

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

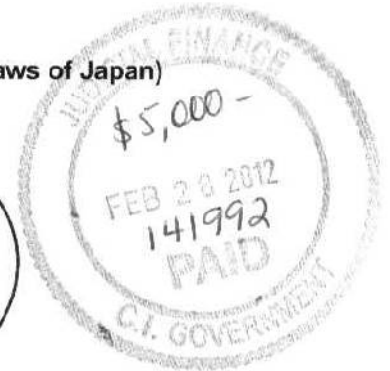
FSD NO. 30 OF 2012



IN THE MATTER OF THE COMPANIES LAW (2011 REVISION)
AND

IN THE MATTER OF GK RCA 03 (a company incorporated under the laws of Japan)

WINDING-UP PETITION



To: The Grand Court of the Cayman Islands

THE HUMBLE PETITION of Cathay Strategic Investment Company No. 2 Limited (the "**Petitioner**") a company incorporated under the laws of the Cayman Islands with its registered office at PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands, presented by the Petitioner as a creditor or contributory of GK RCA 03, shows that:

1. GK RCA 03 (hereinafter referred to as the "**Company**") is a limited liability company (a "*godo kaisha*") incorporated under the laws of Japan on 9 February 2007.
2. The head office of the Company is Uchisaiwai-cho Dai-biru, 3-3 Uchisaiwai-cho1-chome, Chiyoda-ku, Tokyo.
3. The objects of the Company are to purchase and sell, exchange, lease, own, intermediate, and manage real properties and manage beneficiary rights concerning real properties; to acquire and dispose of shares in companies which have the same objective and to carry on any and all business relating to the above.
4. The Company was formed to act as an "*eigyosha*" ("**Operator**") in respect of *Tokumei Kumiai* ("**TK**" or "**Silent Partnership**") Agreements between itself and various other corporate entities, including the Petitioner.

5. The only asset of the Company is its holding of 1,800,000 non-voting preference shares in RCA02 (the "**Shares**"). RCA02 is a limited liability company incorporated under the laws of Cayman Islands and its registered office is at PO Box 309GT, Ugland House, South Church Street, George Town, Grand Cayman, Cayman Islands. The Shares are of considerable value.
6. For the reasons set out in this Petition, the Petitioner seeks an order to wind-up the Company on the grounds that it is just and equitable that it be wound-up.
7. The Shares have considerable value, the Company is solvent and, in the event of a liquidation, there will be a distribution to the Company's creditors and/or contributories including the Petitioner.

The Tokumei Kumiai ("Silent Partnership") Agreements

8. The Petitioner is one of a number of investors (the "**Silent Partner Investors**") in the Company through a series of *tokumei kumiai* agreements (the "**Silent Partnership Agreements**"), governed by the laws of Japan. The Silent Partnership Agreements constitute a "silent partnership" under Part 2, Chapter 4 (Article 535 through Article 542) of the Japanese Commercial Code (Law no.48 of 1899, as amended).
9. A silent partnership agreement is an agreement between an operator (*eigyosha*) and a silent partner (*tokumei kumiai-in*). Under the terms of such agreements, the investor agrees to contribute capital to a business which is operated by the operator and, as a result, the investor is entitled to participate in the losses and profits from that business.
10. The laws of Japan impose a duty on an operator under a silent partnership agreement to be a "good manager", which places an operator under a duty of care and loyalty with respect to the operation of the business and with respect to its relationship with the investor.
11. In the present case, the silent partnership structure was adopted to give investors exposure to real estate investments in the People's Republic of China. Following a restructuring in 2010, the structure is as follows:
 - (1) the Company, in its capacity as operator under the Silent Partnership Agreements, holds shares in RCA02;

- (2) RCA02 holds shares in Huamao Property Holdings Limited ("**Huamao**"), a company incorporated under the laws of the Cayman Islands;
 - (3) The contributions made by the investors pursuant to the Silent Partnership Agreements were used to subscribe for Shares in RCA02. In 2007, RCA02 used those contributions to invest in Beijing Guohao Real Estate Co., a Sino-foreign joint venture established under the laws of the People's Republic of China ("**Guohua**"). Following a re-organisation, Guohua is now an 87 per cent owned subsidiary of Huamao. As a result, RCA02 now holds its investment in Guohua indirectly by holding the shares in Huamao.
12. The Petitioner became a party to a number of identical Silent Partnership Agreements with the Company in or around 19 May 2010 as follows:
- (1) it received a novation of the rights and obligations of GH Focus Investment Holding Limited ("**GH Focus**"), a company incorporated under the laws of the Cayman Islands, pursuant to a transfer agreement (the "**TK Transfer Agreement**");
 - (2) prior to entering into the TK Transfer Agreement with the Petitioner, GH Focus had been party to a number of Silent Partnership Agreements with the Company, which it had acceded to via novations from Re-Plus Inc., a company incorporated under the laws of Japan.
13. Under the terms of the Silent Partnership Agreements:
- (1) the "**Business**" is defined as "*the business of subscribing for, and possessing and disposing of, the Preferred Contributions...in RCA02*" (Article 1.1); and "**Preferred Contributions**" is a reference to non-voting preference shares in RCA02;
 - (2) Silent Partner Investors are required to contribute capital to the Company for the purposes of investing in the Business (as defined above);
 - (3) the Company, as operator, is required to operate the Business and is the owner of all assets acquired for that purpose in accordance with Article 5.1;

- (4) the Company, as operator, is required to make distributions of profits and losses arising from the operation of the Business to the Silent Partner Investors in accordance with the terms of Article 2;
 - (5) the term for which the Company is required to operate the Business expires on the last day of February 2012, at which point the Business will be closed, in accordance with Articles 8.1 and 8.2; and
 - (6) upon closure of the Business, the Company as operator, is required to liquidate the Business by disposing of all the business assets, being the Preferred Contributions in RCA02, and distributing the surplus to the Silent Partner Investors in accordance with the terms of the Silent Partnership Agreement in accordance with Article 8.2.
14. Other corporate entities, including Asuka DBJ Investments LPS (a company incorporated under the laws of Japan), have entered into the Silent Partnership Agreements in substantially similar form to the Petitioner's Silent Partnership Agreement. The Petitioner's contributions to the Company under the Silent Partnership Agreements amount to approximately 33.88% of the total investments made.

The Role of Asuka Asset Management Co. Ltd

15. Asuka Asset Management Co. Ltd ("**Asuka**") is a regulated entity in Japan under the Financial Instruments and Exchange Law ("**FIEL**"). Asuka assumed the role of business manager from another Japanese entity known as Re-Plus Advisors in late 2008.
16. Asuka controls and directs the actions of the Company in its capacity as operator under the Silent Partnership Agreements. In particular, Asuka controls the Company's decisions relating to the running of the Business, including the holding and the disposal of the assets of the Company and the payment of dividends to the Silent Partner Investors, including the Petitioner.
17. As an advisor, Asuka owed duties to the Company and the Petitioner, including:
- (1) Under articles 42 and 130 of the FIEL, not to act in a way which profits itself or a third party, sacrificing the interests of the Company;

- (2) Under article 44-3 of the FIEL, not to enter into unfair transactions with its parent or subsidiary;
- (3) Under article 36 of the FIEL, a duty of good faith; and
- (4) Under articles 41 and 42 of the FIEL, duties of loyalty and due care of a prudent manager.

The Consent Agreement

18. On 6 August 2008, the Company as TK Operator, GH Focus as TK Investor and Re Plus Advisors as Financial Advisor entered into a consent agreement (the "**Consent Agreement**") pursuant to which:
 - (1) the Company agreed that it would not make any decision with respect to the disposition of the Shares without the prior written consent of the TK Investor (clause 2.1); and
 - (2) the Financial Advisor agreed that it would not and shall not cause the Company to make any decision with respect to the disposition of the Shares without the prior written consent of the TK Investor (clause 2.1).
19. The Consent Agreement is expressed to take effect "*Notwithstanding anything to the contrary in the TK Agreements*" and is not limited by reference to the expiry of the Business under the Silent Partnership Agreements.
20. The Petitioner became party to the Consent Agreement, as "TK Investor", under an Agreement for Transfer of Contractual Status dated May 19 2010. Asuka was also a party to the Agreement for Transfer of Contractual Status and agreed to be bound by the terms of the Consent Agreement as "Financial Advisor".

Breach of the Consent Agreement and cessation of the purpose for which the Company was formed

21. The Company was formed to pursue the specific business of subscribing for, possessing and disposing of the Shares, in accordance with the terms of the Silent Partnership Agreements and the Consent Agreement.

22. The purpose for which the Company was formed comes to an end on 29 February 2012, when the term of the operation of the Business expires and the Business is closed.
23. Upon closure of the Business, the Company is required to liquidate the Business by disposing of the Shares and thereafter using the proceeds to satisfy any outstanding obligations of the Business before making distributions of the net amount to the Silent Partner Investors, including the Petitioner.
24. By virtue of the Consent Agreement, neither the Company nor Asuka may make any decision regarding the disposition of the Shares without the consent of the investors, including the Petitioner.
25. The contractual structure therefore ensures that the parties with an economic interest in the Business and its assets (i.e., the Silent Partner Investors, including the Petitioner) are able to monitor and control the timing and manner of their disposal with a view to ensuring that a proper market price is obtained pursuant to coherent, fair and transparent disposal strategy.
26. It appears that since at least early February 2012, the Company has been in purported negotiations with a purported purchaser of the Shares (the "**Purchaser**"). The Petitioner has significant and reasonable concerns that the Company and Asuka intend to conduct the sale of the Shares without first obtaining the prior written consent of the Petitioner, in breach of the Consent Agreements and in accordance with a flawed sale process that will not achieve a proper market price for the Shares and will prejudice the interests of the Petitioner. In particular:
 - (1) By a letter dated 20 February 2012, Asuka has informed the Petitioner that it has initiated a sale process for the Shares, but Asuka also asserted that, in causing the Company to dispose of the Shares, it would not obtain consent (as required), apparently on the false basis that the consent requirement no longer applies after the expiry of the "Term" of the Silent Partnership Agreements.
 - (2) Despite repeated requests, Asuka has not provided all of the financial statements of RCA02, or any details of potential purchasers or prices or other information about the business and assets of the Company. Such information

requires to be disclosed under the applicable contractual arrangements and Article 539 (2) of the Commercial Code in Japan.

- (3) From the limited information that the Petitioner does have about the sale process for the Shares, it is plainly flawed and will not achieve a proper market price for the Shares. For example: (a) the process is apparently being conducted according to a very short and arbitrary timetable; (b) Asuka / the Company have been reluctant to provide sufficient information to potential purchasers about the Shares or the assets held by Guohua; (c) Asuka / the Company have apparently not explored the possibility of realising the Huamao shares, notwithstanding that a sale at that level of the structure might be more attractive for purchasers; and (d) it appears that the proposed terms for any sale of the Shares proceeds on the basis of it being conducted without any due diligence and any representations or warranties – in other words, effectively a “fire sale”. Such an approach is inappropriate, whether before or after the expiry of the Business.
- (4) An affiliate of the Petitioner has sought to participate in the sale process. In response: (a) Asuka / the Company required the affiliate to tender a bid without allowing it access to information relating to, for example, RCA02 or the assets held by Guohua; and (b) a bid submitted by that affiliate was rejected as not being on the necessary “form”.
- (5) It appears that Asuka may intend to sell the Shares, whether to Asuka DBJ or some other entity, and is facilitating such a sale by allowing its affiliates access to information, while failing to provide detailed information to potential competitor bidders.

27. Further, in light of the matters described above, the Company is in breach of its duty to act as a good manager.

28. The Petitioner will rely on the following:

- (1) By a letter dated 14 February 2012, Asuka informed the Petitioner that it has initiated a sale process for the Shares and that it was in negotiations with the Purchaser. The Petitioner responded by letter dated 17 February 2010 in which the Petitioner:

- (a) reminded Asuka of its and the Company's respective obligations under the Consent Agreement; and
 - (b) requested that Asuka provides on behalf of the Company, financial statements of RCA02 along with the details of the Purchaser, the terms of the proposed transaction and all information provided to the Purchaser;
- (2) By letter dated 20 February 2012, Asuka informed the Petitioner that in causing the Company to dispose of the Shares, it did not intend to abide by the consent requirement in the Consent Agreements. In addition, and notwithstanding the fact that the provision of financial statements of RCA02 and information relating to potential purchasers and prices is necessary for the Petitioner and other investors to take an informed view on the suitability of the proposed sale, in the same letter Asuka stated that it would not provide any information regarding the Purchaser to the Petitioner "*due to confidentiality obligations*";
- (3) On 18 February 2012, Asuka DBJ, purporting to act on behalf of Asuka sent invitations to bid for the Shares to the Petitioner and an affiliate of the Petitioner, Deutsche Bank AG ("**Deutsche Bank**"). The invitations required offers to be made by no later than 22 February 2012. On 19 February 2012, Deutsche Bank requested information relating to the financials and holding structure of RCA02 to assist it in the preparation of its bid. Asuka DBJ purportedly acting on behalf of Asuka, responded by email on 19 February 2012 stating "*please first inform your price...and we will consider disclosing the requested documents accordingly*";
- (4) By email on 20 February 2012, Deutsche Bank as a potential bidder for the shares requested that it be provided with the same information as had already been given to the Purchaser. Asuka DBJ and/or Asuka on behalf of the Company have since refused to provide Deutsche Bank with that information on the basis that it is unable to do so under the terms of a confidentiality agreement;
- (5) Notwithstanding the absence of financial information about RCA02 and the Company, on 22 February 2012 Deutsche Bank sent Asuka on behalf of the Company an indicative bid of USD 150 million for the Shares, requesting

once again the provision of information relating to the financials and holding structure of RCA02. Asuka responded by email on the same day:

- (a) refusing to provide the information requested by Deutsche Bank on the alleged basis that it did not consider Deutsche Bank's bid to be a binding bid;
 - (b) asserting that it would only consider a bid which could be reasonably be expected to lead to a closed deal by 29 February 2012; and
 - (c) rejecting Deutsche Bank's bid on the purported basis that it was not binding and did not refer to the terms set out in Asuka's proposal document;
- (6) On 23 February 2012, the Petitioner's Japanese attorneys wrote to the Company as a shareholder in RCA02 and Asuka demanding the following (the "**Demand Letter**"):

"The immediate disclosure of all information (the "Information") necessary to evaluate the current fair market value of the assets and rights held by Godo Kaisha RCA03 (the "Operator"), including but not limited to pricing reports of the preferred contributions in RCA02 ("Preferred Contributions") provided by an independent third party of suitable experience and qualification, financial statements and associated documents of RCA02, as well as details of the terms and conditions of any sale or proposed sale of the assets and rights held by the Operator;

The extension of the deadline for offering to purchase the Preferred Contributions, albeit the deadline expired at 5pm on 22 February 2012;

The irrevocable and unconditional permission to the Company and its agents to inspect immediately the business and assets of the Operator, in accordance with Article 7.2(2) of the Silent Partnership Agreements (the "Silent Partnership Agreement") concerning the Preferred Contributions and Article 539.2 of the Commercial Code; and

Your compliance with the obligation to seek prior written consent from the Company and the immediate suspension of the ongoing process to negotiate, document and enter into definitive agreements for the sale of the Preferred Contributions by 29 February 2012 (the "Proposed Sale")."

- (7) On 24 February 2012, in a purported response to the Demand Letter, Asuka sent the Petitioner: (a) copies of a so-called "valuation report" dated 20 May 2011 in respect of a valuation dated 31 December 2010 for Guohua; and (b) a document labelled "Financials 2011 (RCA02)" (sic) as to these:
- (a) the information provided was inadequate in that, for example, the valuation report was: (i) based on historic 2010 financial year values when interim accounts would have been more appropriate to establish the current fair market value; and (ii) the valuation model adopted was, at management's request, expressly limited to the discounted cashflow method, whereas a more appropriate valuation would have included other models such as multiples of EV/EBITDA, market comparables, or net asset value;
 - (b) Asuka provided no confirmation that they would comply with the Consent Agreement. Indeed, in a letter to the Petitioner dated 27 February 2012, Asuka reaffirmed its erroneous belief that the Company is entitled to dispose of the Shares without the consent of the Petitioner or other Silent Partner Investors.

The need for independent liquidators

29. When the purpose for which the Company was formed comes to an end on 29 February 2012 it is required to liquidate its assets, namely the Shares. That liquidation may be done either by the contractual method agreed between the Company and its Silent Partner Investors or under the supervision of independent liquidators.

30. In light of the matters set out above, the Petitioner believes that:

- (1) there is a real and urgent need for the liquidation of the Company's assets to be conducted by independent liquidators who will be able to take control of the Company's affairs and conduct the sale of the Shares in a reasonable and

transparent manner and to maximise returns to the Company's creditors, alternatively contributories, by obtaining a proper market price for the Shares;

- (2) in light of the actions of the Company and Asuka in relation to the sale of the Shares, the Petitioner has significant and reasonable concerns that the Company is no longer being managed in the best interests of the Company and all of its creditors and/or contributories but, rather, in the best interests of Asuka and/or Asuka DBJ Investments and to the prejudice of the Petitioner; and
- (3) Further, as a consequence of the matters set out above, the Company has breached its obligation to act as a good manager and there has been a complete and irrevocable loss of trust and confidence by the Petitioner in the conduct of the affairs of the Company.

31. In the premises, the Petitioner contends, *inter alia*, that:

- (1) On 29 February 2012, the Company's substratum will fail, as the specific business which it was formed to pursue will come to an end;
- (2) The Company and Asuka intend to sell the Shares, which are the only assets of the Company, in breach of the Consent Agreements and in accordance with a flawed sale process that will not obtain proper market value for the Shares and will prejudice the interests of the Petitioner; and
- (3) It is apparent that only an independent liquidator will be able to achieve an orderly wind-down of the Company's affairs and a fair and lawful distribution of the Company's assets.

Conditions for making a winding-up order

Standing

32. Under section 94(4) of the Companies Law (2011 Revision):

"(1) An application to the Court for the winding-up of a company shall be by petition presented either by –

...

- (b) *any creditor or creditors (including any contingent or prospective creditor or creditors);*
- (c) *any contributory or contributories”*

33. The Petitioner is a creditor of the Company:

- (1) there will be a considerable surplus following the sale of the Shares at the expiry of the term of the Business;
- (2) the Company is required to distribute that surplus to the Silent Partner Investors, including the Petitioner; and
- (3) the Petitioner is therefore a contingent and/or prospective creditor of the Company in respect of its entitlement to receive payment of that surplus.

34. Alternatively, the Petitioner is a contributory of the Company and/or should be treated as such in these circumstances:

- (1) Silent Partner Investors are required to make contributions to the capital of the Company for the purposes of operating the Business;
- (2) The contribution takes effect through:
 - (a) An initial subscription to a Maximum Contribution Amount in accordance with Article 1.1;
 - (b) The silent partner is not required to pay the entirety of the Maximum Contribution Amount up-front but is required to pay an Initial Contribution Amount to the Company in accordance with Article 4.4; and
 - (c) The silent partner remains liable to make further contributions to the Company from time to time under the terms of the Silent Partnership Agreements, up to the Maximum Contribution Amount subscribed for by the investor in accordance with Article 4.1.

- (3) Silent Partner Investors are entitled to participate in the profits generated by the Company from the operation of the Business in proportion to the ratio of contributions made by them in the total aggregate value of contributions made by all investors (Article 6.1);
- (4) Silent Partner Investors are required to participate in the losses suffered by the Company from the operation of the Business, limited by reference to the contributions made by them to the Company; and
- (5) Silent Partner Investors are entitled to receive a payment of surplus following the liquidation of the assets of the Company on the expiry of the term of the Business.

Connection to the Jurisdiction, benefit to the Petitioner, jurisdiction over the Petitioner

35. The Company is a foreign company within the meaning of Part V of the Cayman Companies Law (2011 Revision), being a body corporate incorporated under the laws of Japan.
36. There is a sufficient connection between the Company and the Cayman Islands for the court to exercise its winding-up jurisdiction in that:
 - (1) The Shares are the only assets owned by the Company;
 - (2) The Shares relate to a company incorporated in the Cayman Islands and whose register of members is located in the Cayman Islands; and
 - (3) Accordingly, the entirety of the Company's property is located in the Cayman Islands.
37. There is a reasonable possibility if a winding-up order is made of benefit to the Petitioner as the Petitioner will be entitled to receive a distribution of the proceeds of sale of the Shares, whether as a creditor or contributory of the Company.
38. This Court is able to exercise jurisdiction over the Petitioner, which is a company incorporated under the laws of the Cayman Islands.

Conclusion

39. In the circumstances, it is just and equitable that the Company be wound-up.

THE PETITIONER THEREFORE HUMBLY PRAYS THAT:

1. The Company be wound-up by the Court under the provisions of the Companies Law (2011 Revision);
2. Mr. Kenneth M. Krys of KRyS Global of Governors Square, Building 6, 2nd Floor, 23 Lime Tree Bay Avenue, P.O. Box 31237, KY1-1205, George Town, Grand Cayman, Cayman Islands and Mr. Cosimo Borrelli of Borrelli Walsh of Level 17, Tower 1, Admiralty Centre, 18 Harcourt Road, Hong Kong be appointed as Joint Official Liquidators of the Company with power to act jointly and severally (the "**Official Liquidators**");
3. The Official Liquidators shall not be required to give security for their appointment;
4. In addition to their powers prescribed in Part II of the Third Schedule to the Companies Law (2011 Revision), which are exercisable without sanction of this Court, the Official Liquidators may also without further sanction or intervention from this Court:
 - a. exercise the powers set out in Part I of the Third Schedule to the Companies Law (2011 Revision); and
 - b. take any such action as may be necessary or desirable to obtain the recognition of their appointment in any other relevant jurisdictions and to make applications to the courts of such jurisdictions for that purpose,and for the avoidance of doubt the powers bestowed on the Official Liquidators may be exercised by them within and outside the Cayman Islands;
5. The costs of the Petitioners of and incidental to the Petition be paid forthwith from the assets of the Company, to be taxed on the indemnity basis if not agreed;
6. Such other order and directions may be made as the Court thinks fit;

