

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION



CAUSE NO: FSD <sup>0073</sup> OF 2013

IN THE MATTER OF SECTION 15(4) OF THE EXEMPTED LIMITED PARTNERSHIP LAW (2012  
REVISION)

AND IN THE MATTER OF CYBERNAUT GROWTH FUND, L.P.

WINDING UP PETITION



**To the Grand Court**

The humble petition of: (a) Partners Group Access Secondary 2008, L.P. ("**PGAS 2008**"), a limited partnership formed under the laws of Scotland, with a registered office at 50 Lothian Road, Festival Square, Edinburgh, Scotland, EH3 9WJ; (b) Partners Group Access 89, L.P. ("**PG Access 89**"), a limited partnership formed under the laws of Scotland, with a registered office at 50 Lothian Road, Festival Square, Edinburgh EH3 9WJ, Scotland, United Kingdom; (c) Partners Group Maple Leaf Secondary Fund II, L.P. Inc. ("**PG Maple Leaf**"), a limited partnership formed under the laws of Guernsey, with a registered office at Tudor House, Le Bordage, St Peter Port, Guernsey, GY1 1BT; (d) Partners Group Access IV L.P. ("**PGA IV**"), a limited partnership formed under the laws of Guernsey, with a registered office at Tudor House, Le Bordage, St Peter Port, Guernsey, GY1 1BT; and (e) Partners Group Global Value SICAV ("**PG GV**"), a company incorporated under the laws of Luxembourg, with a registered office at 2-8 Avenue Charles de Gaulle, B.P. 406, L-2014 Luxembourg, Grand Duchy of Luxembourg (together, the "**Petitioners**") shows that:

#### **Introduction**

1 Cybernaut Growth Fund, L.P. ("**Partnership**"), was registered in the Cayman Islands on 20 May 2008 as an exempted limited partnership with registration number 26329 pursuant to the Exempted Limited Partnership Law (2007 Revision) (referred to herein, together with

amendments and revisions thereto, as the "**ELP Law**"). The registered office of the Partnership is at Codan Trust Company (Cayman) Limited, Cricket Square, Hutchins Drive, PO Box 2681, Grand Cayman, KY1-1111, Cayman Islands.

- 2 The general partner of the Partnership is Cybernaut Capital Management Limited ("**General Partner**"), an exempted company registered in the Cayman Islands whose registered office is at Codan Trust Company (Cayman) Limited, Cricket Square, Hutchins Drive, PO Box 2681, Grand Cayman, KY1-1111, Cayman Islands. The General Partner is understood to be 85% owned by Mr Min Zhu ("**Mr Zhu**") and 15% owned by Mr Jason Zhao ("**Mr Zhao**").
- 3 Mr Zhu is understood to be a citizen of the People's Republic of China (the "**PRC**") and the United States and resident in Hangzhou. Mr Zhu is an entrepreneur who is understood to have substantial personal wealth and holds a number of venture capital investments in the PRC. In 2005, Mr Zhu founded Cybernaut (China) Venture Capital Co. Ltd. which, together with affiliated businesses (together "**Cybernaut**"), is engaged in investment business in the PRC.
- 4 The General Partner is a vehicle through which the Partnership receives, via Cybernaut, Mr Zhu's investment management expertise. The other personnel that the Petitioners have dealt with at or on behalf of the General Partner include Mr Zhao and Tianyi Huang, Sha Wang, Wilson Wu, Stephen Zhou and Daryl Magana.
- 5 The Petitioners are each limited partners in the Partnership. The Partnership's business and investments are described further at paragraphs 27 to 29 below and in the Schedule to this petition. Together the Petitioners own 49.96% of all limited partner interests in the Partnership.
- 6 Oriental Financial Holding Corporation, an exempted limited company incorporated in the Cayman Islands with its registered office at Zephyr House, 122 Mary Street, PO Box 709, Grand Cayman KY1-1107, Cayman Islands ("**Oriental**") is the only other limited partner of the Partnership and holds the balance of limited partnership interests (the Petitioners and Oriental are referred to collectively herein as "**Limited Partners**"). Oriental is understood to be legally and/or beneficially owned by Mrs Yuqing (Susan) Xu ("**Mrs Xu**") who is Mr Zhu's wife.

- 7 The Petitioners are parties to an Amended and Restated Limited Partnership Agreement dated 18 February 2009 ("LPA").
- 8 By way of general summary of this petition, the Petitioners seek a winding up order in respect of the Partnership and its affairs on the basis that there has been a justifiable loss of trust and confidence in the General Partner rendering it just and equitable that the Partnership be wound up and/or the management and conduct of the General Partner is such that it is unjust and inequitable to require the Petitioners to continue as limited partners in the Partnership, for the following reasons:
  - 8.1 The General Partner's failure to cause the distribution of realisations of Partnership assets to the Petitioners in breach of the LPA and/or the General Partner's duty of good faith;
  - 8.2 The General Partner's breaches of the LPA and/or section 12 of the ELP law with respect to the provision of true and full information regarding the state of the Partnership's business and financial condition and/or failure to keep or cause to be kept proper books of account which give a true and fair view of the business and financial condition of the Partnership, including the failure to produce audited financial statements for the years ended 31 December 2010, 2011 and 2012 and other information either requested by the Petitioners or required to be provided by the General Partner under the LPA;
  - 8.3 The litany of other significant breaches of the LPA and/or the duty of good faith owed by the General Partner as specified at paragraphs 82 to 114 below;
  - 8.4 The allegations of dishonesty made by the principals of the General Partner, Mr Zhu and Mr Zhao, against one another in the context of certain of the facts and matters pleaded in connection with the above;
  - 8.5 Together and/or separately, such conduct as summarised above and set out further below, is sufficient to evidence a lack of probity on behalf of the General Partner;
  - 8.6 Alternatively, together and/or separately, such conduct as summarised above and set out further below, has justifiably led the Petitioners to have lost all trust and

confidence in the General Partner in circumstances where the only interests in the Partnership independent of the General Partner and its affiliates are those of the Petitioners.

- 8.7 Further or alternatively, the conduct of the General Partner and its principals evidences the need for an immediate investigation into the affairs of the Partnership by independent liquidators.
- 9 Mr Zhu on behalf of the General Partner has admitted that it is appropriate for the partnership interests of the Petitioners to be separated from the partnership interests of Oriental and for the Partnership to be dissolved, such that there is no bona fide dispute that the Partnership should be wound up.
- 10 The Petitioners do not have voting power sufficient to cause the Partnership to be wound up on a voluntary or other basis or take any other effective action to replace the General Partner, such that there is no reasonable alternative but to present this petition.
- 11 All references herein to actions taken by Partners Group are references to actions of Partners Group taken on behalf of the Petitioners.
- 12 All amounts stated in this petition are in United States Dollars unless otherwise specified. Where amounts are stated in a currency other than United States Dollars, the equivalent amount in United States Dollars as at the date of this petition is also stated.

### **The Partnership**

- 13 The Partnership originated from Mr Zhu seeking investment from institutional investors into certain assets that he and/or entities under his control had already acquired in the PRC. In order to pursue that objective, Mr Zhu established a venture capital team under the Cybernaut brand in 2007 and recruited a team tasked with seeking investments from institutional investors.
- 14 Partners Group AG ("**Partners Group**") is a global private markets investment management firm registered and based in Switzerland with more than 600 employees in 15 offices around

the world. Partners Group and its affiliates manage around \$33 billion in assets under management, through a number of collective investment entities, including the Petitioners.

- 15 The Partnership was formed on 20 May 2008 following discussions between Cybernaut and Partners Group representatives between February and May 2008. The Partnership is made up solely of Limited Partnership interests represented by Mr Zhu and/or his wife Mrs Xu (i.e. Oriental) and Partners Group (i.e. the Petitioners).
- 16 The Partnership's purpose was to carry on private equity investment business in the PRC. Schedule 4 of the LPA describes the Partnership's purpose as: "*to carry on the business of investment as part of the Fund and, including but not limited to... making private equity and equity related (such as investments in the form of convertible securities and options) investments in the PRC...*".
- 17 The Partnership is due to terminate in accordance with clause 2.5 of the LPA on 2 June 2015 following its Closing Date on 2 June 2008.
- 18 Clause 5.1 of the LPA provides the General Partner with exclusive responsibility for the management and control of the business and affairs of the Partnership and, subject to clause 5.2 of the LPA, the power and authority to do all things necessary to carry out the purposes and objectives of the Partnership.
- 19 Clause 10.6 of the LPA requires the General Partner to appoint one of its affiliates as Investment Manager to advise it in relation to the investment of the Partnership's assets but provides that the Investment Manager shall not make investment decisions on behalf of the General Partner or enter into any transaction or otherwise bind the General Partner or the Partnership. It is understood that the General Partner has not in fact appointed an Investment Manager for the Partnership.
- 20 The Partnership has made investments in entities, mainly in the education, energy, financial and information technology sectors, based in the PRC. The Partnership primarily carries on business in the PRC. The Partnership is also understood to operate through personnel employed by Cybernaut based in the United States.

### Limited Partners' investments

- 21 Each of the Petitioners is an investment fund advised or managed by Partners Group or its affiliates.
- 22 Each of the Petitioners agreed to make capital contributions to the Partnership in exchange for limited partnership interests by way of subscription agreements as follows:
- 22.1 On 2 June 2008, PGAS 2008 agreed to a capital commitment of \$84.9m of which it has duly paid \$70.2 million;
- 22.2 On 2 June 2008, Partners Group Global Value 2008 L.P. agreed to a capital commitment of \$5 million. This commitment was later transferred to PG Access 89 and \$4.1 million of this commitment has been duly paid;
- 22.3 On 2 June 2008, PG Maple Leaf agreed to a capital commitment of \$5m of which it has duly paid \$4.1 million;
- 22.4 On 2 June 2008 PGA IV agreed to a capital commitment of \$20m of which it has duly paid \$16.5 million; and
- 22.5 On 2 June 2008, PG GV agreed to a capital commitment of \$5 million and on 1 January 2012, following a merger with HSBC Partners Group Global Private Equity, assumed the latter's \$5 million of capital commitments also agreed on 2 June 2008 of which it has duly paid in aggregate \$8.3 million.
- 23 In aggregate, the Petitioners made combined capital commitments of \$124.9 million of which they have duly made cash payments of \$103.2 million in capital calls which is understood to represent 49.96% of Limited Partner interests in the Partnership.
- 24 Pursuant to clause 9(b) of the LPA, the General Partner is required to provide each Limited Partner with a quarterly report containing a statement of the property and assets of the Partnership, details of investments purchased and sold during the quarter, unaudited accounts for the Partnership for the quarter and updates on the performance of the Partnership's investments ("**Quarterly Report**") within 45 days of the end of each calendar

quarter other than the last quarter of each year (although fourth quarter reports were provided from time to time).

- 25 According to the Quarterly Report for the fourth quarter of 2011 ("QR 2011/4"), which is the latest report that the General Partner has provided to the Petitioners containing the capital contribution table for the Partnership, Oriental has made capital commitments to the Partnership of \$125.1 million, of which it had paid \$103.4 million by the fourth quarter of 2011 for a 50.04% Limited Partner interest in the Partnership.
- 26 Oriental's capital contributions were purportedly made in kind to the Partnership when, in 2008, Mr Zhu and affiliated entities transferred shares in a number of companies to the General Partner on Oriental's behalf by way of initial capital contribution to the Partnership. The Petitioners do not know whether Oriental has made any further capital contributions since the initial in kind contributions in 2008.

#### **The Partnership's business**

- 27 The Partnership is believed to hold 12 portfolio investments in the PRC through complex holding structures. Each portfolio investment appears to be held through a unique structure but the Petitioners have not been able to verify these structures due to the General Partner's failure to provide information requested by the Petitioners. It appears that Mr Zhu has complete control over these investments through the entrustment arrangements described below, his position as a director of the relevant operating entities and his substantial control over the General Partner.
- 28 The last Quarterly Report to the Partnership is that for the third quarter of 2012 received on 5 November 2012 ("QR 2012/3"). According to page 2 of QR 2012/3, as of 30 September 2012, the Partnership held interests in 10 portfolio companies incorporated and operating in the PRC and two limited partnerships registered in the PRC, with the total amount invested said to be \$189.45 million. The names of each of the relevant operating or holding entities have not been verified by the Petitioners.
- 29 Further information relating to the Partnership's investment entities are set out in the Schedule to this petition which has been derived from QR 2012/3. The names of the investment entities used in the Schedule as derived from QR 2012/3 are used below.

**General Partner's breaches of the LPA and its duty of good faith through its failure to distribute the proceeds of sales of Partnership investments**

30 The General Partner has acted in a manner sufficient to destroy the Petitioners' trust and confidence in the General Partner having regard to the following conduct which constitutes breaches of the LPA and/or the General Partner's duty of good faith.

*Relevant provisions of the LPA*

31 Clause 6.6(a) of the LPA requires the General Partner to distribute the net proceeds of the realisation of an investment by the Partnership to the Limited Partners in accordance with the allocation formula in clause 6.5 of the LPA within 45 days of the realisation. The allocation formula in clause 6.5 of the LPA affords the Petitioners priority over Oriental with respect to distributions.

*Hairui and Teacher.com*

32 In early June 2012, during a site visit to some of the portfolio companies of the Partnership in the PRC, Mr Zhao indicated to representatives of Partners Group that the Partnership had been involved in certain transactions concerning Teacher.com.

33 On 20 June 2012, Partners Group followed up the site visit by emailing Mr Zhao to ask for more information on a number of matters, including the transactions relating to Teacher.com and transactions relating to Hairui which had been brought to Partners Group's attention by a third party.

34 Mr Zhao responded by email on 28 June 2012 stating that the Petitioners should contact Mr Zhu and Mr Xuanyu Shang, allegedly one of the other "partners" of Cybernaut, for an update on Hairui and should contact Mr Zhu and Mr Steven Wan, a "venture partner" of Cybernaut, for an update on Teacher.com.

35 On or about 31 July 2012, a representative of Partners Group spoke with Mr Zhao by telephone who informed Partners Group that the Partnership had received more than \$10 million in proceeds relating to its investment in Hairui and that Teacher.com had been

restructured into a 100% domestic entity and all foreign shareholders, including the Partnership, had exited their investment in Teacher.com.

- 36 Representatives of Partners Group then met with Mr Zhao in Shanghai on 6 August 2012 to receive a portfolio update from the General Partner. During that meeting Mr Zhao repeated the statements he had made during the telephone call on or about 31 July 2012 referred to above regarding Hairui and Teacher.com.
- 37 On 17 October 2012, a representative of Partners Group spoke with Mr Zhao by telephone who informed Partners Group that: (i) the General Partner had sold the Partnership's interest in Hairui for approximately twice the cost that it had been acquired for; and (ii) a fund managed by Mr Zhu had purchased the Partnership's interest in Teacher.com for what Mr Zhao suspected was a low price.
- 38 The disposition of the Partnership's interest in Hairui is referred to on page 18 of QR 2012/3, which states that the Partnership's interest had been sold to a Chinese local buyer for RMB178.12 million (\$29 million). It is further stated that the proceeds of the sale went to a fund managed by Mr Zhu and Mr Shang. On pages 2 and 18 of QR 2012/3 it states that the Partnership had invested \$18.5 million in Hairui in July 2008.
- 39 In an email dated 16 May 2013 in connection with the forensic review by PricewaterhouseCoopers ("PwC") described below, Pengcheng Lin of Cybernaut stated that the Partnership had not sold its stake in Hairui.
- 40 The disposition of the Partnership's interest in Teacher.com is referred to on page 35 of QR 2012/3, which states that the Partnership's interest in Teacher.com had been transferred to "on-shore entities" and that no proceeds had been received into the Partnership's bank account, nor had the General Partner been formally notified of the transfer. The amount stated in QR 2012/3 for the realisation of the Partnership's investment in Teacher.com is \$17.49 million.
- 41 In an email dated 16 May 2013 in connection with the PwC forensic review described below, Pengcheng Lin of Cybernaut stated that the Partnership had not sold its shares in Teacher.com but due to the fact that Teacher.com planned to list onshore, the offshore holding entities were transferring their interests to onshore operating entities.

- 42 Despite repeated requests to explain these transactions, no full or consistent explanation has been provided by the General Partner.
- 43 Mr Zhu has denied that there has been any money removed from the Partnership's portfolio companies in meetings with representatives of Partners Group in Hong Kong on 16 January 2013 and in subsequent correspondence on 20 January 2013. Mr Zhu sought to explain the transactions as follows:
- 43.1 In relation to Hairui, Mr Zhu acknowledged that Hairui had disposed of one of its campuses but sought to explain this by saying that the land in question had substantial debt associated with it which had also been transferred to the purchaser and that therefore there had been no reduction in Hairui's net assets. This explanation is inconsistent with page 18 of QR 2012/3 and Mr Zhu did not deal with the explanations previously given by Mr Zhao and set out in QR 2012/3 regarding the sale of some or all of the Partnership's interest in Hairui; and
- 43.2 In relation to Teacher.com, Mr Zhu acknowledged that there had been transfers involving the Partnership's interest in Teacher.com but said that he still controlled the interest under certain entrustment arrangements (described further below).
- 44 In a further meeting in Hong Kong on 21 January 2013, Mr Zhu again asserted to representatives of Partners Group that he had not received any moneys from disposals of portfolio assets of the Partnership and that all the portfolio assets of the Partnership were still held by the Partnership.
- 45 Despite substantial efforts to do so, the Petitioners have been unable to determine what precise dealings the General Partner has had in relation to the Partnership's investments in Hairui and Teacher.com, or to verify Mr Zhu's assertions that the investments have not been sold, or to verify the Partnership's current legal or beneficial interest in these underlying assets.
- 46 It is to be inferred that the General Partner is in breach of clause 6.6(a) of the LPA by failing to distribute proceeds from the realisations of the Partnership's interests in Hairui and Teacher.com to the Limited Partners within 45 days of the realisations taking place.

47 In any event, serious discrepancies exist as between Mr Zhu's explanations in relation to these transactions and those of Mr Zhao, Pengcheng Lin and what is recorded in QR 2012/3 to the effect that the Partnership's interests in Hairui and Teacher.com have been sold.

SVG

48 According to page 15 of QR 2011/4, in October 2011 the Partnership entered into a term sheet for a share transfer agreement to sell its interest in SVG to another investor in SVG for approximately RMB 359 million (\$58.4 million) which was due to complete in the first quarter of 2012. According to page 15 of QR 2012/3, the consideration for the Partnership's interest in SVG was RMB 550 million (\$89.5 million) in cash and 6 million shares in a company called "AnXin Security Company". The General Partner has not provided the Petitioners with any other details about AnXin Security Company.

49 Page 15 of QR 2012/3 also discloses that (i) RMB 240 million (\$39 million) was received from the purchaser. Partners Group understands that this amount was paid by the purchaser into an escrow account; and (ii) the General Partner was in the process of receiving the remaining RMB 315 million (\$51.2 million) and AnXin Security Company shares. The Petitioners do not know if the remaining RMB 315 million in purchase consideration has been received by the General Partner or the shares transferred. In any event, the Petitioners have not received any payment under clause 6.6 of the LPA in relation to the sale.

50 Representatives of the Petitioners have been in separate contact with Messrs Zhu and Zhao of the General Partner by telephone and email to confirm the progress of the sale of the Partnership's interest in SVG on numerous occasions during 2012. Quite apart from no satisfactory response having ever been received in connection with this transaction, the information provided by the General Partner has been contradictory and evidence of further breaches of the LPA and section 4(3) of the ELP Law. By way of example:

50.1 In an email to Partners Group dated 23 March 2012, Mr Zhu confirmed that the General Partner had received RMB 100 million (\$16.3 million) from the purchaser and was working hard to receive the remaining \$50 million;

50.2 On 8 April 2012, Mr Zhu sent Partners Group an email stating that the General Partner was working hard to close the SVG deal as soon as possible;

- 50.3 On 20 August 2012, Mr Zhu told Partners Group, by telephone, that the General Partner would not distribute any proceeds from the sale of the Partnership's interest in SVG until agreement was reached with Partners Group on dividing the Partnership's assets; and
- 50.4 On 28 September and 17 October 2012, representatives of Partners Group spoke with Mr Zhao by telephone. During these conversations, Mr Zhao stated that the purchaser was negotiating with Mr Zhu in relation to the payment of 180 million RMB (\$29.2 million) of the SVG purchase consideration into an escrow account until investigations had been undertaken regarding various irregularities, including investigations by the police.
- 51 In summary, the Petitioners believe that the General Partner may have caused the realisation and payment of substantial but unverified sums of up to RMB 240 million (\$39 million) from the sale of the Partnership's interest in SVG, comprising RMB 100 million (\$16.3 million) in or before March 2012 and a further RMB 140 million (\$22.8 million) on or before 30 September 2012.
- 52 It is to be inferred that the General Partner is in breach of clause 6.6(a) of the LPA by failing to distribute proceeds from the realisations of the Partnership's interests in SVG to the Limited Partners within 45 days of the realisations taking place, including at least RMB 100 million (\$16.3 million) which Mr Zhu admitted in his email dated 23 March 2012.
- 53 In any event, serious discrepancies exist as between Mr Zhu's explanations in relation to these transactions and those of Mr Zhao in connection with both the amount and timing of payments received in connection with the sale. The confused and contradictory information provided by the General Partner to the Petitioners regarding the sale of the Partnership's interest in SVG means that the Petitioners have been unable to verify what has occurred in relation to the sale, what amounts have been realised and where they have been applied or are held.
- 54 Further, Mr Zhao's allegation to Partners Group representatives that irregularities were being investigated causes the Petitioners substantial concerns about the manner in which the

General Partner, under Mr Zhu's ostensible control, has managed the Partnership's affairs in connection with SVG and/or his management of the Partnership's assets as a whole.

55 Alternatively, if Mr Zhao's allegation is not true, it evidences a significant breakdown in relations between Mr Zhu and Mr Zhao which affects their ability to manage the General Partner and therefore cause it to discharge its duties to the Partnership and the Limited Partners.

56 Further, Mr Zhu's threat on 20 August 2012 that the General Partner would not distribute any proceeds from the sale of SVG until agreement was reached on dividing the Partnership's assets amongst the Limited Partners indicates Mr Zhu's predisposition to continue to breach the terms of the LPA with respect to the distribution of realisations of Partnership assets.

*Sale of Huizhou Economy Profession Technical College*

57 According to page 22 of QR 2012/3, at some time before November 2012, the General Partner signed a definitive agreement with Dalian Zhenbang Group Co. to sell the Partnership's interest in Huizhou Economy Profession Technical College for RMB 64.08 million (\$10.4 million) with a payment deadline of 20 September 2012.

58 In further breach of clause 6.6(a) of the LPA, the General Partner has failed to distribute any of the proceeds from the realisation of the Partnership's interests in Huizhou Economy Profession Technical College to the Limited Partners within 45 days of the realisation taking place.

**The General Partner's failure to provide financial information in breach of the LPA, the ELP Law and its duty of good faith**

59 The General Partner has acted in a manner sufficient to destroy the Petitioner's trust and confidence in the General Partner having regard to the following conduct which constitutes breaches of the LPA and/or the section 12 of the ELP Law and/or the General Partners' duty of good faith.

Failure to provide audits in breach of LPA

- 60 Pursuant to clause 9(a) of the LPA, the General Partner is required to provide the Limited Partners with financial statements of the Partnership audited by a firm of internationally recognised and independent chartered accountants no later than 120 days after the end of each calendar year or at all.
- 61 In breach of clause 9(a) of the LPA, the General Partner has failed to produce annual audited financial statements for the Partnership for the years ended 31 December 2010, 2011 and 2012.
- 62 The Partnership's auditors for 2008 and 2009 were Ernst & Young in Shanghai who provided an unqualified audit opinion for the Partnership's financial statements for 2008 and 2009 on 31 March 2009 and 30 April 2010 respectively. The Petitioners understand that Ernst & Young were not engaged by the General Partner as auditors for the Partnership in 2010 or any later years.
- 63 Representatives of Partners Group have raised the failure to provide audited financial statements for the Partnership for 2010 and 2011 by both telephone calls and emails to the General Partner at various times, including on or around 25 May 2011, 7 February 2012, 13 July 2012, 18 or 19 August 2012 and 18 October 2012, however no proper explanation has been forthcoming.
- 64 In a telephone call with a representative of Partners Group on 13 July 2012, the explanation given by Mr Zhao for the failure to provide the audited financial statements was that the Partnership's portfolio companies were being non-responsive. Subsequently, Mr Zhu has provided several additional explanations for the failure to provide the audited financial statements to Partners Group representatives, including that there is no money to pay for an audit, that there are no employees at the General Partner to assist the auditors, and that there is nobody capable of coordinating all the steps for an audit.
- 65 In light of the lack of progress by the General Partner, on 18 October 2012, in a telephone conversation between a representative of Partners Group and Mr Zhu it was suggested by Partners Group that it engage a new firm of auditors to prepare the 2010 and 2011 audited financial statements for the Partnership. Mr Zhu agreed with this request provided that the

costs were met by Partners Group. Partners Group was prepared to meet these costs in lieu of the payment of management fees. Partners Group therefore contacted PwC on 22 October 2012 with respect to carrying out the requisite audits.

- 66 In a telephone conversation with a Partners Group representative on 20 November 2012, Mr Zhu stated that the completion of the audited financial statements for 2010 and 2011 will not be an easy task as most of the employees of the General Partner had left because there was no money to pay them.
- 67 Work on the 2010 and 2011 audits by PwC has not commenced because PwC has been unable to obtain the basic preparatory materials from the General Partner necessary to commence the audits, nor to complete its engagement letter as a result.
- 68 On 3 December 2012, PwC emailed Partners Group stating that the audit was far behind the original proposed schedule, that Pengcheng Lin of Cybernaut based in Shanghai whom PwC had been dealing with was not familiar with the audit process and had not been able to find the required materials for the audit, or even to enable PwC to complete its client due diligence to accept the audit engagement, and that it was unclear how the audit field work could be undertaken and whom from the General Partner and/or Cybernaut would assist PwC with such work.

#### Failure to provide Quarterly Reports in breach of LPA

- 69 The Quarterly Reports should give a true and fair view of the state of the business and financial condition of the Partnership and be capable of being relied upon by the Limited Partners.
- 70 In breach of clause 9(b) of the LPA, the General Partner has failed to produce the first and second Quarterly Reports for 2012 and the first Quarterly Report for 2013. Further, contrary to its practice in the years 2009 – 2011, nor has the General Partner produced a fourth Quarterly Report for 2012.
- 71 Accordingly, since the beginning of 2012, the only Quarterly Report provided to the Petitioners is QR 2012/3. However in an email dated 9 January 2013 to Partners Group, Mr Magana on behalf of the General Partner stated that QR 2012/3 had not been seen by him or

Mr Zhu prior to it being sent to the Petitioners and, after being provided with a copy of QR 2012/3 at a meeting with representatives of the Petitioners on 16 January 2013, Mr Zhu stated that he thought QR 2012/3 was an internal Partners Group document. The General Partner has not offered or provided a replacement for QR 2012/3 to the Petitioners.

72 Mr Zhu's allegations regarding QR 2012/3 call into question the accuracy of earlier Quarterly Reports provided by the General Partner, particularly those in 2010 and 2011 given the General Partner's failure to produce audited financial statements for the Partnership for those years.

73 The Petitioners have made several enquiries with respect to the failure to provide Quarterly Reports including:

73.1 In a telephone call with Mr Zhao on 13 July 2012, he stated that the General Partner currently had no employees working on the financial affairs of the Partnership and he was unsure whether Mr Zhu planned to appoint anybody to fill that role; and

73.2 On 8 October 2012, in response to an email from Partners Group to Mr Zhao asking about the outstanding Quarterly Reports for the first and second quarters of 2012, Mr Zhao simply responded that "*we will follow up with you soon and keep you updated about the portfolio*", but such reports were never provided.

#### Breaches of section 12 of the ELP Law

74 Pursuant to section 12(1) of the ELP Law, the General Partner is required to provide true and full information regarding the state of the business and financial condition of the Partnership.

75 Pursuant to section 12(2) of the ELP Law, the General Partner is required to keep or cause to be kept proper books of account which give a true and fair view of the business and financial condition of the Partnership and to explain its transactions.

76 The General Partner is in breach of sections 12(1) and 12(2) of the ELP Law and is culpable under section 12(5) of the ELP Law. The purpose of the contractual requirements of the LPA with respect to the provision of audited financial statements and Quarterly Reports was in part to discharge the General Partner's statutory obligation under section 12.

PwC forensic review

- 77 In light of the General Partner's failure: (i) to provide audited financial statements for 2010, 2011 and 2012 for the Partnership; or (ii) engage an auditor to undertake such work; and (iii) produce the Quarterly Reports for the first and second quarters of 2012; and (iv) the general lack of financial and other information about the Partnership and its investments being provided to the Petitioners, coupled with the Petitioners' serious concerns regarding the General Partner's failure to distribute funds from the realisation of assets, in April 2013 the Petitioners engaged PwC to verify the existence and value of the Partnership's assets, with the General Partner's consent.
- 78 PwC's engagement was intended to give the General Partner a further final chance to provide proper transparency with respect to the Partnership's assets, relevant ownership structures and their value in a timely fashion and to potentially alleviate the serious concerns that Partners Group had regarding the management of the Partnership. PwC's engagement was not a substitute for the provision of audited financial statements for the Partnership for 2010, 2011 and 2012.
- 79 Following discussions between PwC, Partners Group and the General Partner during March and early April 2013, PwC was formally engaged to undertake the forensic review on 3 April 2013 and Partners Group made it clear to the General Partner on numerous occasions, including 3, 5, 9 and 19 April 2013 that the forensic review was to be completed by the end of April 2013. As part of the forensic review, the General Partner agreed to provide PwC with all of the documents and information listed in a schedule prepared by PwC and sent to the General Partner by Partners Group on 4 April 2013.
- 80 On 3 May 2013, PwC reported to Partners Group on the progress that had been made with the forensic review by the end of April 2013. PwC informed Partners Group that:
- 80.1 The General Partner had been proceeding on the basis that the first phase of the audit did not require it to provide many documents, notwithstanding the meetings in person and numerous telephone calls which had taken place during April 2013 between PwC and representatives of the General Partner at which the documents needed by PwC had been discussed;

- 80.2 PwC estimated that it had received, at most, only around 50% of the documents requested from the General Partner which the General Partner had previously agreed to provide for the first phase of the forensic review;
- 80.3 The documents that had been provided by the General Partner to PwC were of less importance in enabling a proper verification of the ownership structures of the Partnership's investments and the use of funds invested by the Partners than the documents not provided;
- 80.4 The two employees of the General Partner who had been assigned to assist PwC, Pengcheng Lin and Tianyi Huang, were both junior employees with limited background knowledge about the Partnership's investments; and
- 80.5 The Partnership's record keeping appeared to be inadequate and incomplete and every time a request for documents was made, it was necessary for a representative of the General Partner to go back to the relevant portfolio entity to obtain the documents and the General Partner was reluctant to do so. The reason given to PwC for such reluctance was that the General Partner feared that the portfolio entities may speculate that the Partnership was exiting their investments and this may further result in undesirable speculation in the industry.

81 Since the update call on 3 May 2013, a further meeting took place between PwC and representatives of the General Partner on 14 May 2013 and the General Partner has provided a small number of additional documents to PwC. However, no substantial progress has been made with the forensic review since the end of April 2013 as set out above.

#### **Further conduct leading to justifiable loss of trust and confidence in the General Partner**

82 The General Partner has acted in a manner sufficient to destroy the Petitioner's trust and confidence in the General Partner having regard to the following conduct which constitutes further breaches of the LPA and/or the General Partner's duty of good faith.

Related party transactions

- 83 Clause 10.3(c) of the LPA provides that the Petitioners have a right of veto in relation to any investment in which the Partnership is to acquire an interest in any entity in which the General Partner or any Key Investment Executive (which includes Mr Zhu) has an existing interest.
- 84 In breach of clause 10.3(c) of the LPA, the General Partner has caused the Partnership to make investments in the PRC through "entrustment" arrangements. Such arrangements involve the purchase of underlying assets through PRC companies wholly or substantially owned by Mr Zhu, purportedly as nominee for the Partnership. The Petitioners have been advised that such arrangements are in effect for the following investments:
- 84.1 Huizhou Economy Profession Technical College; and
- 84.2 Hangzhou Lingfeng RMB Fund, also known as Zhejiang RMB Fund.
- 85 The Petitioners have also been advised that the Partnership's investment in Huagui Capital was held through entrustment arrangements. According to page 14 of the Quarterly Report for the fourth quarter of 2010, the Partnership's investment in Huagui Capital was "merged" with SVG during the fourth quarter of 2010.
- 86 The Petitioners understand that the entrustment agreements were entered into in light of PRC regulatory restrictions on direct foreign investments into certain industries, including the education industry. Under such arrangements, the entrustment companies are the legal owners of shares or limited partnership interests in the underlying entities and the enforceability of the entrustment agreements is subject to considerable legal uncertainty under PRC law.
- 87 The Petitioners raised queries and expressed their concerns about the enforceability of the entrustment arrangements to the General Partner between June 2009 and February 2010, including by way of a letter addressed to the General Partner dated 6 October 2009. Despite such concerns being expressed by the Petitioners, the General Partner has maintained the entrustment arrangements.

Aborted actions in breach of investment restrictions in the LPA

- 88 On 20 September 2011, Mr Zhu informed the Petitioners by email that he intended to cause the General Partner to use its shares in FPI referable to Oriental's interest in the Partnership as security to obtain bridge loans to support "our portfolio companies". Later that day a representative of Partners Group responded to Mr Zhu by email querying what Mr Zhu meant by this statement. Mr Zhu responded by email on 27 September 2011 proposing a meeting to provide an update on the Partnership and to discuss this issue.
- 89 During a meeting with representatives of Partners Group in November 2011, Mr Zhu indicated that he wished to use his own (by which was meant Oriental's) indirect holding in FPI via the Partnership as collateral to obtain finance to support the Partnership's portfolio investments.
- 90 Then, on or about 1 February 2012, during a telephone call with Partners Group, Mr Zhu said that he was proposing to cause the General Partner to use the Partnership's interest in FPI as collateral to obtain finance for his own personal use rather than to support the Partnership's portfolio investments. During this call, Partners Group told Mr Zhu that the Petitioners were not prepared to agree to the assets of the Partnership being used for such purpose.
- 91 On 7 February 2012, a representative of Partners Group spoke with Mr Zhu by telephone, during which Mr Zhu again raised the issue of a loan against the Partnership's interest in FPI and expressed frustration at the Petitioners' unwillingness to agree to him using the Partnership's shares in FPI as personal loan security.
- 92 On 23 February 2012, Mr Zhao provided the Petitioners with a number of emails between Mr Zhu and Amy Xu, an employee of Cybernaut, dating from August 2011, which confirm that Mr Zhu was seeking to use the shares in FPI held by the General Partner on behalf of the Partnership as security to obtain finance through a Hong Kong intermediate holding company, Rich Goal Holding Limited, before he first raised this matter with the Petitioners in September 2011.

93 On 20 January 2013 in an email to a number of personnel at Partners Group, Mr Zhu stated that the General Partner had not used the Partnership's investment in FPI as collateral for any loans.

94 Notwithstanding his assurances regarding the use of the Partnership's interest in FPI, the Petitioners have significant concerns that, based on his prior conduct, Mr Zhu either has or may in future cause the General Partner to act in breach of clauses 5.2(h) and/or 5.3 of the LPA and/or its duty of good faith by using the Partnership's interest in FPI or other investments as security for indebtedness other than the acquisition, holding or disposal of any Partnership investment, given his attempt to do so in August 2011 before informing the Petitioners.

Directions to pay capital contributions relating to management fees into a bank account not in the Partnership's name or under its control

95 Between May 2008 and April 2011, the Petitioners paid all eight capital contributions pursuant to draw-down notices into the account named therein, namely, account numbered 1770132859 at California Bank & Trust, Mountain View, California in the name of Cybernaut Ventures Ltd.

96 At a meeting between representatives of Partners Group and Mrs Xu in San Jose California on 27 November 2012, during a discussion about the management fees of the Partnership, Mrs Xu stated that Oriental had not paid any capital calls to the Partnership. Partners Group does not know if this means that Oriental has not paid:

96.1 Its share of the management fee element of capital calls issued by the General Partner since the second quarter of 2009, by which time the Petitioners' capital contributions had caught-up with the in kind contributions made on Oriental's behalf to the Partnership in 2008; or

96.2 Any capital calls at all since the initial in kind contributions made on Oriental's behalf to the Partnership in 2008.

97 On 20 January 2012, the Petitioners received a draw-down notice from the General Partner by email from Mr Zhao requesting that \$2.55 million in respect of management fees due to

the General Partner be paid to a different bank account from that specified in all previous draw-down notices sent to the Petitioners.

- 98 On the same day, a representative of Partners Group contacted Mr Zhu and Mr Zhao by email to query the new account details. After a further follow up email from Partners Group on 26 January 2012, Mr Zhu responded by email on the same day to say that he was not aware of the capital call, that it appeared to him that the bank account in question was not "our account" and he asked the Petitioners not to wire funds to the account listed in the draw-down notice.
- 99 Mr Zhu's email on 26 January 2012 to the effect that he was not aware of the capital call is contradicted by his email dated 24 December 2011 to Mr Zhao asking him to arrange a capital call.
- 100 On 27 January 2012, Partners Group attempted to contact Mr Zhu by telephone to discuss the matter but was not able to reach him and, in lieu thereof, sent an email asking Mr Zhu to speak by telephone. Mr Zhu responded by email later that day that he had been unable to reach the relevant Partners Group representative by telephone and asked the Petitioners not to wire any funds until the matter had been resolved.
- 101 As a result of receiving the 20 January 2012 draw down notice with the new bank account details, the Petitioners realised that the bank account described in paragraph 95 above that they had paid all prior capital contributions into may not have been used exclusively for the Partnership.
- 102 On 9 April 2013, PwC informed the Petitioners that it had been told by Cybernaut representatives that the Partnership did not have any bank accounts in its own name and had been using one of Mr Zhu's personal bank accounts to "pass through" payments to the Partnership.
- 103 Due to the confused and inconsistent information regarding the payment of the capital call dated 20 January 2012 provided by Mr Zhu and Mr Zhao, and the apparent non-payment of capital calls by Oriental (in whole or in part), the Petitioners have not paid the capital call made on 20 January 2012, which was the last capital call made in respect of the Partnership. The General Partner has not subsequently demanded payment of that capital call.

Failure by General Partner to devote necessary time and attention to the Partnership

- 104 Pursuant to clause 5.1(c) of the LPA, the General Partner is required to devote as much of its time and attention as shall reasonably be required for the management of the Partnership business and to carry on and manage the same with the assistance from time to time of such agents, servants or other employees or advisers as it shall deem necessary.
- 105 The Petitioners understood when investing in the Partnership in 2008 that an experienced and professional investment team at the General Partner would manage the investment activity on behalf of the Partnership.
- 106 As of November 2012 at the latest, the Petitioners understand that almost all of the personnel originally involved in managing the Partnership's investments and purportedly fulfilling the General Partner's reporting obligations to the Limited Partners have left the employ of the General Partner or are no longer involved in investment activity on behalf of the Partnership and have not been replaced. This was confirmed by Mr Zhao who stated during a telephone call on 13 July 2012 that the General Partner had no employees working on the financial affairs of the Partnership and by Mr Zhu who stated during a telephone call on 20 November 2012 that most of the employees of the General Partner had left the firm.
- 107 Accordingly, since November 2012 at the latest, the General Partner has been in breach of clause 5.1(c) of the LPA by failing to retain sufficient employees to manage the business of the Partnership or to appoint replacements for those who had left. This appears to have been a factor contributing to the lack of transparency by the General Partner, the confusion regarding the state of the Partnership's affairs and the inconsistent and contradictory information provided to the Petitioners by the General Partner in relation to the Partnership in the last 18 months.
- 108 Mr Zhu's substantial involvement in the Partnership was a critical factor in the decision-making process when the Petitioners were evaluating their investment in the Partnership. The Petitioners understand that Mr Zhu is no longer devoting substantially all of his business time to the affairs of the Partnership and is instead involved in a significant number of other business ventures.

109 Accordingly, a Relevant Event has occurred as defined in clause 5.6(c) of the LPA and the Partnership's investment powers are accordingly suspended pursuant to clause 5.6(a) of the LPA.

110 In any event, the General Partner has admitted that it does not have sufficient resources to provide proper oversight or control in relation to the Partnership's business and, as a result, cannot discharge its duties to the Limited Partners.

#### Failure to establish a Board of Advisors

111 The Partnership, through the General Partner, is required to establish a Board of Advisors pursuant to clause 10.1(a) of the LPA, the functions of which set out in clause 10.1(b) of the LPA are to review the Partnership's investment strategy and performance, to review and resolve conflicts of interest and to consult on other issues referred to it under the LPA.

112 In breach of clause 10.1(a) of the LPA, the General Partner has not established a Board of Advisors.

#### Failure to call meetings of the Partners

113 Pursuant to clause 10.2(a) of the LPA, the General Partner is required to convene an annual general meeting of the Partners in each calendar year.

114 In breach of this requirement, the General Partner has never called any meetings, including any annual general meetings, of the Partners.

#### **Agreement to winding up**

115 The General Partner, by its representatives, has indicated its agreement that the Partnership should be wound up and dissolved.

116 On 8 March 2012, representatives of Partners Group met with Mr Zhu in Hong Kong to discuss proposals for the distribution of the proceeds of the sale of the Partnership's interest in SVG and the division of the remaining portfolio assets of the Partnership. Mr Zhu said that he would consider the proposals and indicated a desire to end the relationship between

Cybernaut and Partners Group by a division and distribution of the assets of the Partnership or a secondary sale of the Partnership's assets to a third party in the PRC or elsewhere.

- 117 On 23 March 2012, Mr Zhu indicated by email that further discussions were needed on matters such as the value to be assigned to the FPI shares.
- 118 On 18 April 2012, after several rounds of discussions by email and telephone between 25 March 2012 and 4 April 2012, the Petitioners sent a draft memorandum of understanding setting out the terms of proposal for an orderly unwinding of the Petitioners' interests in the Partnership.
- 119 On 8 May 2012, Mr Zhu replied by telephone stating that he disagreed with the proposal and preferred a portfolio sale to a third party and distribution of proceeds pro rata to the Limited Partners' shares in the Partnership.
- 120 On 18 May 2012, Mr Zhu indicated in a telephone call with Partners Group that he was unwilling to divide the assets of the Partnership by transferring ownership of some assets to the Petitioners and was also unwilling to consider a separation of the portfolio assets in which certain assets would be distributed in kind to the Petitioners in consideration of the Petitioners surrendering their limited partnership interests in the Partnership while the remaining assets were kept by Oriental and the General Partner/Mr Zhu. Mr Zhu reiterated his preference for a sale of the entirety of the Partnership's portfolio to a third party and the division of the proceeds between the Petitioners and Oriental 50:50, despite the fact that such a division does not accord with the distribution preference afforded to the Petitioners in clause 6.5 of the LPA.
- 121 On 18 or 19 August 2012, a representative of Partners Group spoke with Mr Zhu by telephone during which he said that it was difficult to find buyers for the Partnership's investments and suggested that Partners Group make an asset selection to separate the portfolio.
- 122 On 5 December 2012, Daryl Magana of Cybernaut spoke with a representative of Partners Group to inform him that Mr Zhu had considered three options for the dissolution of the Partnership: (i) Mr Zhu had some interested buyers for the Petitioners' interests in the Partnership; (ii) Oriental would sell its interest in the Partnership to Partners Group at the

same price as the interested parties were offering; or (iii) a separation of the Partnership's investments amongst the Partners.

- 123 On 19 December 2012, Mr Magana sent Partners Group a further email setting out a proposal for a separation agreement which would involve a review of the Partnership's affairs followed by a joint determination by the Partners of the fair market value of the Partnership's assets and a discussion as to which of the options previously discussed would be used for the return of Limited Partners' investments in the Partnership. On 20 December 2012 Mrs Xu sent Partners Group an email urging Partners Group to consider Mr Zhu's proposal or to modify it if necessary to make it work.
- 124 On 16 January 2013, representatives of Partners Group met with Mr Zhu in Hong Kong. During this meeting, Mr Zhu said that he would deliver a proposal by the following Monday which would allow Partners Group to conduct a forensic review of the Partnership and then he wanted to divide the portfolio amongst the Partners in kind.
- 125 On 20 January 2013, Mr Zhu sent an email to Partners Group acknowledging a breakdown in the relationship between the General Partner and the Petitioners and the mistrust between the parties. He stated that the General Partner would explore all reasonable solutions, including the sale of the Petitioners' interest in the Partnership to a third party, the sale of all of the Partners' interests in the Partnership to a third party or a division of the Partnership's investments amongst the Partners.
- 126 On 27 January 2013, a representative of Partners Group responded to Mr Zhu stating that the Petitioners would like the forensic review of the Partnership's investments to start at Mr Zhu's earliest convenience and, once completed, the Limited Partners should then agree on a division of the Partnership's investment portfolio between them. Partners Group again confirmed that the Petitioners were not interested in purchasing Oriental's Limited Partner interest in the Partnership, or selling their Limited Partner interests to a third party.
- 127 On 29 January 2013, Mr Zhu responded that he accepted this suggestion and could start the forensic review as soon as possible. Mr Zhu stated that Daryl Magana and Mr Zhu's assistant Pengcheng Lin would help with the forensic review as Mr Zhu was resting on his doctor's advice due to recent health problems.

128 Based on the matters set out above, it is clear that the General Partner agrees that the Partnership should be wound up and dissolved.

### **Grounds for Petition**

129 The Petitioners present this petition in accordance with section 15(4) of the ELP Law and section 92(e) of the Companies Law (2012 Revision).

130 Paragraph 8 above is repeated herein. For the reasons set out above the Petitioners have justifiably lost trust and confidence in the General Partner's conduct and management of the Partnership's affairs due to the numerous breaches of the LPA and the ELP Law, including the General Partner's breaches of its duty of good faith contained in section 4(3) of the ELP Law.

131 The conduct of the General Partner specified above demonstrates its abject failure to properly manage the affairs of the Partnership consistently with its legal duties, in particular with a complete lack of transparency in relation to the existence and value of the Partnership's assets.

132 The principals of the General Partner, Messrs Zhu and Zhao have made mutual allegations of dishonesty against one another, further indicating that the General Partner is unable to fulfil its obligations and causing the Petitioners grave concerns about the existence and value of Partnership assets and/or the manner in which such assets have or will be managed in the future.

133 In addition, the General Partner has indicated its agreement that the Partnership should be wound up.

134 The Limited Partners of the Partnership, including the Petitioners, have a legitimate interest in ensuring that independent liquidators, rather than the General Partner, manage the winding up of the Partnership and, if thought fit, investigate the conduct of the General Partner, its principals and related persons and entities.

135 In all the circumstances, it is just and equitable that the Partnership be dissolved and that independent liquidators be appointed to wind down the affairs of the Partnership.

### **Nomination of Joint Official Liquidators**

136 The Petitioners nominate Stuart Sybersma and Robert Aspinall of Deloitte & Touche, One Capital Place, George Town, PO Box 1787, Grand Cayman, KY1-1109 and Lai Kar Yan (Derek) of Deloitte Touche Tohmatsu, 35/F One Pacific Place, 88 Queensway, Hong Kong for appointment as joint official liquidators of the Company ("**Liquidators**").

### **YOUR PETITIONERS THEREFORE HUMBL Y PRAY THAT:**

- (1) The Partnership be wound up in accordance with section 15(4) of the ELP Law and section 92(e) of the Companies Law (2012 Revision).
- (2) Stuart Sybersma and Robert Aspinall of Deloitte & Touche, One Capital Place, George Town, PO Box 1787, Grand Cayman, KY1-1109 and Lai Kar Yan (Derek) of Deloitte Touche Tohmatsu, 35/F One Pacific Place, 88 Queensway, Hong Kong be appointed as Liquidators of the Partnership.
- (3) The Liquidators shall not be required to give security for their appointment.
- (4) The Liquidators shall have the power to act jointly and severally in their capacity as Joint Liquidators of the Partnership.
- (5) No disposition of the Partnership's property by or with the authority of the Liquidators in carrying out their duties and functions and exercise of their powers under any Order granted pursuant to this Petition shall be voided by virtue of section 99 of the Companies Law.
- (6) The Liquidators be authorised to exercise the powers specified at paragraphs 1, 2, 7, 8, 10 and 11 of Part I of the Third Schedule of the Companies Law (2012 Revision) and pursuant to section 110(2) thereof without the further sanction of the Court.
- (7) Without limitation to the generality of the powers specified in paragraph 6 above, it is confirmed that the Liquidators shall have the power to:
  - (i) Bring or defend any action or other legal proceeding in the name and on behalf of the Partnership both in the Cayman Islands, Hong Kong or the PRC and to engage attorneys for such purposes in order to secure the assets of the Partnership; and

- (ii) Take all action required in the Cayman Islands, Hong Kong and/or the PRC consistent with applicable law to carry on the business of the Partnership so far as may be necessary for its beneficial winding up; and
  - (iii) Take all action on behalf of the Partnership in the name and to the exclusion of the General Partner which shall forthwith have no authority or power to act in relation to the Partnership other than at the direction and with the consent of the Liquidators.
- (8) The Liquidators be at liberty to appoint counsel, attorneys and 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 in accordance with CWR O.25.
  - (9) The Liquidators be at liberty to apply generally.
  - (10) The costs of the Petitioners of and incidental to the Petition be paid out of the assets of the Partnership as an expense of the liquidation, such costs to be taxed if not agreed with the Liquidators.
  - (11) Such further or other relief be granted as the Court deems appropriate.

AND your Petitioners will ever pray etc.

Dated the 27th day of May 2013.

Maples and Calder

**Maples and Calder**

**NOTE:** This Petition is intended to be served on the General Partner and Oriental Financial Holding Corporation.

## NOTICE OF HEARING

TAKE NOTICE THAT the hearing of this petition will take place at the Law Courts, George Town, Grand Cayman, on \_\_\_\_\_ 2013 at.

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.

## SCHEDULE

### Partnership Investments stated as at 30 September 2012

#### Based on representations contained in the Quarterly Report for the Partnership for the Third Quarter of 2012

##### Focused Photonics Inc ("FPI")

A producer of analytical and measuring instruments based in Hangzhou. The Partnership invested \$25 million on 23 May 2008 to acquire a 14.7858% equity interest in the company. The Partnership's two nominees on the nine-member Board are Mr Zhu and Mr Zhao.

##### Astronergy

A manufacturer of photovoltaic cells based in Hangzhou. The Partnership invested \$12 million in April 2009 and \$2.36 million in November 2010 to acquire a 7.4075% equity interest in the company. The Partnership's one nominee on the seven-member Board is Mr Zhu.

##### SVG Capital ("SVG")

A financial services provider based in Shenzhen. The Partnership invested \$11.25 million on 23 July 2008 and \$20 million on 2 August 2008 to acquire a 56.4% equity interest in the company and granted a bridge loan of \$10 million to the company in October 2010. The Partnership's three nominees on the five-member Board are Mr Zhu, Mrs Xu and Mr Zhao.

##### Hairui Education ("Hairui")

A professional and vocational education provider based in Hainan. The Partnership invested \$18.5 million on 23 July 2008 to acquire a 24.4% equity interest in the company. The Partnership's two nominees on the eight-member Board are Mr Zhu and Xuanyu Shang.

##### Huizhou Economy Profession Technical College

A vocational education provider based in Huizhou city. The Partnership invested \$4.41 million in February 2009 to acquire a 30% equity interest in the company. The Partnership's two nominees on the five-member Board are Mr Zhu and Xuanyu Shang.

### **Hangzhou Cybernaut Education**

A High School education program provider based in Hangzhou city. The Partnership invested \$5.59 million in December 2009 to acquire a 69.85% equity interest in the company. The Partnership's nominees on the five-member Board are Mr Zhu, Steven Wan and one other person whose identity has not been disclosed to the Petitioners.

### **Lianlian Pay**

A network service provider for mobile payments based in Hangzhou. The Partnership invested \$25.35 million on 20 May 2008 and after realising \$34.3 million in September 2011, held a 4.287% equity interest in the company. The Partnership's one nominee on the seven-member Board is Mr Zhu.

### **Quickcare, also known as Pharmasky**

An operator of medical service stations and hospitals based in Hangzhou. The Partnership invested \$11.39 million on 23 July 2008 and \$3 million on 7 August 2008 to acquire a 34.91% equity interest in the company. The Partnership's two nominees on the seven-member Board are Mr Zhu and Justin Fang.

### **China WebEdu Technology Ltd ("Teacher.com")**

An online education service provider based in Beijing. The Partnership invested \$6.2 million on 23 July 2008 and \$5 million on 1 August 2008 to acquire a 30.18% equity interest in the company and \$7 million in June 2011 to acquire convertible debt in the company. The Partnership's two nominees on the five-member Board are Mr Zhu and Steven Wan.

### **Gtel**

A healthcare services provider based in Beijing. The Partnership invested \$1.5 million on 8 November 2010 to acquire an 11.9% equity interest in the company. The Partnership's two nominees on the five-member Board are Mr Zhu and Justin Fang.

**Hangzhou Lingfeng RMB Fund, also known as Zhejiang RMB Fund**

A limited partnership investment fund with eight portfolio investments in China across a range of industry sectors. The Partnership invested \$2 million in the Fund. According to page 40 of QR 2012/3 this investment was made in March 2008 but this is clearly an error as the Partnership was only established in May 2008. The Partnership holds a 13.66% limited partner interest in the fund. The general partners of the fund are Zhejiang Cybernaut Investment Management Co. Ltd, a company which is 50% owned by a company that is 93.75% owned and controlled by Mr Zhu.

**CITIC-Cybernaut Growth Capital Partner I, L.P.**

A limited partnership investment fund with eight portfolio investments in China across a range of industry sectors. The Partnership invested \$15 million in April 2010 to acquire a 49% limited partner interest in the fund. The general partner of the fund is Tianjin CIAM-Cybernaut Zhixin Investment Management Co Ltd, which is 34% owned by MyGL Financial Holding Ltd, which is in turn wholly owned by the General Partner.