At pages 11 and 12 of exhibit VG-2** are true copies of the Certificate of Registration by Way of Continuation and Certificate of Incorporation on Change of Name.

11. The share capital of the Company is US\$11,350 divided into 1,000,000 Ordinary Shares of a par value of US\$0.01 each and 135,000 Preference Shares of a par value of US\$0.01 each. The Company and its shareholders entered into a Shareholders Agreement dated 13 January 2010.
12. By written resolution of the shareholders of the Company dated 22 October 2013, the Company passed a special resolution changing its name from New Media Distribution Company Ltd to New Media Distribution Company SEZC Ltd. The memorandum and articles of association of the Company currently in effect were amended and restated and are exhibited hereto **at pages 13 to 61 of exhibit VG-2**.
13. The objects for which the Company was established are unrestricted. The Company's principal business has been the production of various television series in the Russian language and it carries on business in Europe, Gibraltar, Switzerland and the Cayman Islands (in respect of the latter, for the purposes that are ancillary to, or in furtherance of, the business of the Company carried on outside the Cayman Islands).
14. Since about late 2005, the Company's production of various television series in the Russian language have been for sale in the markets spanning across Russia, Ukraine, other CIS countries, Europe, USA, and Canada. Historically the two largest clients of the Company are among the biggest television channels in Russia - NTV and RTR. Until 2010 and prior to the reorganisation of the Company (referred to under 'The Group' below), the Company used to have a direct contractual relationship with NTV.
15. Presently, and as mentioned above, the Company, through its subsidiaries, has two major clients:
  - 15.1 NTV for which the Company, through New Century Distribution LLC, produces various television series, with the latest delivery made in late December 2018; and

15.2 RTR, one of the largest television channels in Russia.

15.3 However, as a result of the dispute with the East West United Bank (as referred to in detail below), RTR and NTV have not placed new orders for series in 2018. The Company believes that until the issue with the East West United Bank is resolved, NTV and RTR will not resume ordering Company series.

16. The income presently derived from these sources, together with the assets and liabilities of the Company, are particularised below in Section F.

### C. The Group

17. Following the Company's registration by continuation on 13 January 2010, the Company reorganised its business whereby the Company itself became a holding company and the business and assets were vested in various subsidiaries. **At pages 62 of exhibit VG-2 is a Structure Chart.**

18. As shown on the Structure Chart:

18.1 The Company holds 100% of issued shares in a Cayman Islands subsidiary, New Media Programming Ltd ("**NMP**" or the "Subsidiary"), which was incorporated on November 27, 2009 in the Cayman Islands and holds the intellectual property rights in the television series of the Company (called the "**Library**").

18.2 The Company also holds 100% of the issued shares in Nova Century Holdings Limited ("**NCH**"), which was incorporated on December 9, 2009 in Gibraltar for the purpose of undertaking the operational side of the business (marketing and production). NCH then incorporated a Swiss subsidiary, namely New Century Distribution LLC ("**NCD**") on December 10, 2009 whose principle function is (a) the distribution of the products; and (b) to deal with various Russian subsidiaries over the years but, most recently, to deal with Movie Production Center to make the productions of the television programs in Russia.

19. At a later date in 2016, Movie Production Center was incorporated as a subsidiary of NCD. NCD is currently subject to a Moratorium in Switzerland which commenced on 29 January 2018 and is due to expire on 29 March 2019.
20. As at the date of this affidavit, there is only one active Russian subsidiary, Movie Production Center whose function is production of television series in Russia. The sales generated for the Company, through NCD and through Movie Production Center, were approximately USD\$25 million in 2017 and approximately USD\$14.5 million in 2018 as a result of the conflict with the Bank. The other Russian subsidiaries are now dormant and/or in the process of liquidation.

**D. The Credit Facility Agreement**

21. On August 23, 2013, NCD entered into a Credit Facility Agreement ("**Agreement**") with a Luxembourg-based bank, East West United Bank (the "**Bank**"), the purpose of which is to provide working capital and to refinance certain other Company's subsidiary obligations in Russia. As the Agreement is voluminous and not in dispute, it has not been exhibited to this affidavit but can be put into evidence if necessary.

Relevant terms of the Agreement

22. Pursuant to clause 2 of the Agreement, the Bank agreed to provide credit to NCD of up to the amount of USD\$75 million. Notwithstanding the Bank's intention to act as an agent and organise the funds from a syndication of several banks, the Bank never succeeded in arranging the syndication; rather the Bank itself provided credit to NCD in two tranches:
  - 22.1 the sum of USD\$25 million on August 28, 2013; and
  - 22.2 the sum of USD\$10 million on February 14 2014.
23. In accordance with section 6 of the Agreement, certain members of the Structure executed the Agreement as Guarantors; specifically, the Company, NMP, NCH and various Russian subsidiaries as identified on the Structure Chart.
24. As a consequence of the political turmoil and war between Russia and the Ukraine (with Russia's invasion into the Ukraine in 2014) and subsequently, the sanctions imposed by the

Ukrainian government to ban the broadcasting of any television program produced in Russia from 2014 onwards, the Company lost significant revenues overnight, arising from the loss of licensing and broadcasting rights in the Ukraine (which was, until 2014, the second largest market for the Company, with the first and largest being Russia itself), with consequential impacts on the Russian economy (and therefore television production budgets) as a whole.

#### Negotiations between the parties

25. Having regard to the Company's ongoing liquidity issues, NCD and the Bank negotiated amendments to the Agreement in March 2015 to extend the amortization to 31 December 2016 with the largest amounts falling due at the end of Q3 and Q4 of 2016, and in May 2017 to extend the amortization to the end of 2018, by extending the repayment schedule reflecting the Company's business difficulties.
26. Pursuant to the revised terms of the Agreement, NCD repaid all amounts owed up to December 30, 2017, in accordance with the amortization schedule, for the total amount of USD\$32.4 million including USD\$26 million in principal and USD\$6.4 million in interest.
27. As a direct result of international and Ukrainian sanctions, the Company continued to struggle to collect revenues and in late 2017, NCD approached the Bank to seek a further revision to the repayment schedule. However, the Bank refused to give a further extension to the repayment schedule and demanded all payments be brought up to date as at 31 December 2017 failing which the Bank would accelerate the loan and demand immediate repayment of the remaining amount. As at 31 December 2017, the total repayments made by NCD to the Bank pursuant to the Agreement represented approximately 75% of the total loan repaid plus interest.
28. On 29 December 2017, the Company, as the primary guarantor of the Bank, sent a letter to the CEO of the Bank explaining that by seeking to accelerate the loan, the Bank would cause significant damage to the Company and that the Bank should seek to negotiate repayment terms with NCD. Unfortunately, the Bank ignored that correspondence. At **pages 63 to 66 of exhibit VG-2** is a true copy of this letter.
29. As expected, NCD was not able to pay the amount due to the Bank on 31 December 2017 and as a result, the Bank served the Group with the following documents:

- 29.1 A Reservation of Rights letter sent to NCD on 8 January 2018 (at **pages 67 to 69 of exhibit VG-2**);
  - 29.2 An Acceleration Notice sent to all Guarantors and the Company on 15 January 2018 (at **pages 75 to 80 of exhibit VG-2**); and
  - 29.3 A Demand Notice sent to all Guarantors and the Company on 23 January 2018 (at **pages 70 to 74 of exhibit VG-2**).
30. Following these actions by the Bank, on 25 January 2018 NCD applied to the Court in Zug, Switzerland, with a request to issue a provisional Debt Collection Moratorium. NCD believed that by allowing NCD to continue its operations, NCD would be able to complete and deliver to clients different television series, collect the amounts due by the clients, and then pay its debts to the Bank and other creditors. The Court granted the Provisional Moratorium which is currently due to expire on 29 March 2019.
31. In 2018, due to all of the difficulties, the Group was able to deliver only Sixty Four (64) hours of programming.

#### **E. The English proceedings**

##### High Court proceedings

32. On 28 February 2018, the Bank initiated two separate legal proceedings in London:
- 32.1 proceedings in the High Court against NCD and all other non-Russian Guarantors, including the Company and NMP; and
  - 32.2 LCIA Arbitration proceedings against the Russian Guarantors.
33. In response, the defendants challenged the High Court proceeding being of the view that it was an abuse of process since it violated the arbitration clause of the Agreement. This challenge was accepted by the Court and the High Court proceedings were stayed with full costs awarded to the defendants. The High Court Proceedings were officially stayed pending the outcome of the arbitration. Consequently, having successfully completed the arbitration,



the Bank is now prevented from continuing with those proceedings in the High Court and, as a result, they should be withdrawn.

34. NCD sought recognition of the Swiss Moratorium in England. This application was accepted and NCD was not a party to the arbitration.
35. Following the decision to stay the High Court proceedings, the Bank applied to join the non-Russian Guarantors, including the Company and NMP to become respondents in the LCIA arbitration. This was agreed by all parties.
36. Due to the Moratorium being recognised in England, NCD was not a party to the LCIA proceedings.

#### Arbitral Proceedings

37. In late October 2018 and prior to the arbitration hearing, the Company succeeded in unrelated litigation against a third party, Kagalovsky, who had failed to pay the Company certain royalties. The judgment in favour of the Company was for the sum of \$5.2 million which was paid into an escrow account of the Company's London solicitors.
38. On 27 November 2018, the arbitration hearing took place. During the course of the arbitration, the Company's solicitors gave an undertaking to the Tribunal (and later to the Bank's solicitors) that \$4.75 million of the funds that had been paid into the solicitors' escrow account (the "**Kagalovsky Proceeds**") would be held by them and, further, they undertook to provide both the Tribunal and the Bank's solicitors with 5 business days' notice before transferring any of the Kagalavosky Proceeds out of that escrow account to another third party.
39. On 11 December 2018, the Tribunal issued a Final Partial Award (as it concerned the principal of the debt due in accordance with the Agreement) in the amount of \$9.150 million, a copy of which is **at pages 81 to 107 of exhibit VG-2**. The Tribunal also ordered that a sum of \$4.75 million should be paid immediately to the Bank with the remainder due in 31 March 2019.

#### **F. The Company's financial position and creditors**

40. As a consequence of those matters referred to above, the financial position of the Company has deteriorated. In addition, the Company has had to pursue litigation, at significant cost, for unpaid royalties which has placed financial stress on the Company in an otherwise difficult market.
41. The Company is currently unable to pay its debts as they fall due as a result of a lack of sufficient liquid assets.
42. Notwithstanding the aforementioned difficulties facing the Company, during 2016 and 2017, the Group managed to continue to generate revenue of approximately US\$25 million.
43. Currently, the Company directly owns the following assets:
  - 43.1 the entire issued share capital in NMP;
  - 43.2 the entire issued share capital in NCH; and
  - 43.3 its London solicitors hold the sum of \$4.75 million on its behalf.
44. The Company also indirectly owns (through NMP) the rights to the Library. The Library consists of almost 4000 hours of highly rated, well known and critically acclaimed television series. Many of the series brands have been successfully running for a period of anywhere from eight to twenty years. The majority of the Library was produced by a creative team that was assembled some twenty years ago – in 1998. In or during November 2017 a valuation of the Library was undertaken by an independent valuation expert, BDO Switzerland, – which established the value of the Library as at 31 December 2016 to be USD\$12.8 million (a copy of which is at pages 108 to 117 to exhibit VG-2. In or during January 2018, BDO Switzerland reviewed that valuation and ascribed a potential value to the library of USD\$51.8 million, a copy of which is at pages 118 to 127 to exhibit VG-2 . The difference in value can be explained as a result of the fact that the larger of the two valuations took into account the content creation and delivery developments in the media markets, as well as, the development of a future OTT project which was being undertaken by the Company. Furthermore, it ascribed value to the fact that the ability to market and sell new programs would depend heavily on the continued engagement of the abovementioned creative team, who have worked for the Company for two decades. On the other hand, the smaller valuation

considered the position of NMP if there were to be a fire sale of the Library which, in turn, would have the effect of severely deteriorating the value of the Library, as well as, causing the loss of the majority of the creative team who are responsible for the further development and growth of the Library.

45. In other words, a forced fire sale of the library would completely degrade and ultimately destroy the value of the business of the Company.

#### Creditors

46. The creditors of the Company are as follows:
  - 46.1 the Bank – who claims the principal debt of US\$9.150 million pursuant to the Final Partial Award issued plus interest and costs which are still to be determined by the Tribunal;
  - 46.2 the senior consultants of the Group (including members of the creative team) who agreed to defer payment of any outstanding compensation owed to them by NMP, NCH and/or NCD on the basis of a guarantee given to them by the Company, to pay such outstanding compensation to them upon receipt of the Kagalovsky Proceeds (the "**Compensation Claimants**"). The agreement of the Compensation Claimants was memorialised by a Letter of Guarantee, executed on behalf of the Company on 18 January 2018, which guaranteed the Group's debt to the Compensation Claimants. At **pages 128 to 134 of exhibit VG-2** is a copy of the Letter of Guarantee together with an excel spreadsheet showing the amount of the current debts due to each Compensation Creditor. As at 1 December 2018, the accumulated debts owed by the Group to the Compensation Creditors and guaranteed by the Company, amounts to approximately US\$5.75 million; and
  - 46.3 NCD in respect of a loan extended to the Company in the amount of CHF3.2 million (approximately US\$3 million).
47. The Company intends to serve a copy of the Summons, this Affidavit and its exhibit on the registered office of the Company prior to the hearing.

48 In respect of the Bank and the class of senior consultants referred to above, the Company intends to serve a copy of the Summons, this Affidavit and its exhibit and any order made by the Court following the hearing and as soon as the sealed order is issued.

**A. Proposed Restructuring**

49 The Company believes that a restructuring of the group and its debts will enable the Company to allocate sufficient funds to finance ongoing (and future, new) productions and by doing so generate cash-flow and profits to repay its creditors.

50 To enable the Company to generate cash-flow and profits, the Company is looking to create an OTT platform (similar to Netflix) that will enable the Company to offer both the existing Library and future productions directly to its end users. The Company's position in the market, and the fact that the Company (through NMP) already owns series that are well know to the audience, make this project potentially very profitable.

51 A failure to properly restructure the Group will result in massive degradation to the value of the Company's assets and will be detrimental to all of its creditors and stakeholders.

52 On the other hand, by properly restructuring the Group, the Company is confident that it will have the ability to repay its creditors and maximise the value of the Group for the benefit of its stakeholders.

53 The Company is therefore respectfully requesting this Honourable Court to appoint Provisional Liquidators for the purposes of assisting the Company with such a compromise and to protect the few assets that it currently holds.

**B. Conclusion**

54 In all of the circumstances, I request that the Court grant the relief sought in the Summons.

Sworn at Greenwich, Connecticut )  
before me LEONA E. PISANI )  
This 8<sup>th</sup> day of January 2019 )

  
\_\_\_\_\_  
NOTARY PUBLIC



Leona E. Pisani  
NOTARY PUBLIC  
State of Connecticut  
My Commission Expires  
April 30, 2019

  
\_\_\_\_\_  
VLADIMIR GUSINSKI

THIS AFFIDAVIT is filed by Campbells Attorneys-at-Law for the Petitioners, whose address for service is that of their Attorneys-at-Law at Fourth Floor, Willow House, Cricket Square, Grand Cayman, Cayman Islands