

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

0035
FSD CAUSE NO: OF 2013

IN THE MATTER OF SECTIONS 14 TO 16 OF THE COMPANIES LAW (2012 REVISION)

AND IN THE MATTER OF FU JI FOOD AND CATERING SERVICES HOLDINGS LIMITED
(PROVISIONAL LIQUIDATORS APPOINTED)



To: The Grand Court of the Cayman Islands

THE HUMBLE PETITION of FU JI Food and Catering Services Holdings Limited (the "**Company**") of Codan Trust Company (Cayman) Limited, Century Yard, Cricket Square, Hutchins Drive, P.O. Box 2681GT, Grand Cayman KY1-1111, Cayman Islands, shows that:

Purpose

- 1 The object of this Petition is to seek an Order of the Court pursuant to section 16 of the Companies Law (2012 Revision) (the "**Companies Law**") confirming a reduction of the capital of the Company ("**Capital Reduction**"), which has been approved by special resolution of the Company's shareholders.

Background

- 2 The Company was incorporated and registered on 8 April 2004 as an exempted company limited by shares. The Company's original name as at the date of incorporation was Fuji Holdings Company Limited. This was changed to the Company's present name by an ordinary resolution passed on 3 May 2004.

- 3 The registered office of the Company is at Codan Trust Company (Cayman) Limited, Century Yard, Cricket Square, Hutchins Drive, P.O. Box 2681GT, Grand Cayman KY1-1111, Cayman Islands. The Company's principal place of business is at Room 2703-08, 27th Floor, Shui On Centre, 6-8 Harbour Road, Wanchai, Hong Kong SAR.
- 4 The objects for which the Company was formed are unrestricted but include, without limitation, to act and to perform all the functions of a holding company and as an investment company and to carry out the other objects more particularly set forth in the Company's Amended and Restated Memorandum of Association (the "**Memorandum**") dated 3 May 2004 (as amended from time to time).
- 5 Between 17 December 2004 and 29 July 2009 the shares of the Company were listed and traded on The Stock Exchange of Hong Kong (Stock Code: 1175). Due to the Company's impaired financial position, trading of the Company's shares was suspended on 29 July 2009.
- 6 By an Order dated 19 October 2009 (the "**Appointment Order**"), and pursuant to an application made by the Company the same day, the High Court of the Hong Kong Special Administrative Region (the "**Hong Kong Court**") appointed Edmund Yeung, Derek Lai and Darach Haughey of Deloitte Touche Tohmatsu as joint and several provisional liquidators over the Company (the "**Provisional Liquidators**").
- 7 On 17 June 2010 the Hong Kong Court issued a letter of request to this Honourable Court seeking its assistance by ordering that:
 - "1. *the Appointment Order and the Provisional Liquidators be recognised such that the Appointment Order be treated in all respects in the same manner as if the Appointment Order had been made and the Provisional Liquidators had been appointed by the Grand Court of the Cayman Islands, including recognition of the powers and authority of the Provisional Liquidators to act on behalf of the Company including, inter alia, to alter or otherwise deal with the capital structure of the Company in furtherance of the proposed rescue and restructuring;*
 2. *in accordance with such recognition and for the avoidance of doubt, section 97 of the Cayman Islands Companies Law (2009 Revision) shall apply to the Company so that no action or proceeding shall be proceeded with or commenced against the Company within the jurisdiction of the Grand Court of the Cayman Islands except by leave of the Grand Court of the Cayman Islands and subject to such terms as that Court may impose; and*

3. *the Provisional Liquidators have liberty to apply to the Grand Court of the Cayman Islands in respect of any matter concerning the Company and arising during the period of the appointment of the Provisional Liquidators of the Company and by doing all such things as may be necessary or convenient to assist the Provisional Liquidators (or one or more of them) in connection with their appointment as the Provisional Liquidators of the Company."*

8 On 16 November 2010 this Honourable Court ordered as follows:

- "1. *That the order of the High Court of the Hong Kong Special Administrative Region dated 19 October 2009 (the "Appointment Order") and Messrs Edmund Yeung, Derek Lai and Darach Haughey of Deloitte Touche Tohmatsu, the joint and several provisional liquidators (the "Applicants") of Fu Ji Food and Catering Services Holdings Limited (the "Company"), be recognised by this Court such that the Appointment Order be treated in all respects in the same manner as if the Appointment Order had been made and the Applicants had been appointed as the joint and several provisional liquidators by this Court, including recognition of the powers and authority of the Applicants to act on behalf of the Company including, inter alia, to alter or otherwise deal with the capital structure of the Company in furtherance of a proposed rescue and restructuring of the Company.*
2. *That section 97 of the Companies Law (2010 Revision) shall apply to the Company so that no action or proceeding shall be proceeded with or commenced against the Company within the jurisdiction of this Court except by leave of this Court and subject by such terms as this Court may impose.*
3. *That the Applicants shall have liberty to apply to this Court in respect of any matter concerning the Company and arising during the period of the appointment of the Applicants as Joint Provisional Liquidators of the Company and by doing all such things as may be necessary or convenient to assist the Applicants (or one or more of them) in connection with their appointment as the joint and several provisional liquidators of the Company.*
4. *That pursuant to GCR O.63, r.4, the Clerk of the Court is directed to remove from the Court file the affidavit of Darach E Haughey sworn on 8 November 2010 and filed on 11 November 2010."*

Company's share capital - History

- 9 The Company was incorporated and registered with an authorised share capital of HK\$100,000 divided into 10,000,000 shares with a par value of HK\$0.01 each.
- 10 By an ordinary resolution passed on 26 November 2004 the Company's authorised share capital was increased to HK\$20,000,000 divided into 2,000,000,000 shares with a par value of HK\$0.01 each.

- 11 As at the date of this Petition, the Company's authorised share capital is HK\$20,000,000 divided into 2,000,000,000 shares with a par value of HK\$0.01 each. As at the date of this Petition, there are 541,296,756 issued shares of the Company, each of which is fully paid up.

The Scheme of Arrangement

- 12 On 22 February 2011, the Company applied to the Hong Kong Court pursuant to section 166 of the Hong Kong Companies Ordinance ("**Companies Ordinance**") for directions to convene a meeting of the "Scheme Creditors" of the Company to consider and, if thought fit, approve a scheme of arrangement proposed between the Company and the Scheme Creditors (the "**Scheme**").

- 13 The two principal purposes of the Scheme are to:

- 13.1 Fully compromise and release all indebtedness of the Company as may be due to Scheme Creditors (described below) as at the effective date of the Scheme, including under the following bonds and facility:

- (a) the HK\$1,000,000,000 Zero Coupon Convertible Bonds due 9 November 2009 (the "**2009 Bonds**") issued pursuant to a trust deed executed by the Company (as Issuer) and The Bank of New York Mellon (as Trustee) on 9 November 2006 (the "**2006 Trust Deed**");
- (b) the RMB1,500,000,000 HK\$ Settled Zero Coupon Convertible Bonds due 18 October 2010 (the "**2010 Bonds**") issued pursuant to a trust deed executed by the Company (as Issuer) and Capita Trust Company Limited (as Trustee) on 18 October 2007 (the "**2007 Trust Deed**"); and
- (c) the term loan facility entered into between the Company and, *inter alia*, Deutsche Bank AG London Branch as agent dated 15 August 2007, as amended on 2 May 2008 and 8 April 2009 (the "**DB Facility**").

- 13.2 Distribute the assets of the Company to Scheme Creditors, in respect of claims accepted by the Provisional Liquidators, more expeditiously than would be possible upon a liquidation of the Company.

- 14 The Scheme Creditors comprise:
- 14.1 Persons with an interest in the DB Facility;
 - 14.2 Persons with an economic or beneficial interest as principal in the 2009 Bonds and/or the 2010 Bonds held through Clearstream Banking, société anonyme, Luxembourg ("**Clearstream**") and Euroclear Bank S.A./N.V. ("**Euroclear**") at 5.00pm (Hong Kong time) on 26 April 2011;
 - 14.3 The Bank of New York Mellon and Capita Trust Company Limited, as trustees of the 2009 Bonds and the 2010 Bonds, respectively;
 - 14.4 The principal agent and such other paying, conversion and transfer agents appointed under:
 - (a) the 2006 Trust Deed;
 - (b) the 2007 Trust Deed;
 - (c) the terms and conditions of the 2009 Bonds and 2010 Bonds; and/or
 - (d) the Paying and Conversion Agency Agreements dated 9 November 2006 in relation to the 2006 Trust Deed, and 18 October 2007 in relation to the 2007 Trust Deed, respectively,(together, the "**Bond Documentation**");
 - 14.5 The Bank of New York Depository (Nominees) Limited and Citivic Nominees Limited, registered holders of the 2009 Bonds and 2010 Bonds, respectively, or such other persons as may be appointed in accordance with the Bond Documentation;
 - 14.6 Persons, and/or their intermediaries, recorded in the books of Euroclear and/or Clearstream as being holders of 2009 Bonds or 2010 Bonds in an account with Euroclear or Clearstream or who were recorded in such books as being holders of 2009 Bonds or 2010 Bonds in such an account at 5.00pm (Hong Kong time) on 26 April 2011;

- 14.7 Persons with the beneficial and economic interest as principal in the 2009 Bonds and the 2010 Bonds; and
- 14.8 All other creditors of the Company.
- 15 By an Order dated 11 March 2011, the Hong Kong Court directed, *inter alia*, that the Provisional Liquidators be at liberty to convene a meeting of Scheme Creditors (the "**Scheme Meeting**") to be held at a place to be determined (in Hong Kong), on a date to be fixed but not later than 6 May 2011, for the purpose of considering and, if thought fit, approving (with or without modification) the Scheme.
- 16 On 29 April 2011 the Scheme Meeting was held at 3.00 p.m. (Hong Kong time) at 4/F, Three Pacific Place, 1 Queen's Road East, Hong Kong. The Scheme Creditors voted in favour of the Scheme without amendment by the majority required pursuant to section 166 of the Companies Ordinance.
- 17 On 16 May 2011 the Company presented a Petition to the Hong Kong Court seeking its sanction of the Scheme. By an Order dated 17 May 2011 the Hong Kong Court sanctioned the Scheme without amendment.

Power to alter the Company's share capital

- 18 Pursuant to Article 6 of the Company's Articles of Association dated 26 November 2004 (the "**Articles of Association**"), the Company has the power to reduce its share capital by special resolution subject to the Companies Law. Article 6 states:

"The Company may from time to time by special resolution, subject to any confirmation or consent required by the Law, reduce its share capital or any capital redemption reserve or other undistributable reserve in any manner permitted by law."

- 19 Pursuant to Article 4 of the Articles of Association, the Company has the power to make the following additional alterations of capital by ordinary resolution subject to the Companies Law:

"The Company may from time to time by ordinary resolution in accordance with the Law alter the conditions of its Memorandum of Association to:

- (a) *increase its capital by such sum, to be divided into shares of such amounts, as the resolution shall prescribe;*
- (b) *consolidate and divide all or any of its capital into shares of larger amount than its existing shares;*
- (c) *divide its shares into several classes and without prejudice to any special rights previously conferred on the holders of existing shares attach thereto respectively any preferential, deferred, qualified or special rights, privileges, conditions or such restrictions which in the absence of any such determination by the Company in general meeting, as the Directors may determine provided always that where the Company issues shares which do not carry voting rights, the words "non-voting" shall appear in the designation of such shares and where the equity capital includes shares with different voting rights, the designation of each class of shares, other than those with the most favourable voting rights, must include the words "restricted voting" or "limited voting";*
- (d) *sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum of association (subject, nevertheless, to the Law), and may by such resolution determine that, as between the holders of the shares resulting from such sub-division, one or more of the shares may have any such preferred, deferred or other rights or be subject to any such restrictions as compared with the other or others as the Company has power to attach to unissued or new shares;*
- (e) *cancel any shares which, at the date of the passing of the resolution, have not been taken, or agreed to be taken, by any person, and diminish the amount of its capital by the amount of the shares so cancelled or, in the case of shares, without par value, diminish the number of shares into which its capital is divided.'*

Special and ordinary resolutions of the Company

20 On 1 March 2013 the Company convened an extraordinary general meeting of its shareholders (the "EGM") to be held at Room 101 Auditorium, 3 Lockout Road, Wanchai, Hong Kong at 2pm on 25 March 2013 to consider and, if thought fit, approve certain resolutions, including, as a special resolution:

That conditional upon: (i) approval of the Capital Reduction (as defined below) by the Grand Court of the Cayman Islands (the "Cayman Islands Court"); (ii) registration by the Registrar of Companies of the Cayman Islands of the order of the Cayman Islands Court confirming the Capital Reduction and the minute of the Capital Reduction approved by the Cayman Islands Court containing the particulars required under the Companies Law (2012 Revision) of the Cayman Islands (the "Companies Law") in respect of the Capital Reduction and compliance with any condition as may be imposed by the Cayman Islands Court in relation to the Capital Reduction; and (iii) the Listing Committee of The Stock Exchange of Hong Kong Limited (the

"Stock Exchange") granting the listing of, and permission to deal in, the new ordinary shares of the Company of HK\$0.01 each (the "New Shares") in issue, upon the date on which the Capital Reduction becomes effective (the "Effective Date") the issued share capital of the Company be reduced from HK\$5,412,967.56 to HK\$541,296.756 by the cancellation of HK\$0.009 paid up capital on each issued share of the Company (the "Share") so that each issued share of the Company shall be treated as one fully paid up share of HK\$0.001 (the "Capital Reduction"), and that the credit item arising upon the Capital Reduction, being HK\$4,871,670.80 be applied in full against part of the accumulated losses of the Company as at 31 March 2012.

and, as ordinary resolutions:

- (a) That conditional upon and immediately following the Capital Reduction, the then (unreduced) authorised but unissued share capital of the Company, being HK\$19,458,703.24, be cancelled and extinguished, such that the authorised share capital of the Company shall be HK\$541,296.756 divided into 541,296,756 Shares with a par value of HK\$0.001 each (the "Capital Cancellation").
- (b) That conditional upon the Capital Cancellation becoming effective, every 10 Shares of HK\$0.001 each in the share capital of the Company be consolidated into one New Share with a par value of HK\$0.01, such that the authorised share capital of the Company will be HK\$541,296.75 divided into 54,129,675 New Shares with a par value of HK\$0.01 each (the "Share Consolidation" and, separately, the Capital Reduction, Capital Cancellation and Share Consolidation are hereafter referred to collectively as the "Capital Restructuring Events"). Any fractions of New Shares arising upon the Share Consolidation shall not be allocated to the holders of the existing Shares otherwise entitled thereto but such fractions shall be aggregated and sold for the benefit of the Company in such manner, on such terms and subject to such conditions as the Directors (as defined below) may, in their sole and absolute discretion, think fit.
- (c) That immediately following the Capital Restructuring Events becoming effective, and subject to the approval of the special resolution to amend the Memorandum and Articles of Association of the Company (set out below), the authorised share capital of the Company be increased from HK\$541,296.75 divided into 54,129,675 New Shares of HK\$0.01 each to HK\$200,000,000 divided into 19,800,000,000 New Shares of HK\$0.01 each and 200,000,000 cumulative non-voting non-redeemable preference shares in the capital of the Company of HK\$0.01 each (the "Preference Shares") by the creation of 19,745,870,325 New Shares of HK\$0.01 each and 200,000,000 Preference Shares of HK\$0.01 each (the "Capital Increase").
- (d) That any one provisional liquidator of the Company (a "Provisional Liquidator" and collectively, "Provisional Liquidators") or any one director of the Company (a "Director" and collectively, "Directors") be and is hereby authorised generally to do all acts, deeds and things, to take all necessary steps, and to approve, sign and execute all documents (including the affixation of the common seal of the Company where execution under seal is required) which may be necessary, desirable or expedient for

the purpose of carrying into effect, giving effect to or implementing any of the foregoing Resolutions numbered 1 to 4.

and, as a further special resolution:

That subject to and conditional upon the implementation of the Capital Restructuring Events, and concurrently with the Capital Increase, the Memorandum and Articles of Association of the Company be amended as follows:

- (e) *Clause 8 of the Memorandum of Association of the Company and Article 8 of the Articles of Association of the Company be deleted in their entirety and each replaced with the following:*

8. The share capital of the Company is HK\$200,000,000 divided into 19,800,000,000 shares with a par value of HK\$0.01 each and 200,000,000 Restricted Voting Preference Shares with a par value of HK\$0.01 each, with power for the Company insofar as permitted by law (and by the Articles) to redeem or purchase any of its shares and to increase or reduce the said capital subject to the provisions of the Companies Law (2012 Revision) of the Cayman Islands (as amended from time to time) and the Articles of Association and to issue any part of its capital, whether original, redeemed or increased with or without any preference, priority or special privilege or subject to any postponement of rights or to any conditions or restrictions and so that unless the conditions of issue shall otherwise expressly declare every issue of shares whether stated to be preference or otherwise shall be subject to the powers hereinbefore contained.

- (f) *In Article 2 of the Articles of Association of the Company, the following definitions be added:*

"Restricted Voting Preference Share(s)" means the restricted voting preference shares of HK\$0.01 par value each in the authorised share capital of the Company issued subject to and in accordance with the Memorandum and Articles of Association of the Company.

"share(s)" means a share in the authorised share capital of the Company (including, without limitation, a Restricted Voting Preference Share and any other share in the capital of the Company) and shall also include a fraction of a share in the Company.

- (g) *A new Article 9B of the Articles of Association of the Company be added as follows:*

9B. Notwithstanding any other provision of the Memorandum of Association of the Company and these Articles, the Restricted Voting Preference Shares shall have the same rights attaching to them as all other shares of the Company of any other class from time to time, except as follows:

- 1. Restricted Voting Preference Shares may not be redeemed;*

2. *Restricted Voting Preference Shares may be re-designated as shares on a 1:1 basis at any time after 6 months from the date of their issue by notice served on the Company and the updating of the Register to record and give effect to the re-designation;*
3. *Restricted Voting Preference Shares shall have no voting rights other than the right to vote on a resolution for the winding up of the Company, or a resolution which, if approved, would vary or abrogate the rights or privileges attaching to the Restricted Voting Preference Shares; and*
4. *Restricted Voting Preference Shares shall have a senior claim to all other shares of the Company in any claim to the remaining assets of the Company upon its winding up, and such Restricted Voting Preference Shares shall rank pari passu amongst themselves in proportion to the amount paid up thereon.*

Purpose of the Capital Reduction

- 21 The Company has accumulated losses of approximately RMB2,380.5 million as at 31 March 2012. The purpose of the Capital Reduction is to enable the credit resulting thereon to be applied to set off some of the accumulated losses of the Company.
- 22 Thereupon the Company will be able to raise new capital by way of subscription for new shares pursuant to the subscription agreement entered into on 18 January 2013 between the Company, the Provisional Liquidators and Marvel Light Holdings Limited.

Minute of Order

- 23 The form of Minute proposed to be registered is as follows:

"The capital of FU JI Food and Catering Services Holdings Limited was, by virtue of a Special Resolution passed on 25 March 2013 and confirmed by an Order of the Grand Court, and an Ordinary Resolution passed on 25 March 2013, reduced from HK\$20,000,000 divided into 2,000,000,000 shares with a par value of HK\$0.01 each to HK\$541,296.756 divided into 541,296,756 shares with a par value of HK\$0.001 each. At the date of the registration of this Minute, 541,296,756 shares in the Company have been issued and are deemed to be fully paid up. On the said reduction of capital taking effect, the authorised share capital of the Company will be HK\$541,296.756 divided into 541,296,756 shares of HK\$0.001 each, of which 541,296,756 are issued and fully paid up."

AND THE PETITIONER HUMBLY PRAYS AS FOLLOWS:

- 1 That the capital reduction of the Company proposed to be effected by the Special Resolution referred to in paragraph 20 of this Petition be confirmed by the Court.
- 2 That the Minute referred to in paragraph 23 of this Petition be approved by the Court.
- 3 That, to the extent necessary, a declaration be granted that the Order of the Hong Kong Court dated 17 May 2011 be recognised.
- 4 That, to this end, all necessary inquiries may be made and directions may be given.
- 5 Such further or other order as the Court sees fit.

Dated this 8th day of March 2013



Maples and Calder

NOTE: It is intended to serve this petition on the Company at its registered office.