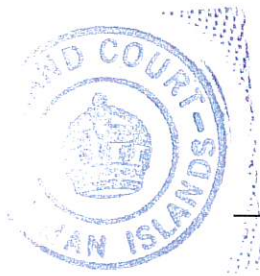


**IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION**

CAUSE NO. <sup>248</sup> OF 2009

**IN THE MATTER OF THE COMPANIES LAW (2007 REVISION)**

**AND IN THE MATTER OF THE PRIDE OF TREASURE FUND**



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**WINDING UP PETITION**

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To: The Grand Court of the Cayman Islands

The petition of Chan Hui Mei of 4F, No 2 Lane 17, Shanghe St, Yonghe City, Tapei County, Taiwan R.O.C. (the "Petitioner") shows that:

**Background**

1. The Pride of Treasure Fund (the "Fund") was incorporated on 28 June 2006 as an exempted company under the laws of the Cayman Islands to operate as a private investment fund.
2. The registered office of the Fund is situated at PO Box 2681 Cricket Square, Hutchins Drive, George Town, Grand Cayman, KY1-1111, Cayman Islands.

3. The authorised share capital of the Fund is
  - 3.1 US\$50,000 divided into:
    - 3.1.1 4,990,000 with par value of US\$0.1 non-voting shares per share; and
    - 3.1.2 100 Management shares with a par value of US\$1.
  
4. The principal object for which the Fund was established is to carry on the business of a private investment fund for the benefit of “Professional Investors” within the meaning of the Hong Kong Securities and Futures Ordinance and other non-Hong Kong investors in accordance with the relevant rules and regulations. The investment objective of the Fund was to achieve medium to long term capital appreciation through investments primarily in listed and unlisted securities of companies which have substantial business interest in the People’s Republic of China (“**PRC**”) and whose values would be appreciated by the capital and financial market reforms in the PRC and the Renminbi (“**RMB**”) appreciation.

**The Petitioner**

5. Ms Chan Hui Mei is an investor and shareholder in the Fund. She holds 438.51 shares in the Fund which she purchased at a subscription price of US\$182.39 per share, paying a subscription cost of US\$80,022.91. These shares were acquired on 28 June 2007. The Petitioner brings this petition in her own name and own capacity and also as representative of a further 40 shareholders and investors in the Fund who collectively hold 35,025.98 shares in the Fund or 11% of the issued shares (the “**Petitioning Investors**”). Schedule 1 of the Petition sets out a list of the Petitioning Investors represented by the Petitioner, together with a number of their shares, the subscription date and the subscription price.

## The Fund's Directors and Professional Service Providers

6. According to the Fund's Offering Memorandum dated 24 July 2006, as supplemented on 15 March 2007, 1 September 2007, 12 March 2008, 10 April 2009 (the "**Offering Memorandum**") the Fund's directors are Mr Wan Mun Wah, also known as Lewis Wan ("**Mr Wan**"), Ms Tang Wai Po ("**Ms Tang**"), Mr Tan Cheng Chuan ("**Mr Tan**") and Mr Qi Jue ("**Mr Qi**"), (collectively '**The Directors**'). Further Mr Wan and Mr Qi are the Chief Investment Officer and Managing Director respectively of The Pride Investment Groups Limited, the Investment Manager of the Fund (the "**Investment Manager**").
7. The Investment Manager is also incorporated as an exempt company in the Cayman Islands on 2 August 2006 under registration No. 17193. the registered address of the Investment Manager is Codan Trust Company (Cayman) Limited, PO Box 2681, Cricket Square, Hutchins Drive, George Town, Grand Cayman, KY1-1111, Cayman Islands.
8. The Investment Manager operates under an exemption from licence under the Securities Investment Business Law (2004 Revision) ("**SIBL**") on the basis that it provides management services exclusively to funds which are regulated by the Cayman Islands Monetary Authority ("**CIMA**") under the Mutual Funds Law (2007 Revision) of the Cayman Islands and hence are sophisticated persons for the purpose of the exemptions from licence under the SIBL.
9. The Directors delegated to the Investment Manager the authority to effect all investments and other decisions with respect to the fund. The Investment Advisor is the Pride Fund Management Limited (the "**Investment Advisor**") which had responsibility for performing investment research and giving investment advice to the Investment Manager. The Investment Advisor is licensed with the Hong Kong Securities and Futures Commission for carrying out regulated activities, including advising on securities and asset management.

10. The Custodian and Administrator of the Fund is Standard Chartered Bank (Hong Kong) Limited.

#### **GROUNDS FOR THE PETITION**

11. The Petitioner and the Petitioning Investors present this petition on the just and equitable ground on the basis that:

- a) The objects for which the Fund was formed have failed, and the substratum of the business has gone.
- b) The only remaining purpose of the Fund is the realisation and distribution of the Fund's assets.
- c) The Petitioner and Petitioning Investors have been deprived of their legitimate expectation that the Fund would be an open-ended Fund in which they had a right to redeem their shares at any time in accordance with the Articles of Association.
- d) The Petitioner and Petitioning Investors have been deprived of their legitimate expectation that the Fund would be regulated by CIMA.
- e) There has been misfeasance, alternatively mismanagement and breach of Fiduciary duties by The Directors and The Investment Manager
- f) There has been a loss of all confidence in the probity of the Directors' and Investment Manager's conduct of the Fund's business
- g) The misconduct of the Directors and the Investment Manager may be successfully investigated only in a winding up by the Court.
- h) The affairs of the Fund have been conducted in a manner unfairly prejudicial to the interests of the Petitioner and the Petitioning Investors.

***A: Failure of Fund's Objects, Substratum of Business has gone***

12. The Offering Memorandum stated the Fund's investment objective was to achieve medium to long term capital appreciation through investments primarily in listed and unlisted securities of companies which had substantial business interest in the PRC and whose value the investment manager believes would be boosted by the capital and financial market reforms in the PRC and RMB appreciation. It was further stated that the Fund expected primarily to invest in non tradable shares issued by companies incorporated in the PRC (i.e. unlisted securities). Further, the Fund might also invest in listed and quoted debt securities denominated in RMB and issued by the PRC government and companies which has substantial business interest in the PRC.
13. On 22 September 2008 Mr Wan wrote to the shareholders giving them notice of suspension of the net asset value ("NAV") of the Fund ("**The Suspension Notice**") citing the global financial crisis and delay and cancellation of most initial public offering plans by pre IPO companies. He stated that the reduction of transactions in unlisted securities in the "over-the-counter" market, meant latest transaction prices were not available to the Fund and the unlisted securities could not be valued in a fair way.
14. On 22 January 2009 Mr Wan wrote again to investors in a letter entitled "Proposal on Fund Restructuring" in which he stated "*Having seriously considered the current market conditions, the board is in [sic] the opinion that the current market sentiment shows little improvement, The Hong Kong and PRC equity market is inactive and is likely to remain so for a long period of time. As a result of the uncertainty in market outlook, there is few transaction [sic] in unlisted securities, resulting in difficulty in valuation. Instead of continuing on suspension of calculation of net asset value, we propose restructuring the Fund as a long term solution.*"
15. The said restructuring proposed on 22 January 2009 (further details of which in paragraphs 17 to 19 below) was to enable the Fund merely to dispose of its unlisted securities in an orderly manner, and effectively to wind down the Fund's business.

16. In the circumstances, by the Directors own admission, the main object for which the Fund was established as set out in paragraph 12 above have failed. The substratum of the Fund has fallen away in that there is no market for either the sale or purchase of unlisted securities in Hong Kong and PRC, the Fund's investments cannot be valued and there will be no medium to long term appreciation. In fact, the opportunity to provide the investors with absolute returns never materialised and/or has proved worthless and/or cannot be pursued.

**B: Fund's Only Remaining Purpose is Realisation/Distribution of its Assets**

17. A special resolution passed on 26 February 2009, which the Petitioner and the petitioning Investors voted against, purported to amend the Fund's Articles, and implement the restructuring proposed in the Directors letter dated 22 January 2009, converting the Fund to a closed-ended fund [**"The Purported Restructuring"**].

18. The resolution stated *"the share rights of Participating Shares be varied such that Participating Shareholders will not be entitled to the redemption or repurchase of Participating Shares at the option of the holders thereof but such participating shares may be redeemed or repurchased at the option of the Company, and the articles of association of the company be revised to reflect the aforementioned variation of share right and any further change which the directors deem necessary for restructuring the Fund as a closed-ended fund."*

19. Accordingly, the Fund appears to have been converted into a closed-ended Fund and its sole remaining purpose is the realisation of its assets, namely the disposal of the unlisted securities it holds and the distribution of the proceeds of the same

**C: Legitimate Expectation that Shares could be Redeemed.**

20. The Offering Memorandum stated that all investors would have the right to require all or (subject to the minimum holding requirement) a portion of their participating shares to be redeemed on a redemption day at a redemption price then prevailing. It stated that the right of shareholders to effect a redemption of participating shares and the obligation of the Fund to pay redemption proceeds might be suspended in certain circumstances.
21. In reliance on the terms of the Offering Memorandum the Petitioner and the other 40 Petitioning Investors represent decided to invest in the Fund. The Petitioner's legitimate expectation as dictated by the Offering Memorandum, was that the Fund would invest in both listed and unlisted securities of companies with substantial business interest in the PRC but would retain a level of liquidity enabling them to redeem all or a portion of their participating shares, subject to the Directors' right under paragraph 11 (6) of the Articles of Association to suspend NAV and thus redemptions.
22. In the circumstances, the Petitioner and Petitioning Investors had a legitimate expectation that they were subscribing for shares in an open-ended mutual fund, and that their shares would be redeemable unless calculation of NAV was temporarily suspended.
23. By a document whose title translates from Chinese to 'Notice in regards to Fund Restructuring and Asset Distribution' dated 20 April 2009, the Fund announced "*the restructuring of the Fund has been basically completed*".
24. By the Purported Restructuring of the Fund into a closed-ended Fund as described in paragraphs 17 to 19 above, the Petitioner and the Petitioning Investors have been deprived of their legitimate expectation that they would be able to redeem their shares at any time NAV was not suspended.

#### **D: Legitimate Expectation of Fund Regulation by CIMA**

25. The Offering Memorandum stated (until the April 10 2009 revision) *“The Company is an investment company structured as a regulated mutual fund under section 4 (3) of the Mutual Funds Law (2007 Revision) of the Cayman Islands.*
26. Following the Purported Restructuring, the Fund no longer falls within a definition of a mutual fund within the meaning of section 2 of the Mutual Funds Law, since it no longer issues equity interests which are redeemable or repurchaseable at the option of the investors.
27. The latest Offering Memorandum, 10 April 2009 revision, which the Petitioner and Petitioning Investors received on 29 April 2009 states only *“The Company is an investment company structured as a closed-ended Fund’* and the previous reference to regulation under the Mutual Funds Law has been removed.
28. The Fund is presently still registered with CIMA as of the date of the presentation of this Petition, but there is nothing to prevent the Directors from causing the Fund to de-register at any time, and the new Offering Memorandum suggests this is their intention.
29. The Petitioner and the Petitioning Investors have thus been deprived of their legitimate expectation that the Fund is, and would continue to be, a regulated mutual fund under the Mutual Funds Law.

#### **E: Misfeasance and Breach of Fiduciary Duties by Directors and Investment Manager**

30. The Petitioner and Petitioning Investors believe there has been serious misfeasance or alternatively, mismanagement and breach of Fiduciary Duties on the part of the Directors and Investment Manager.

31. The Directors caused the Fund to spend US\$4,748,101 in “legal and professional fees” during the first 18 months trading of the Fund from June 2006 to December 2007. This sum did not include management fees, performance fees, fund services fees or auditor’s fees. It also did not include the “preliminary expenses” of US\$40,000 incurred for establishing the Fund in June 2006. Despite requests, no explanation has been provided to the Petitioner and Petitioning Investors as to how such excessive legal fees of US\$4,748,101 could have been incurred during this short timeframe.

32. The Directors and/or the Investment Manager caused the Fund to borrow two loans from a related entity, The Pride Venture Capital Fund, a company which the Petitioner and Petitioning Investors also believe to be under the control of Mr Wan and Mr Qi, in the sums of US\$10 million and HK\$48 million, incurring interest of US\$52,055 and HK\$341,918 respectively, namely, the aggregate sum of US\$330,416 in interest.

33. Despite requests for information, no explanation has been provided by the Directors as to why such borrowing was necessary, why the loans do not appear under the statement of cash flow in respect of the financing activities of the Fund and in particular why such borrowing was required when income from subscriptions totalled US\$54,648,193 during the same period in respect of which US\$25,091,283 was paid out for investment trading activities and US\$10,958,859 paid in respect of operating expenses and US\$6,592,891 was paid out in respect of redemptions leaving the Fund with a cash balance as at the 31<sup>st</sup> December 2007 of US\$17,384,135.

34. The Directors and/or the Investment manager caused the Fund to enter into four sale and purchase transactions with The Pride Venture Capital Fund, a closed-ended fund managed by the Investment Manager (and also believed to be controlled by the Fund Directors Mr Wan and Mr Qi) under which the Fund disposed of certain equity investments for a total consideration of US\$24,372,993. Such sale appeared to produce a realised gain of US\$18,220,223; namely equity investments which were purchased by the Fund for US\$6,152,770 were sold to the related entity, Pride Venture

Capital Fund, managed by the Investment Manager at a 300% profit (US\$18,220,223), meaning that the retained shareholding in the relevant equity investment could also be revalued at 300% higher than the original purchase price on the basis of the 'latest transaction price'. This in turn has enabled the Directors and Investment Manager to record in the Financial Statements from June 2006 to December 2007 unrealised gains of US\$31,109,964.

35. By reason of these sale and purchase transactions to a related entity under their control, the Directors and the Investment Manager were able to attribute a significantly increased value to the NAV of the Fund thus generating for themselves management fees in the sum of US\$847,797 and performance fees of US\$9,158,173 calculated in accordance with the Offering Memorandum on a high watermark basis equalled to 20% of the increase in net asset value for the 18 month period, June 2006 to December 2007.
36. The Petitioner and the Petitioning Investors believe that such transactions were not bone fide at arm's length for a fair and true market price, or in the best interests of the Fund, but merely a device by which the Directors and Investment Manager could manipulate the Fund's NAV and extract inflated management and performance fees from the Fund. No response to this serious allegation raised a letter to the Fund from the Petitioner's attorneys dated 28 April 2009 requesting a full explanation of the same has ever been received.
37. By reason of the matters aforesaid, the Directors and Investment manager have breached their fiduciary duties to the Fund, or alternatively, failed to exercise reasonable skill and care in the calculation of the Fund's NAV.
38. In the Suspension Notice of 22 September 2008, Mr Wan stated that the reduction of transactions in unlisted securities in the "over-the-counter" market, meant latest transaction prices were not available to the Fund and the unlisted securities could not be valued in a fair way.

39. Despite such difficulties in preparing NAV, according to the Offering Memorandum as revised on 10 April 2009, the Investment Manager purports to attribute a value such that the Fund continues to pay to the Investment Manager a management fee of 2% per annum or 0.5% per quarter of the NAV of the Company as at 31 December 2008 payable quarterly in advance for the year ending 31 December 2009. Furthermore, the Investment Manager continues to claim to be entitled to 20% of the annual increase in NAV per participating share (subject to a high water mark) and calculated until the 31 December 2009.
40. Thus despite the suspension of NAV as at the 29 August 2008, the Investment Manager (controlled by Mr Wan and Mr Qi as directors of the Fund) still intends to deduct management and performance fees from the Fund, payable quarterly in advance based on NAV, and thus the said Directors are in a serious of conflict of interest in that it is in their best interests for the Fund's assets to be realised as slowly as possible, which is contrary to the best interests of the Fund, the Petitioner, the Petitioning Investors and all Investors.
41. Despite the suspension of NAV, a report dated December 2008 was issued to investors with the Investment Manager's review summary which calculated the NAV (which had been suspended because it could not be valued) at US\$240.88, the Petitioner and the Petitioning Investors assume that Mr Wan and Mr Qi as Chief Investment Manager and managing director of the Investment Manager will cause the latter to claim management fees in advance of 2% of all assets under management based on this NAV.
42. The Petitioner and Petitioning investors do not know how the NAV in December 2008 could have been calculated at US\$240.88 per share when the said report from the Investment Manager showed that 79.86% of the Fund's investment portfolio was held in non tradeable and non listed stock, which according to the Suspension Notice could no longer be fairly or at all. The Petitioner and Petitioning investors therefore believe that any purported calculation of NAV since the same was suspended on 29 August 2008 is highly suspect, since its only purpose is the payment of management fees.

43. Further, a Notice of Distribution dated 20 April 2009 stated that it intended to make a distribution to all investors of US\$10 per share supposedly representing 7.3% of the unaudited net asset value per share on "31 December 2008", thus, a new lower NAV of only US\$136 per share.
44. No explanation was provided in the Notice regarding fund restructuring and asset distribution as to why the NAV could be calculated by the Investment Manager at US\$240.88 as at December 2008 (for the purposes of their fees) but that NAV could suddenly dwindle to a mere US\$136, supposedly also calculated in December 2008, for the purposes of a distribution to investors.

**F: Loss of Confidence in the Probity of Directors and Investment Manager**

45. In light of the many facts and matters set out above, the Petitioner and the Petitioning Investors have lost all confidence in the probity of both the Directors of and the Investment Manager, in particular Mr Wan and Mr Qi in light of their conflict of interest, in needing to act in the best interests of the Investment Manager and obtain maximum management and performance fees from the Fund, and their also having to act the best interests of the related entity Pride of Treasure Venture Capital Fund.

**G: The Misconduct of Directors /Investment Manager needs to be investigated**

46. Since the Petitioners and Petitioning Investors do not hold more than one fifth of the total issued shares of the Fund, they have no entitlement to apply to this Honourable Court for the appointment of an Inspector pursuant to section 64 of the Companies Law to investigate into the affairs of the Fund.
47. The Investors of the Fund have a legitimate interest in the affairs of the Fund. The conduct of its Directors, and Investment manager all need to be investigated as a matter of urgency by an independent liquidator or insolvency practitioner to prevent further

mismanagement and dissipation of assets. It is likely that there are claims to be pursued against the Directors, Investment Manager, and other related entities for the benefit of the Fund's investors including the Petitioner and the investors she represents.

48. The Directors have to date been unwilling or unable to provide any meaningful explanation for the various facts and matters set out in this Petition. Moreover, the Petitioner and Petitioning Investors, no longer trust that any such explanation could be relied upon as true. Accordingly, the forensic investigation which is needed into the affairs of the Fund can only be successfully undertaken in the context of a winding up of the Fund by this Court, or alternatively under an order of this Honourable Court regulating the conduct of the Fund in the future.

#### **H: Other Matters / Unfair Prejudice**

49. The special resolution passed on 26 February 2009 set out in paragraph 18 above, which the Petitioner and the Petitioning Investors voted against, purported to amend the Fund's articles, depriving the Petitioner and the represented shareholders of their redemption rights on an indefinite basis and converting the Fund to a closed-ended fund.

50. The Petitioner and Petitioning Investors are of the view that the resolution as framed is only sufficient to act as a consent to amend the articles for which a second special resolution is necessary setting out precisely the actual changes to the wording of the articles intended. Furthermore, the last sentence of the resolution which purports to confer on the directors the right to make such further changes to the articles as they deem necessary for restructuring is contrary to the Companies Law.

51. Thus, any steps taken in connection with the Purported Restructuring of the Fund are invalid and of no legal effect.

52. The 2007 Financial Statements were audited by KPMG. The report from the Investment Manager dated December 2008 stated that the auditor was KPMG, the website of the Fund stated that the auditors are RSM, and the notice dated 20 April 2009 stated that auditor has been changed from KPMG to Mc Gladrey and Pullen, Cayman. In light of the discrepancies in the finances of the Fund as set out above, which have remained unexplained, the suspension of NAV and the varying values attributed to NAV by the Directors and Investment Manager, the Petitioner and Petitioning Investors are very concerned by the sudden change in auditors.
53. The notice dated 20 April 2009 stated that the Fund intended to distribute cash at US\$10 per share amounting to approximately 7.3% of the unaudited net asset value per share as at 31 December 2008. A notice on distribution stated that the payment would be made on or before 30 June 2009 to participating shareholders on the register of members as at 20 April 2009. The payment instructions required investors to complete and return the form on or before 22 May 2009. The Petitioner believes that such distribution of assets will significantly deplete the cash reserve of the Fund (of which only 20.16% - according to the Investment Manager's report of December 2008 - is held in listed stock and cash).
54. In light of the many facts and matters set out in this Petition, the Petitioner and Petitioning Investors believe that this may be a deliberate strategy on the part of the Directors and Investment Manager to divest the fund of cash assets which could be use to pay the fees of liquidators or independent third parties to investigate into the affairs of the Fund.
55. Coupled with the risk of dissipation of its assets, there is no realistic hope that the Fund will ever be profitable without further capital contributions which it is unlikely that any of the investors, including the Petitioner/Petitioning Investors, will contribute.

56. Further, neither the Petitioner nor the other investors have any prospect of being repaid all of their funds or any portion of those funds within the ordinary timescale envisaged by them and the Fund at the time they subscribed.

57. For the reasons set out above, the Petitioner and those investors she represents believe the affairs of the Fund have been and continue to be conducted in a manner unfairly prejudicial to them.

58. In all the premises, it is just and equitable for the Fund to be wound up or alternatively, for the Court to make an order regulating the conduct of the Fund's affairs in the future.

**YOUR PETITIONER THEREFORE HUMBLY PRAYS THAT:**

1. The Fund be wound up by the Court under the provisions of the Companies Law (2007 Revision);
2. Kenneth Krys and Tim Le Cornu of Krys and Associates be appointed as Joint Official Liquidators of the Fund ("the Liquidators");
3. The Liquidators be authorised to exercise any of the powers conferred on them by the Court pursuant to Section 110(2) and Parts I and II of the Third Schedule of the Companies Law (2007 Revision) without the further sanction or intervention of the Court;
4. The Liquidators be authorised to do any act or things considered by them to be necessary or desirable in connection with the liquidation of the Fund and the winding up of its affairs and to prevent the dissipation of the Fund's assets;
5. The Liquidators do file with the Clerk of the Court a report in writing of the position of and progress made with the winding up of the Fund with the realisation of the assets

thereof and to any other matters connected to the winding up of the Fund, as the Court may direct;

6. The Liquidators be at liberty to appoint counsel, attorneys, 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 and on such terms as they may think fit and to remunerate them out of the assets of the Fund;
7. The Liquidators and their staff be remunerated out of the assets of the Fund at the usual customary rate;
8. The Liquidators be at liberty to apply generally;
9. The costs of the Petition and the Petitioner be paid out of the assets of the Fund;
10. The Liquidators cause a copy of this Petition to be delivered to the Registrar of Companies;
11. Alternatively, that the Court do make such orders for regulating the future conduct of the affairs of the Fund as the Court shall see fit.
12. Such Further or other relief be granted as the Court deems appropriate.

Dated the 19 day of May 2009

Filed the 19 day of May 2009



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

NOTE:

It is intended to serve this Petition upon:

The Registrar

The Fund at its registered office.

**THIS PETITION WAS FILED** by Harneys of 3<sup>rd</sup> and 4<sup>th</sup> Floor, Genesis Building, 13 Genesis Close, PO Box 10240, Grand Cayman, KY1-1002, Cayman Islands (Ref: SED/JC/040097.0001), 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, on 2009 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.