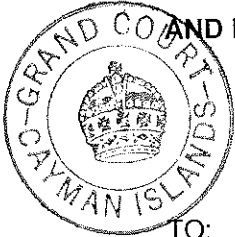
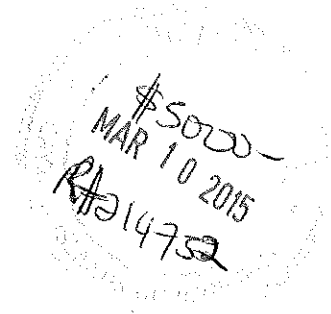


IN THE MATTER OF SECTION 36(3) OF THE EXEMPTED LIMITED PARTNERSHIP LAW,  
2014

AND IN THE MATTER OF ASIA STRATEGIC CAPITAL FUND, L.P.



WINDING UP PETITION



TO: The Grand Court of the Cayman Islands

THE HUMBLE PETITION of ORIX Corporation, whose registered office is at World Trade Center Bldg., 2-4-1 Hamamatsu-cho, Minato-ku, Tokyo, 105-6135, Japan, and New York Life Insurance Company, whose registered office is at 51 Madison Avenue, Suite 1600, New York, NY 10010, USA (together, the "Petitioners"), shows that:

A. Introduction

1. Asia Strategic Capital Fund, L.P. (the "**Partnership**") was registered in the Cayman Islands on 9 January 2008 as an exempted limited partnership with registration number 23388 pursuant to the Exempted Limited Partnership Law (as amended) (the "**ELP Law**"). The registered office of the Partnership is at Maples Corporate Services Limited (formerly M&C Corporate Services Limited) ("**MCS**"), P.O. Box 309, Ugland House, South Church Street, George Town, Grand Cayman KY1-1004, Cayman Islands.
2. The general partner of the Partnership is Asia Strategic Capital Fund GP, Ltd (formerly known as Asian Strategic Mezzanine Fund GP, Ltd and, prior to that, as Asia Mezzanine Capital Fund GP, Ltd) (the "**General Partner**"), an exempted limited company registered in the Cayman Islands on 14 March 2005 pursuant to the Companies Law (as amended) (the "**Companies Law**"). The General Partner's registered office is at P.O. Box 309, Ugland House, South Church Street, George Town, Grand Cayman KY1-1004, Cayman Islands.
3. The Petitioners are limited partners of the Partnership and represent approximately 63.2 per cent of the limited partnership interests in the Partnership. The Partnership's remaining Limited Partners are Massachusetts Mutual Life Insurance

Company ("**Mass Mutual**") and Nippon Life Insurance Company ("**Nippon Life**"), who respectively hold 10.5 per cent and 26.3 per cent of the limited partnership interests in the Partnership.

4. The Petitioners, the General Partner and the Partnership's other limited partners are parties to an Amended and Restated Limited Partnership Agreement dated 24 April 2010 (the "**LPA**"). Unless otherwise defined in this petition, capitalised terms used herein shall have the same meaning as ascribed to those terms in the LPA.
5. The Petitioners, (along with ORIX Asia Limited, "**ORIX Asia**"), are also minority shareholders of the General Partner, holding 40 per cent of the voting share capital of the General Partner, with New York Life holding 20 per cent, ORIX Corporation holding 15 per cent and ORIX Asia holding 5 per cent of the voting share capital. The majority voting shareholder of the General Partner is Asia Mezzanine Capital Partners LP ("**AMCP**"), an entity which is ultimately controlled by Mr Joseph W Ferrigno III ("**Mr Ferrigno**") and Asia Mezzanine Capital Group ("**AMCG**").
6. The Petitioners seek a winding up order in respect of the Partnership and its affairs on the basis that they have justifiably lost trust and confidence in Mr Ferrigno, who has, or has the ability to obtain management control over the General Partner, (and therefore the Partnership), rendering it just and equitable that the Partnership be wound up. Further, Mr Ferrigno's management and conduct of the General Partner and the Partnership is and has been such that it is unjust and inequitable to require the Partnership's limited partners to continue as limited partners in the Partnership. Further or alternatively, the conduct of the General Partner and Mr Ferrigno evidences the need for an investigation by independent liquidators (as officers of this Honourable Court) into the affairs of the General Partner and the Partnership. The Petitioners' reasons are summarised below.
  - (a) Mr Ferrigno has, or has the ability to obtain, ultimate management control over the Partnership by reason of his majority shareholder's control of the board of directors of the General Partner (the "**Board**").
  - (b) The Petitioners and the other limited partners of the Partnership (the "**Limited Partners**") have lost all trust and confidence in Mr Ferrigno's ability or willingness to manage the Partnership's affairs in the best interests of the Partnership as a whole, without favouring his own interests over those of the Limited Partners. "".

- (c) The Petitioners have lost trust and confidence in Mr Ferrigno because, among other things, Mr Ferrigno has abused and misused his power and authority in connection with his control and management of the General Partner and the Partnership and has acted in a manner that favours his own interests to the detriment of the interests of the Partnership and its Limited Partners. In particular, but without limitation:
- (i) Mr Ferrigno, by and through his control of Asia Mezzanine Capital Corporation ("**AMCC**"), has improperly and without authorisation from the Limited Partners or board of directors of the General Partner, misappropriated US\$5,468,750 of funds belonging to the Partnership (the "**Yingliu Receivable**") in connection with an investment in Yingliu International Holdings Limited (the "**Yingliu Investment**").
  - (ii) The fact that the Yingliu Receivable is due and owing from AMCC to the Partnership has been acknowledged in writing by Mr Ferrigno and AMCC and, notwithstanding that acknowledgement, the Yingliu Receivable has not been paid to the Partnership in whole or in part by Mr Ferrigno, AMCC or by any other entity.
  - (iii) In breach of the LPA, AMCC, under Mr Ferrigno's control, failed to distribute to the Limited Partners a closing fee in an amount of US\$1,500,000 due and payable to the Partnership following the completion of US\$30,000,000 investment made by the Partnership (via a subsidiary) in or around March 2013 (the "**Project King Investment**").
  - (iv) Mr Ferrigno and AMCC have generally conducted themselves without any or any sufficient concern as to the proper or adequate corporate governance of the General Partner and the Partnership.
- (d) In April 2014, the other directors on the Board took steps to remove Mr Ferrigno and his related entities from management positions and from carrying out other functions with respect to the Partnership. Despite this, since 31 October 2014, Mr Ferrigno has taken steps to reassert control over the General Partner and the Partnership.
- (i) On 31 October 2014, Mr Ferrigno, through AMCP in its capacity as the controlling majority shareholder of the General Partner, removed or

purported to remove the Independent Class A Directors (defined below) and to replace the same with himself and two other directors, thereby purporting to take management control of the General Partner and the Partnership against the wishes of the Limited Partners.

- (ii) On 21 November 2014 Mr Ferrigno, utilising his purported majority voting power on the Board of the General Partner, then sought to effectively undo the changes which had been implemented by the Independent Class A Directors and the Class B Directors, namely to change the directors of the subsidiaries of the Partnership, to re-appoint AMCC as the manager of the Partnership and to confirm AMCC's role as facility agent and security agent under the Project King Facility Agreement including an acknowledgment of the intention to proceed with certain amendments proposed by Mr Ferrigno in relation to an amendment to the same.
- (iii) Since 21 November 2014 Mr Ferrigno has been purporting to act as a director of the General Partner (and subsidiaries of the Partnership) and has been purporting to call Board meetings and to pass resolutions of the General Partner including to change signatories on bank accounts, despite lacking the requisite authority.

B. The Petitioners do not have sufficient rights under the LPA or otherwise to: (i) cause the Partnership to be wound up on a voluntary or other basis; or (ii) take any other effective action to replace the General Partner, such that there is no reasonable alternative but to present this petition.

C. **The Partnership's Management**

- 7. The Partnership was established as a closed-end private investment fund to make principally mezzanine investments in privately-owned, medium-sized companies doing business throughout Asia.
- 8. The General Partner has the power, in accordance with the LPA, to do acts in furtherance of the purposes of the Partnership.
- 9. The former manager of the Partnership is AMCC, a company incorporated in the Cayman Islands. AMCC was appointed as manager, in accordance with the LPA, by a management agreement dated 24 April 2008 between AMCC, the General Partner

and the Partnership (the "**MA**"). The investment adviser to the Partnership is Asia Mezzanine Capital Advisers Ltd ("**AMCA**"), a company incorporated in Hong Kong. Both AMCA and AMCC are ultimately controlled by Asia Mezzanine Capital Group, which is in turn controlled by Mr Ferrigno. Mr Ferrigno therefore ultimately controlled all of the management operations of the Partnership, through his various companies, during the period that the mismanagement of the Partnership occurred.

10. The relationship between the shareholders of the General Partner is governed by Amended and Restated Shareholders' Agreement entered into between (1) the Petitioners, (2) the Partnership and (3) the General Partner dated 12 September 2007 (the "**SHA**")."
11. Throughout the life of the Partnership up until August 2013 (other than for six days in 2005), there were never any more than two directors nominated by AMCP to the Board (one of whom was always Mr Ferrigno), and for some periods Mr Ferrigno was the only director nominated by AMCP.
12. In August 2013, there were significant changes to the Board:
  - (a) motivated by the concerns relating to the conduct of Mr Ferrigno and AMCC in connection with the management of the Partnership's assets and investments, and pursuant to the terms of the SHA, the Petitioners, in the exercise of their contractual rights under the SHA, passed written resolutions dated 9 August 2013 to appoint professional directors Mr Stephen Briscoe and Mr Wong Teck Meng as directors of the Board (the "**Class B Directors**");
  - (b) in response, Mr Ferrigno sought to have professional directors Cosimo Borrelli, Jason Kardachi and Jacqueline Walsh of Borrelli Walsh and Jonathan Hatch of Madison Pacific appointed by AMCP to the Board (the "**Independent Class A Directors**"); and
  - (c) these appointments were confirmed by a unanimous written shareholders' resolution dated 19 August 2013.
13. As noted below, Mr Ferrigno was removed as a director of the General Partner by a resolution of the Board on 4 April 2014. However, notwithstanding his removal as a director, Mr Ferrigno continued to hold himself out as a director of the General Partner.

14. Further, on 31 October 2014, Mr Ferrigno has sought to use his control of AMCP to effect changes to the Board, namely by purporting to remove the Independent Class A Directors and to replace them with Mr Ferrigno, Ferris C Bye and Christopher Michael Nacson (the "AMCP Directors").
15. On 13 January 2015, the register of directors of the General Partner (the "Register of Directors") was updated by MCS, the General Partner's registered office provider, to reflect the purported removal of the Independent Class A Directors and the purported appointment of the AMCP Directors.
16. On 25 February 2015, Jonathan Hatch, Jacqueline Walsh and Jason Kardachi resigned as directors of the General Partner.
17. It is clear that Mr Ferrigno is seeking to reassert control over the General Partner and therefore the Partnership. In light of the circumstances detailed under Heading D below, the Petitioners do not trust their interests in the Partnership to be protected under Mr Ferrigno's control and consider that their only alternative to protect their interests is to seek a winding up of the Partnership on just and equitable grounds.

**D. Basis of Petition**

18. There has been obvious mismanagement or misconduct in the management of the Partnership and its assets by Mr Ferrigno and the entities he controls to benefit Mr Ferrigno's interests and to the prejudice of the Limited Partners' interests, including the misappropriation of significant Partnership assets. This conduct is detailed below. In addition, Mr Ferrigno has shown a complete disregard of the interests of the Petitioners and has acted solely for his own benefit, to the detriment of the Petitioners and is now taking active steps to regain control of the Partnership.

**Yingliu Investment**

19. On 20 December 2008, the Partnership, through a subsidiary ("ASCF I"), entered into an investment in Yingliu International Holdings Limited ("Yingliu") in the form of a senior secured loan of US\$25,000,000 extended by the Partnership (by way of ASCF I). In support of the loan, Yingliu granted the Partnership zero-exercise price equity warrants for up to 2.40 per cent of ordinary equity.
20. The total return including the repayment of capital, interest payments and the proceeds from the exercise of various warrants was US\$39,439,199. Under the terms of the facility agreement with respect to the Yingliu Investment, the proceeds

were to be paid by Yingliu to AMCC, who received those sums as facility agent in respect of the loan, for the account and benefit of ASCF I. AMCC was required to distribute the proceeds received as in its capacity as facility agent to ASCF I without deduction (with an exception that is *de minimis* for present purposes). The proceeds should then have been distributed by the Partnership to the Limited Partners in accordance with the LPA.

21. In fact, having regard to the amounts actually distributed to the Limited Partners, it is clear that AMCC has illegitimately retained and failed to pay ASCF I the sum of US\$5,468,750. Rather than being paid back to the Partnership, these sums were improperly applied as a source of funds to meet, among other things, the expenses of both AMCC and AMCA.
22. On 12 December 2013, following a request of the Limited Partners made on 25 September 2013, AMCC wrote to the Partnership acknowledging its liability to the Partnership in the sum of US\$5,346,979 (being the Yingliu Receivable). This letter was signed by Mr Ferrigno in his capacity as a director of AMCC.
23. Notwithstanding demands made for repayment, and the unambiguous written admission by AMCC and Mr Ferrigno that the Yingliu Receivable remains due and payable to the Partnership, the Yingliu Receivable has not been paid to the Partnership or to the Limited Partners, either in whole or in part. None of Mr Ferrigno, AMCC nor AMCA has indicated any intention of repaying the Yingliu Receivable to the Partnership.

#### **Project King Investment**

24. Further to a capital call on 3 December 2012, Mr Ferrigno advised the Limited Partners of his intention to cause the Partnership to enter into the Project King Investment. The Partnership, by way of ASCF (Cayman Islands) II Limited ("**ASCF II**") a wholly owned subsidiary of the Partnership incorporated in the Cayman Islands, provided a US\$30,000,000 senior secured loan to CAAM Limited ("**CAAM**") and zero cost equity warrants convertible into a 10.7% interest in CAAM pursuant to a facility agreement dated 14 March 2013 between CAAM as borrower, AMCC as facility agent and security agent and ASCF II as lender (the "**Project King Facility Agreement**"). The loan was provided for the purposes of enabling CAAM to invest in an Australian entity, Moraitis Group, a "grower-aggregator-distributor" of fresh fruits and vegetables in Australia. CAAM is controlled by Chevalier International Holdings Limited ("**Chevalier**").

25. As a result of the General Partner's failure to act to recover the Yingliu Receivable from AMCC, ORIX Corporation requested that Mr Ferrigno refrain from proceeding with the Project King Investment pending a satisfactory resolution of this matter with AMCC. However, these requests were not complied with and Mr Ferrigno proceeded with the Project King Investment notwithstanding the objection of ORIX Corporation.

#### **Project King Closing Fee**

26. Pursuant to clause 10.1 of the Project King Facility Agreement, CAAM, as borrower, was required to pay ASCF II, as lender, a closing fee of US\$1,500,000 (the "Project King Closing Fee").
27. Under the terms of the Project King Facility Agreement, CAAM was required to pay the Project King Closing Fee to AMCC, who received this sum for the account and benefit of ASCF II. AMCC was required to make available the sums received as Facility Agent to ASCF II without deduction (with an exception that is *de minimis* for present purposes). These sums should then have been distributed by the Partnership to the Limited Partners in accordance with the LPA.
28. In fact, AMCC did not make available to ASCF II the Project King Closing Fee, but rather used to this sum, among other things, to pay expenses of AMCC and AMCA. Specifically:
- (a) US\$399,942 for expenses relating to the Project King Investment, for example legal advice, tax due diligence and BVI registration;
  - (b) US\$135,477 for Partnership expenses, being non-consummated investments (US\$113,030) and the balance of the audit fee for the Partnership (US\$22,447);
  - (c) US\$147,497 to AMCC in respect of its own expenses, for example audit and accounting, salaries and consulting fee and directors' fees;
  - (d) US\$335,000 was transferred to AMCA (the fund manager) for rent, office expenses and salary paid to Mr Ferrigno; and
  - (e) US\$52,569 was spent on legal fees relating to the use of the proceeds from the disposition of the Yingliu investment.
  - (f) US\$128,473.63 was spent on unauthorised expenses of service providers to AMCC, the General Partner and the Fund

29. None of these expenses or transfers were validly deducted from the Project King Closing Fee and Mr Ferrigno never provided any details of any such expenses prior to deducting the same from the Project King Closing Fee. The total amount of these expenses is US\$1,198,958.53.

#### **Breach of Undertaking**

30. Following requests from the reconstituted Board, on 18 August 2013, Mr Ferrigno and AMCC executed a Deed of Undertaking pursuant to which they agreed not to dispose of any of the assets of the General Partner or the Partnership without the prior approval of the newly constituted Board (the "Undertaking").
31. The purpose of the Undertaking was to ensure that all payments made from Partnership monies were approved by the Board.
32. On 14 February 2014, the Independent Class A Directors circulated a draft resolution seeking ratification of certain expenses which had been paid by AMCC after execution of the Undertaking and in breach of the same. The Class B Directors queried these expenses and requested further information prior to considering such a resolution. After a number of weeks of delay, on 12 March 2014, Mr Ferrigno finally provided the Board with the list of payments that had been made by AMCC from the remaining Project King Closing Fee without Board approval. Although the Board later determined that some of these payments had been with respect to expenses reasonably incurred in respect of the Partnership and the General Partner (albeit unauthorised at the time), not only had Mr Ferrigno breached the Undertaking by making these payments, but he had also failed to transfer the entire remaining balance of the Project King Closing Fee, retaining US\$30,000. Further, it must be borne in mind that all payments out by AMCC were illegitimate as AMCC should have paid the whole Project King Closing Fee to ASCF I without deduction.

#### **Removal of Mr Ferrigno and AMCC from management of the General Partner and the Partnership**

33. In March 2014, the Class B directors and the Independent Class A Directors, became aware that Mr Ferrigno had been secretly negotiating with Chevalier regarding a restructuring of the Project King Facility Agreement and the Project King Investment without Board approval or indeed any disclosure of that fact to the Board.
34. Given that Mr Ferrigno had deliberately been keeping important developments in respect of the Project King Investment from the Board and entering into secret and

unauthorised negotiations with Chevalier, together with the earlier concerns regarding his conduct with respect to the Partnership, both the Independent Class A and Class B decided that that action was necessary and that Mr Ferrigno should immediately be removed as a director of the General Partner and that the MA should be terminated.

35. On 4 April 2014 resolutions were passed at a Board Meeting removing Mr Ferrigno as a director of the General Partner with immediate effect. It was also agreed by the Board that steps would be taken to terminate the MA with AMCC on notice in accordance with its terms. A termination notice was accordingly served on AMCC (of which Mr Ferrigno is the sole director) on or about 4 April 2014. Following the service of a notice of termination on AMCC as manager, Madison Pacific was appointed as successor manager of the Partner on or about 4 April 2014.

#### **Continued interference following removal**

##### ***The Project King Investment***

36. On 7 April 2014, Chevalier presented Mr Hatch with the 'execution version' of an Amended and Restated Facility Agreement and an Option Agreement in respect of the Project King Investment between AMCC as Facility Agent and Security Agent, CAAM and ASCF II as the Majority Lender, which had purportedly agreed by Mr Ferrigno.
37. The proposed amendments were very unfavourable to the Partnership and ASCF II due to the fact that the effect of the Chevalier restructuring proposal was to subordinate the Project King Investment to a capital injection provided by Chevalier. Essentially, the proposal provided that ASCF II would transfer a significant portion of its potential economic return in the Project King Investment to Chevalier. It is clear that Mr Ferrigno sought to agree this restructuring, which would have risked the Partnership's principal investment, in order to increase his own potential carried interest at a time when the companies he controlled did not have sufficient funds to repay the amounts owed to the Partnership (being the Yingliu Receivable and the Project King Closing Fee).
38. A restructuring agreement agreed by the Board (with different proposals to those agreed by Mr Ferrigno) was executed on 21 October 2014, and the restructuring of the Project King Investment has since been completed.

39. Mr Ferrigno's behaviour in continuing to negotiate with Chevalier regarding the restructuring of the Project King Investment, against the express instructions of the Class B Directors and Independent Class A Directors, was an obvious misrepresentation of his authority and his behaviour since threatened the interests of the Partnership and the Limited Partners. Further, the nature of restructuring deal Mr Ferrigno was willing to agree to shows that he was willing to benefit himself to the detriment of the Partnership by causing the Partnership to enter into a speculative investment so as to potentially earn carried interest for himself.
40. The Petitioners are concerned that if Mr Ferrigno were to regain control of the Partnership, he would continue this pattern of: (a) making decisions without recourse to other stakeholders and without implementing proper corporate governance; and (b) making decisions that benefit himself to the detriment of the Partnership as a whole".

***Project Pantheon - SFO***

41. One of the investments of the Fund was certain INR315,000,000 Compulsory Convertible Debentures (the "CCDs") issued by SFO Technologies Pvt. Ltd. ("SFO") and held by a wholly owned subsidiary of the Partnership, ASCF L.P. (Mauritius) Company Limited, ("ASCF Mauritius"), which convert to equity in SFO upon certain liquidity events at post-money valuations to be determined (the "Project Pantheon Investment").
42. Because SFO had failed to achieve an IPO by 11 October 2013, it was obliged to undertake a third party sale process to sell a certain "NEST division" of the business and to repurchase the CCDs at a price sufficient to allow the investors to achieve a 25% IRR by 11 April 2014. If the sale process was not successfully completed by 11 April 2014, the Chairman of SFO and the other promoters (the "Promoters") became obliged to repurchase the CCDs at a price sufficient for all the investors to achieve a 30% IRR.
43. Throughout the negotiation process with SFO Mr Ferrigno continued to hold himself out as representing the management of the Partnership which had the effect of interfering with the negotiation process. In particular, Mr Ferrigno advocated to SFO that the Project Pantheon Investment should not be redeemed but rather rolled over. This is another example of Mr Ferrigno seeking to cause the Partnership to make a high risk investment in a speculative bid to increase the yield, putting Partnership assets at risk to advance his own interests.

## Books and Records

44. Following the removal of Mr Ferrigno as a director of the General Partner and of the Partnership, a number of requests were sent by letter to Mr Ferrigno requesting that he deliver up the books and records of the General Partner and the Partnership.
45. On 7 July 2014, proceedings were issued by the General Partner, ACSF I and ASCF II against Mr Ferrigno, and by ASCF II against AMCC in the Hong Kong Court for the delivery up of books and records.
46. In light of the continuing dispute as to who has the authority to act on behalf of the General Partner, ACSF I and ASCF II, the parties to the Hong Kong proceedings have agreed in principle to a stay of those proceedings.

## Purported Removal of Independent Class A Directors

47. In its capacity as the Class A Holder, AMCP purportedly passed resolutions on 31 October 2014 (the "**October 2014 Resolutions**") :
  - (a) Removing the Independent Class A Directors; and
  - (b) Appointing the following as replacement Class A directors ("**AMCP Directors**"):
    - (i) Mr Ferrigno;
    - (ii) Christopher Michael Nacson; and
    - (iii) Ferris C. Bye.
48. On 13 January 2015, the register of directors of the General Partner was updated by MCS to reflect the purported removal of the Independent Class A Directors and the purported appointment of the AMCP Directors despite the known objection by the Independent Class A Directors and Class B Directors to such action.
49. There are currently two different positions being taken regarding the validity of the removal and appointment of the Independent Class A Directors and the AMCP Directors. This has resulted in considerable uncertainty regarding the current constitution of the Board of the General Partner and the overall management of the Partnership. On 9 February 2015, AMCP commenced an action in this Honourable Court to seek, *inter alia*, a declaration that the October 2014 Resolutions were validly

made and an order that the Register of Directors be amended in accordance with the October Resolutions.

50. Notwithstanding this uncertainty, Mr Ferrigno has continued to act as though the October 2014 Resolutions were valid, including by taking steps to try to change the directors of the subsidiaries, ASCF II and ASCF Mauritius, as well as the ASCF II nominated director on the board of directors of CAAM and King Holding Company I Pty. Limited (the Project King Investment project company), terminating the appointment of Madison Pacific as manager and re-appointing AMCC and confirming AMCC as the Facility Agent and Security Agent under the Project King Facility Agreement and taking steps to proceed with an amendment of the Project King Facility Agreement.

#### **Corporate Governance Issues**

51. The General Partner, under the control and direction of Mr Ferrigno, has:
- (a) failed to convene any annual board meetings of the General Partner since the formation of the Partnership;
  - (b) failed to provide financial statements of the Partnership to the Limited Partners in accordance with the terms of the LPA in a timely manner or at all;
  - (c) failed to convene an advisory committee of the Partnership in breach of the terms of the LPA;
  - (d) in breach of the terms of the LPA, failed to obtain the consent of a majority of interest of the Limited Partners in the Partnership for AMCC to be appointed to the role of facility agent for the Partnership in respect of various investments made by the Partnership;
  - (e) proceeded with the Project King Investment despite the request of one of the Limited Partners not to do so due to concerns arising from AMCC's failure to repay the Yingliu Receivable to the Partnership;
  - (f) acted in breach of an undertaking given on 18 August 2013 pursuant to which Mr Ferrigno and AMCC agreed not to dispose of any assets of the General Partner or the Partnership without the approval of the Board constituted on 19 August 2014;

- (g) purported to act for and on behalf of the General Partner and the Partnership in relation to an amendment to the Project King Facility Agreement without authorisation and against the express instructions of the Board, both before and after his removal as a director of the General Partner;
- (h) interfered with discussions in relation to the sale of interests in Project Pantheon;
- (i) refused to agree to the removal of AMCC as the Facility Agent and Security Agent under the Project King Facility Agreement despite this removal being sanctioned by the Board;
- (j) refused to comply with requirement from the General Partner, ASCF I and ASCF II for delivery up of the books and records; and
- (k) failed to convene any general meetings of the shareholders of the General Partner since the formation of the Partnership;
- (l) purported to remove the Independent Class A Directors from the General Partner and replace them with Mr Ferrigno and his nominees.

#### **Distribution**

- 52. On 25 February 2015, distributions from the Partnership's assets occurred which comprised of all or substantially all of the Partnership's liquid assets to the Limited Partners (the "**Distribution**").
- 53. The Distribution occurred following a resolution of the Board of the Partnership on 24 February 2015. As a result of the Distribution, there are no material liquid assets remaining in the Partnership, and its sole remaining assets are a right to a future payment of principal and interest under the restructured Project King Investment and the claims against Mr Ferrigno and entities controlled by him arising out of their conduct with respect to the Partnership. There are no prospects of the Partnership, at least with the consent of the Petitioners, making any further investments.

#### **E. Conclusion**

- 54. In the premises:
  - (a) Mr Ferrigno, has by his conduct evinced a disregard for the best interests of the Partnership and an intention to act in the interests of Mr Ferrigno, AMCP

and its affiliates at the expense of the best interests of the Partnership. The other AMCP Directors in acquiescing with Mr Ferrigno's actions since his purported re-appointment as a director of the General Partnership, have shown that they cannot be relied on to safeguard the interests of the Partnership as a whole. Indeed, if they were to do so, Mr Ferrigno would undoubtedly remove them as he has purported to do with respect to the Independent Class A Directors.

- (b) The Petitioners have in consequence justifiably lost all trust and confidence in the ability of Mr Ferrigno and AMCC, to act in the best interests of the Partnership and the Limited Partners and/or to comply with their fiduciary responsibilities to the Limited Partners and their contractual obligations under the LPA. The prospect or even the risk that Mr Ferrigno could regain control over the Partnership, in which the Limited Partners have a substantial financial interest is intolerable to the Petitioners.
- (c) Since the Partnership is no longer able to make Investments and is effectively in realisation mode, the substratum of the Partnership has gone, and it is impracticable and no longer viable for the Partnership to continue as a going concern.
- (d) It is just and equitable that the Partnership be wound up.
- (e) There is no alternative or other remedy or cause of action available to the Petitioners in order to satisfactorily protect their interests and the interests of the other Limited Partners in the Partnership.

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

- (1) The Partnership be wound up in accordance with the Companies Law (2013 Revision) (the "**Companies Law**") and the Exempted Limited Partnership Law, 2014.
- (2) David Martin Griffin of FTI Consulting (Cayman) of 2D Landmark Square, 64 Earth Close, SMB, PO Box 30613 Grand Cayman KY11203 Cayman Islands and John Howard Batchelor of FTI Consulting (Hong Kong) Limited, Level 22, The Center, 99 Queen's Road Central, Central, Hong Kong be appointed be appointed as joint official liquidators of the Partnership (the "**JOLs**").
- (3) The JOLs shall not be required to give security for their appointment.

- (4) The JOLs have the power to act jointly and severally in their capacity as liquidators of the Partnership.
- (5) The JOLs be authorised to take any such action as may be necessary or desirable to obtain recognition of the JOLs and/or their appointment in any other relevant jurisdiction and to make applications to the courts of such jurisdictions for that purpose.
- (6) The JOLs be authorised to exercise all of the powers set out in paragraphs 2, 8, 10 and 11 of Part 1 of the Third Schedule to the Companies Law and section 110(2) thereof, without further sanction or intervention of this Honourable Court.
- (1) The JOLs be authorised to do any act or thing considered by them to be necessary or desirable in connection with the liquidation of the Partnership and the winding up of its affairs in the Cayman Islands and/or elsewhere
- (2) Without prejudice to the generality of the foregoing, the JOLs be authorised and be granted leave to take all such actions as may be necessary to:
  - (a) investigate the affairs of the Partnership and its direct and indirect subsidiaries;
  - (b) pass resolutions appointing themselves or their nominees as directors and/or liquidators of the Partnership's subsidiaries in accordance with the terms of their constitutional documents and the laws of their place of incorporation;
  - (c) make applications to, and seek the assistance and recognition from, the courts of any foreign jurisdictions as may be necessary in the course of their conduct as JOLs of the Partnership or for the purposes of carrying out any of the functions provided for herein.
- (9) The JOLs be at liberty to appoint such counsel, attorneys, professional advisors, whether in the Cayman Islands or elsewhere, as they may consider necessary to advise and assist them in the performance of their duties in accordance with Order 25 of the Companies Winding Up Rules 2008 (as amended).
- (10) No disposition of the property of the Partnership by or with the authority of the JOLs in carrying out their duties and functions and the exercise of their power under any Order granted pursuant to this Petition shall be voided by virtue of section 99 of the Companies Law.

- (11) Subject to section 109(2) of the Companies Law and the Insolvency Practitioner's Regulations 2008 (as amended), the JOLs be authorised to render and pay invoices out of the assets of the Partnership for their own remuneration.
- (12) The JOLs be at liberty to meet all disbursements reasonably incurred in connection with the performance of their duties and, for the avoidance of doubt, all such payments shall be made as and when they fall due out of the assets of the Partnership as an expense of the liquidation.
- (13) The JOLs be at liberty to apply generally.
- (14) The Petitioners' costs of and incidental to the Petition be paid forthwith out of the assets of the Partnership on the standard basis.
- (15) Such further or other relief be granted as the Court deems appropriate.

AND your Petitioners will ever pray etc.

DATED this 4<sup>th</sup> day of March 2015  
FILED this 10<sup>th</sup> day of March 2015

  
\_\_\_\_\_  
**WALKERS**  
Attorneys at Law for the Petitioners

**NOTE:** This Petition is intended to be served on the General Partner and the Partnership at their registered offices.  
This Petition was presented by Walkers, Attorneys at Law for the Petitioners, whose address for service is care of their said Attorneys at 190 Elgin Avenue, George Town, Grand Cayman KY1-9001, Cayman Islands.