

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO. FSD



IN THE MATTER OF THE COMPANIES LAW (2013 REVISION) AS AMENDED



IN THE MATTER OF FB MAITREYA FUND

WINDING UP PETITION



The humble Petition of Sharp Gain International Limited, Mr Liu Shi Yang and Mr Chiu Sing Yee (the *Petitioners*) shows that:

1. FB Maitreya Fund (the *Company*) is a Cayman Islands exempted company established on 15 December 2009 under the laws of the Cayman Islands with registration number 234763. The Company's registered office is Appleby Trust (Cayman) Ltd. and its registered office address is at PO Box 1350, Clifton House, 75 Fort Street, Grand Cayman, Cayman Islands.
2. The Company has an authorised share capital of US\$50,000, issued and divided into 100 "Management Shares" and 49,990,000 "Participating Shares" of US\$1.00 and US\$0.01 each respectively. The Management Shares and the Participating Shares are subject to different rights and restrictions as set out in the Company's Memorandum and Articles of Association.
3. The Company is a specified purpose company operating as a private fund structure holding shares in FBI Investments V, LLC, a company incorporated in Delaware, USA, which in turn owns shares in DGH Investments, Inc (formerly DST Global Limited), a company incorporated in the British Virgin Islands which in turn owns certain shares in Facebook, Inc, a company incorporated in Delaware, USA (*Facebook*) which is listed on

the NASDAQ Stock Market. The Fund is therefore incorporated for the purpose of, ultimately, holding shares in Facebook (the *Facebook Shares*) on behalf of the shareholders of the Company. The Petitioners represent 100% of the investors in the Company and 99.8% of the issued share capital of the Company.

4. Pursuant to a Private Placement Memorandum dated 8 January 2010 (the *Memorandum*) to which each of the Petitioners subscribed, the Fund offered “Participating Shares” shares to the Petitioners and set out the terms and conditions upon which the Petitioners may subscribe to those shares. Maitreya Investment Management Limited (the *Fund Manager*), a company incorporated in the British Virgin Islands was appointed as the investment manager of the Fund under the Memorandum. Ms. Hillary Yiu Tsz Ngar (*Ms Yiu*) is the sole director and principal of the Fund Manager and is also the sole director of the Fund.
5. Pursuant to Clause 4 of the Memorandum (under the sub-heading “Lock-up Period”), the Facebook Shares were subject to “*a maximum of 6 months lock-up upon the initial public offering of FB Shares...*”, while the Facebook Shares were required to be “*sold within 6 months after the Lock-up Period*” and once sold, the Fund was required to redeem each of the Petitioners “*at a redemption price equal to the sale of the FB Shares after deducting the performance fee ... and any other fees and charges, accruals and payables* (Clause 4 of the Memorandum under the sub-heading “Sale of FB Shares”). “*FB Shares*” is defined in the Memorandum as “*common shares and/or preference shares of Facebook, Inc.*”.
6. Facebook listed on the NASDAQ Stock Market on 18 May 2012 and accordingly, the Lock-up Period under the Memorandum expired on 18 November 2012, while the further six month period by which the Facebook Shares were to be sold and the Petitioners redeemed expired on 18 May 2013.
7. Notwithstanding repeated demands by the Petitioners both directly and through their respective Hong Kong legal advisors, to the Company and/or Ms Yiu, the Facebook Shares have not been redeemed pursuant to the terms of the Memorandum.



8. Further, Ms Yiu is not conducting the affairs of the Company in the best interests of the Company, and is acting in a manner prejudicial to the Petitioners and/or is acting with a lack of probity as a director and investment manager of the Company. These include:-
- a. Failing personally to be licensed and regulated in Hong Kong in order to provide fund management services of the nature set out in the Memorandum, contrary to Hong Kong law;
 - b. Failing to procure that the Investments Manager, wholly owned and controlled by Ms Yiu, be licensed and regulated in the British Virgin Islands in order to provide fund management services of the nature set out in the Memorandum, contrary to British Virgin Islands law;
 - c. Exercising her powers as investment manager under the Memorandum to remove Intertrust Fund Services (Asia Limited) and Intrust Escrow (Asia) Limited (together *Intertrust*) as Administrator and Custodian respectively under the Memorandum, appointing in their place the Fund Manager in both roles. Ms Yiu has thereby removed all independent checks and balances in relation to the Company.
 - d. The discovery, following the subscription by the Petitioners to the Memorandum, that the lock-up period in relation to the Facebook Shares was in fact 18 months as per the arrangements between Facebook and DGH Investments Inc. The Fund Manager, acting through Ms Yiu, did not inform the Petitioners of this, until the issue was raised when the Petitioners wrote to the Fund Manager to seek to redeem their shares following the 6-month lock-up period under the Memorandum.
 - e. Notwithstanding concerted attempts at contacting Ms Yiu, she has remained generally unresponsive, and particularly so after the discrepancy in respect of the lock up period in the Memorandum (referred to above) was raised with her.
 - f. Despite numerous requests for fund related information, including bank account statements, and financial reports, Ms Yiu has not provided these nor substantively responded to the Petitioners' requests for the same, nor provided an account of the



Company. In this regard, the last email correspondence with Ms Yiu and any of the Petitioners was in mid-September 2013.

- g. Ms Yiu's current whereabouts is presently unknown.
- h. Ms Yiu is believed to be in serious financial difficulty.
- i. The Petitioners are precluded by the M&A of the Company from removing Ms Yiu as director and are in deadlock, impotent to act by way of shareholders' resolution to protect the assets of the Company.

9. On 18 November 2013 the Facebook Shares are due to be released from their lock-up restrictions. Ms. Yiu, through the Investment Manager, and as director of the Company exercises control over the Facebook Shares and/or the proceeds of any sale of the same. The Petitioners believe that Ms Yiu will fail to distribute the proceeds or the Facebook Shares to the Petitioners. The Petitioners believe there is a real risk of Ms. Yiu wrongly dissipating the proceeds of the Facebook Shares, and thereby the assets of the Company.

10. In any event, pursuant to Article 149 of the Company's Articles of Association, it is clear that the Company was to be wound upon "*upon the earlier of (i) the disposition of all assets of the Company; or (ii) the compulsory redemption of all Participating Shares of the Company*". Pursuant to Article 47.1 of the Company's Articles of Association, "*the investment manager shall sell the FB Shares on behalf of the Company as further described in the Offering Memorandum and after the sale of the FB Shares as aforesaid, the Company shall compulsorily redeem the equivalent number of Participating Shares...*". The timeframe by which the Facebook Shares were to be redeemed under the Memorandum (i.e. 18 May 2013) has expired.

11. The contractual life of the Company is naturally at an end and its substratum no longer exists except to make final distributions. Accordingly, in accordance with section 92(c) of the Companies Law (2013 Revision) as amended (the *Companies Law*), the Petitioners bring this Winding Up Petition against the Company on the grounds that the period fixed for the duration of the company by the Articles of Association has expired or on the event (i.e. the triggering of the compulsory winding up provisions in the



Memorandum) has occurred which triggered the winding up of the Company pursuant to its Articles of Association.

12. Further, the Company has failed to compulsorily redeem the equivalent number of Participating Shares on 18 May 2013 or at all despite demands and is therefore unable to pay its debts. Accordingly, in accordance with section 92(d) of the Companies Law, the Petitioners further and/or in the alternative bring this Winding Up Petition against the Company on the grounds that the Company is insolvent.
13. Further and/or in the alternative, the Company should be wound up, in accordance with section 92(e) of the Companies Law because it is just and equitable to do so for the reasons above.
14. Should the Honourable Court be minded to grant this Winding Up Petition, the Petitioners nominate Stuart Sybersma and Michael Penner of Deloitte & Touche, One Capital Place, George Town, Grand Cayman, Cayman Islands to be nominated as official liquidator (the *Liquidators*).

Your Petitioners therefore humbly pray that:

- (1) The Company be wound up in accordance with the Companies Law.
- (2) The Liquidators shall not be required to give security for his appointment.
- (3) The Liquidators shall be authorised to exercise any of the powers conferred on them by the Court pursuant to Section 110(2) and Parts I and II of the Third Schedule of the Companies Law without the further sanction or intervention of the Court.

The Liquidators be authorised to carry out any act or exercise any power considered by them to be necessary or desirable in connection with the liquidation of the Company and the winding-up of its affairs and to prevent the dissipation of the Company's assets.

- (5) No suit, action or other proceeding shall be proceeded with or commenced against the Company except with the leave of the Court and subject to such terms as the Court may impose.



- (6) No disposition of the Company's property by or with the authority of the Liquidators in carrying out their duties and functions and exercise of their powers under this Order shall be voided by virtue of section 99 of the Companies Law.
- (7) The Liquidator do file with the Clerk of the Court a report in writing detailing the present position and progress made to date with the winding up of the Company with the realisation of the assets thereof and to any other matters connected to the winding up of the Company, as the Court may direct.
- (8) The Liquidators be at liberty to appoint counsel, attorneys, and/or any other professional advisors, whether in the Cayman Islands or elsewhere as they may consider necessary to advise and assist them in the performance of their duties and on such terms as they may think fit and to remunerate them out of the assets of the Company.
- (9) The Liquidators and their staff be remunerated out of the assets of the Company at the usual customary rate.
- (10) The Liquidators be at liberty to apply generally.
- (11) The costs of the Petition and the Petitioner be paid out of the assets of the Company.
- (12) The Liquidators shall cause a copy of this Petition to be delivered to the Registrar of Companies.
- (13) Alternatively, that the Court do make such orders for regulating the future conduct of the affairs of the Company as the Court shall see fit.
- (14) Such further or other relief be granted as the Court deems appropriate.

Dated this 15th day of November 2013

Harney Westwood & Riegels
HARNEY WESTWOOD & RIEGELS
Attorneys-at-Law for and on behalf of the Petitioners



NOTE: This Petition is intended to be served on the Company



THIS PETITION was presented by Harney Westwood & Riegels, Attorneys-at-Law for the Petitioners, whose address for service is 4th Floor, Harbour Place, 103 South Church Street, PO Box 10240, Grand Cayman KY1-1002, Cayman Islands (Ref: INM/045303.0001).

NOTICE OF HEARING

TAKE NOTICE THAT the hearing of this Petition will take place at the Law Courts, George Town, Grand Cayman on _____ at 10:00am.

Any correspondence or communication with the Court relating to the hearing of this Petition should be addressed to the Registrar of the Financial Services Division of the Grand Court at PO Box 495, Grand Cayman, KY1-1106, telephone 345 949 4296.