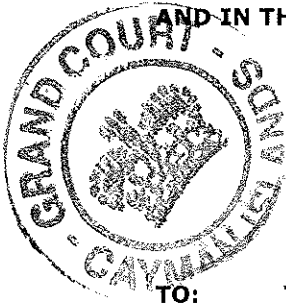


IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 134 OF 2016 (NAS)

IN THE MATTER OF THE EXEMPTED LIMITED PARTNERSHIP LAW, 2014 REVISION

AND IN THE MATTER OF CXC CHINA SUSTAINABLE GROWTH FUND, L.P.

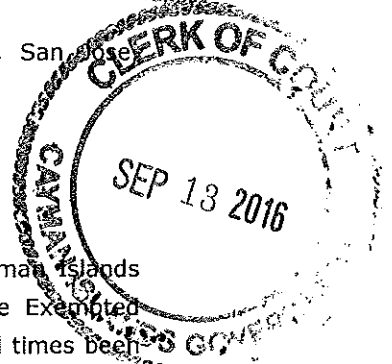


WINDING UP PETITION



TO: The Grand Court of the Cayman Islands

THE HUMBLE PETITION of Cisco Systems, Inc. of 170 West Tasman Drive, San Jose, California, 94040, United States of America (the "**Petitioner**") shows that:



Introduction

1. CXC China Sustainable Growth Fund, L.P (the **Offshore Fund**) is a Cayman Islands exempted limited partnership registered on 19 October 2007 under the Exempted Limited Partnership Law (as amended) (the **Law**). CXC has at all material times been controlled and managed by Ziwang Xu, Qian Zhao, Dixin Yu and Liefeng Ou (together the **Principals**).
2. The registered office of the Offshore Fund is situated at Codan Trust Company (Cayman) Limited, Cricket Square, Hutchins Drive, George Town, Grand Cayman.
3. Pursuant to an Amended and Restated Limited Partnership Agreement dated 9 November 2007 (the **LPA**), CXC Capital, Inc. (**CXC**), a Cayman Islands exempted company, is general partner of the Offshore Fund and the Petitioner is the only limited partner. The Petitioner agreed to commit US\$100 million to the Offshore Fund pursuant to Schedule A of the LPA.
4. Clause 7.1 LPA provides that the Offshore Fund would appoint XZ Capital Management, Ltd. (**XZCM**), a Cayman Islands exempted company, as its manager, to manage its operations (such appointment not to relieve CXC of any of its obligations to the Offshore Fund). Clause 7.2 LPA provides that in consideration of the provision of management services the Offshore Fund would pay XZCM an annual fee (**Management Fees**).

5. Clause 5.2 LPA provides that partners make capital contributions *inter alia* to fund Management Fees. Clause 5.5 LPA provides *inter alia* that in the event that a limited partner fails to make capital contributions in a timely manner it may be designated by the general partner as being in default.
6. On a true construction of Clause 5.5 LPA the general partner may only designate a limited partner as in default in the event that the unpaid "capital contribution" demanded is properly due and payable.
7. As further detailed below, in the event XZCM provided little if any Management Services between October 2007 and March 2010 and no Management Services thereafter.
8. In the premises no Management Fees fell due after March 2010 (no admission being made as to whether any Management Fees in fact fell due prior to that date).
9. Further, clause 2.3(e) LPA provides that *inter alia*, CXC (as general partner) shall cause each Principal, for so long as he or she is employed by XZCM, to devote substantially all of his or her business time to the day-to-day operation and affairs of the Manager, the Offshore Fund and the Onshore Fund.
10. In breach of clause 2.3(e) LPA CXC did not cause any of the Principals to devote substantially all of his or her business time to the day-to-day operation and affairs of the Manager, the Offshore Fund and the Onshore Fund.
11. The purposes of the Offshore Fund, described in clause 1.3 LPA, are generate long term capital appreciation by investing in CXC Sustainable Growth Capital Investment Enterprise, a Sino-Foreign non-legal person cooperative joint venture organized under the laws of the PRC (the **Onshore Fund**) and such other purposes as are necessary, advisable, convenient or incidental to that principal purpose.
12. Pursuant to a Foreign-Invested Venture Capital Investment Enterprise Agreement (the "**Onshore Agreement**"), CXC is the general investor of the Onshore Fund and China Development Bank (**CDB**) and the Offshore Fund are equal limited investors, who both agreed to commit US\$100 million (or 49.444375%) in capital. The Offshore Fund is, effectively, an equal limited partner of the Onshore Fund.
13. As general investor of the Onshore Fund, CXC acts in the interests of its limited partners – CDB and the Offshore Fund).
14. As general partner of the Offshore Fund, CXC owes fiduciary duties to, and acts in the interests of, the sole limited partner, namely the Petitioner.

The Petitioner

15. The Petitioner is an American technology company headquartered in California that designs, manufactures and sells networking equipment worldwide.
16. The Petitioner is, and has been at all material times, the only limited partner of the Offshore Fund. It has, to date, contributed over \$9.8 million to the Offshore Fund of its \$100 million capital commitment.

The Onshore Fund

17. On 9 November 2007, CXC (as general investor), the Offshore Fund, by its general partner, CXC (as limited investor) and CDB (as limited investor) executed the Onshore Agreement.
18. Pursuant to the Onshore Agreement, CDB and the Offshore Fund agreed to capital commitments of US\$100 million each (49.444375%). They were equal limited investors.
19. CXC must, pursuant to chapter 5.1(a) of the Onshore Agreement, discharge its duties to the Onshore Fund and the limited investors under the Onshore Agreement and exercise its rights under the Onshore Agreement in a manner consistent with principles of good faith and fair dealing.
20. Under chapter 6.2 of the Onshore Agreement, the limited investors have the right to, *inter alia*, remove or replace the general investor, suspend investments, terminate or dissolve the fund and liquidate the assets and amend the Onshore Agreement.
21. Under chapter 9.3 of the Onshore Agreement, the general investor is required to distribute the proceeds of sold securities to the investors within 45 days of receipt in proportion to their capital contributions.
22. The Offshore Fund was formed pursuant to the Onshore Agreement which provides, at chapter 3.5:

To facilitate investments in China's rapid growing economy by offshore investors, the General Investor or its 100% parent company shall establish CXC China Sustainable Growth Fund, L.P. (the "Offshore Fund") in the Cayman Islands and act as the general partner of such Offshore Fund.

- (a) *The Offshore Fund shall be a Limited Investor of the Fund. All offshore investors which initially shall be Cisco (the Petitioner), shall invest in the Fund through the Offshore Fund at the Initial Closing...*

- (b) *To minimize potential conflicts of interest, other than making offshore investments in China-related projects, the Offshore Fund shall only make onshore investments in Chinese enterprises validly organized under the PRC laws through its capital contribution to the Fund. All onshore investment shall be made through the Fund.*

Operation of the Offshore Fund

23. On 26 February 2008, CXC issued a Drawdown Notice to the Petitioner requiring a capital contribution of \$1.5 million to fund Organisational Expenses and the Management Fee for six months to be paid before 11 March 2008. This payment was made by the Petitioner.
24. On 25 August 2008, CXC issued a second Drawdown Notice to the Petitioner requiring a capital contribution of \$749,000 to fund the Management Fee for the remainder of 2008 to be paid by 5 September 2008. This payment was made by the Petitioner.
25. On 29 December 2008, CXC issued a third Drawdown Notice to the Petitioner requiring a capital contribution of \$1,267,026 (of which \$500k had already been paid) for Management Fees for the first 6 months of 2009 and organisation expenses agreed by CDB and the Petitioner to be paid by 12 January 2009. This payment was made by the Petitioner.
26. On 7 July 2009, CXC issued a fourth Drawdown Notice to the Petitioner requiring a capital contribution of \$1,000,000 to fund Management Fees for the last 6 months of 2009 to be paid by 21 July 2009. This payment was made by the Petitioner.
27. The only work that appears to have been done in 2008 and 2009 was "setting up" the Onshore Fund and the Offshore Fund. The Petitioner's contribution to those costs (including Management Fees) was \$4,516,026, without any investments actually having been made.
28. On 15 December 2009 (two years after the LPA was signed), the Petitioner received an email relating to CXC's first investment in Wuhan HC Semitek (**the Huacan Investment**) and a fifth Drawdown Notice requiring a capital contribution of \$4.8 million, which was expected to be used for the Huacan Investment, to be paid by 16 January 2010. This payment was made by the Petitioner.
29. On 4 January 2010, CXC issued a sixth Drawdown Notice to the Petitioner (dated 1 January 2010) requiring a capital contribution of \$1,000,000 to fund Management Fees for the first six months of 2010 to be paid by 21 January 2010. This payment was made by the Petitioner. CXC also informed the Petitioner that they were finalising details on another deal, Impression Show, which would require a capital contribution from the Petitioner of \$11 million.

30. In March 2010, the Petitioner (and CDB) asked CXC to restructure the Onshore Fund because the limited partners/investors were becoming increasingly dissatisfied with the performance of CXC as general partner. Only one investment had been made over a period of 2 years and management of the Offshore Fund had ceased, yet Management Fees of 2% on capital commitments of \$200m, which amounted to \$4m per year (\$2m from the Petitioner and \$2m from CDB), had been charged.
31. Despite the above, on 29 November 2010 CXC issued a seventh Drawdown Notice to the Petitioner (dated 1 July 2010) requiring a capital contribution of \$1,000,000 to fund Management Fees purportedly due for the last 6 months of 2010 to be paid by 31 July 2010.
32. The seventh Drawdown Notice related solely to the funding of Management Fees that, in the absence of any Management Services being provided, were not due and payable. The Notice was accordingly invalid and service of it on the Petitioner was accordingly improper, made in bad faith and in breach of the fiduciary duty owed to the Petitioner by CXC as general partner of the Offshore Fund.
33. Thereafter, between about until in or about 2013 the Petitioner and CXC then attempted to reach agreement in relation to the restructure of the Onshore Fund. Those attempts were unsuccessful.
34. In the absence of agreement, by January 2013 it was clear that the relationship between the parties had broken down. Further, at or about that time CXC confirmed that the Onshore Fund had no active staff, had deficit funding and as a result, could not meet the PRC regulatory inspection and had no resources to meet the Petitioner's audit requirements.
35. In April 2013 CXC proposed to the Petitioner and CDB that it would exit the Huacan Investment and distribute the revenue in stock among investors (CDB and the Offshore Fund being equal limited partners). In May 2013, CDB confirmed its agreement to exit the Huacan Investment.
36. On 1 December 2013, CXC confirmed that it sold down its last share in the Huacan Investment, bringing the total cash return to the Onshore Fund to RMB220m (equivalent to approximately US\$36m at that date) from an investment of RMB 65m (equivalent to approximately US\$10m at that date, of which half was the Petitioner's) (the **Proceeds of Sale**).
37. On 15 December 2013, CXC issued an eighth Drawdown Notice to the Petitioner requiring a capital contribution of \$3,250,000 to fund Management Fees for the period 1 July 2010 to 14 February 2013.

38. As the eighth Drawdown Notice related solely to the funding of Management Fees that, in the absence of any provision of Management Services at any point during the period in question, were not due and payable. The Notice was accordingly invalid and service of it on the Petitioner was accordingly improper, made in bad faith and in breach of the fiduciary duty owed to the Petitioner by CXC as general partner of the Offshore Fund.
39. On 18 February 2014, CXC wrote to the Petitioner purportedly designating it a "Defaulting Partner" under the LPA. As there had been no default in payment of any capital contribution properly due, the designation was accordingly invalid, improper, made in bad faith and in breach of the fiduciary duty owed to the Petitioner by CXC as general partner of the Offshore Fund.
40. In July 2014, the Petitioner learned from CDB that it had reached an agreement with CXC, which both CXC and CDB refused to disclose to the Petitioner. CDB subsequently confirmed that a share of the Proceeds of Sale had been released to it.
41. The Petitioner has received no equivalent distribution from CXC. Despite repeated requests CXC has failed to communicate further with the Petitioner and in particular has provided no explanation as to its failure to procure that such a distribution be made by the Onshore Fund to the Offshore Fund, or by the Offshore Fund to the Petitioner.
42. In the premises it appears that CXC has misappropriated for its own benefit the share of the Proceeds of Sale due to the Petitioner under the LPA.

Grounds for Petition

43. In the premises, and more particularly for the reasons set out below, the Petitioner seeks a winding-up order against the Fund on the basis that it is just and equitable for the Fund to be wound up:

Lack of Probity and Loss of Confidence in Management

44. The Petitioner has justifiably and irretrievably lost all trust and confidence in the ability or willingness of CXC, as general partner of the Offshore Fund, to manage the Offshore Fund's affairs in the best interests of the Offshore Fund and its sole limited partner, the Petitioner.
45. The Petitioner had a legitimate expectation that the fund would be managed by CXC, as the general partner, in accordance with the terms of the LPA. That legitimate expectation was not met for the following reasons:
 - 45.1 In breach of Article 2.3(e) LPA CXC, as general partner of the Offshore Fund, failed to ensure that the Principals devoted substantially all of their business time to and remain

actively involved in the day-to-day operation and affairs of the Manager, the Offshore Fund and the Onshore Fund. In particular, during the period 2010-2013 none of the Principals devoted any time to the operations and affairs of any of the Manager, the Offshore Fund or the Onshore Fund.

- 45.2 In breach of Article 3.5(a) LPA CXC, as general partner of the Offshore Fund, failed to establish an Advisory Committee or a Joint Management Committee and the Petitioner was not consulted in relation to any investments, save for on an information basis only. No meetings were held pursuant to article 3.5(d).
- 45.3 In breach of clause 4.1(a) LPA CXC, as general partner of the Offshore Fund, did not seek to obtain opportunities for the Offshore Fund to make Portfolio Investments in accordance with the Investment Objective.
- 45.4 In breach of clause 8.2 LPA CXC, as general partner of the Offshore Fund, has failed to prepare quarterly or annual financial reports. In fact, the Petitioner has received no information from the general partner whatsoever in relation to the financial position of the Onshore Fund.
46. In breach of clause 6.3 LPA, despite repeated requests, CXC, as general partner of the Offshore Fund, has not procured that the Onshore Fund, of which it is general manager, distribute to the Offshore Fund its share of the Proceeds of Sale or to procure that the Offshore Fund distribute those Proceeds of Sale to the Petitioner.
47. CXC, as general partner of the Offshore Fund, has failed to respond to repeated requests in relation to the distribution to the Petitioner of its share of the Proceeds of Sale. It accordingly appears that such proceeds have been misappropriated by CXC for its own benefit.
48. In the circumstances, CXC, as general partner of the Offshore Fund, has acted with a lack of probity and good faith and has improperly conducted itself.

Loss of Substratum

49. By reason of the breakdown of trust and confidence between CXC, the general partner of the Offshore Fund, and the Petitioner, there is no prospect of any further investment being made into the Offshore Fund and the only investment made by the Offshore Fund has now been realised.
50. As the principal purpose of the Offshore Fund can no longer be achieved and as the other purposes for which the Offshore Fund was established are, on a true construction, incidental to that principal purpose, the Offshore Fund has ceased to carry on business or otherwise be viable.
51. In the premises the Offshore Fund has suffered a loss of substratum.

Conclusion

52. By reason of the matters aforesaid it is respectfully submitted that it is just and equitable that the Offshore Fund be wound up.

YOUR PETITIONER THEREFORE HUMBLY PRAYS THAT:

1. The Offshore Fund be wound up in accordance with the Companies Law (2013 Revision);
2. David Griffin of FTI Consulting (Cayman) Ltd, Suite 3212, 53 Market Street, Camana Bay, Grand Cayman, KY1-1203, Cayman Islands and Fok Hei Yu (Vincent Fok) of FTI Consulting (Hong Kong) Ltd, Level 22, The Center, 99 Queen's Road Central, Central Hong Kong, be appointed Joint Official Liquidators of the Fund (the "**Joint Official Liquidators**").
3. The Joint Official Liquidators shall not be required to give security for their appointment.
4. The Joint Official Liquidators are hereby authorised to take any such action as many be necessary or desirable to obtain recognition of the Joint Official Liquidators and/or their appointment in any other relevant jurisdiction and to make applications to the courts of such jurisdictions for that purpose.
5. The Joint Official Liquidators have the power to act jointly and severally in their capacity as liquidators of the Offshore Fund.
6. The Joint Official Liquidators shall be authorised to do any act or things considered by them to be necessary or desirable in connection with the liquidation of the Offshore Fund and the winding-up of its affairs and to prevent the dissipation of the Fund's assets in the Cayman Islands or elsewhere.
7. The Joint Official Liquidators be at liberty to appoint attorneys, counsel 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 Order 25.
8. The Joint Official Liquidators shall be at liberty to apply for further directions concerning their functions and the exercised or proposed exercise of their powers.

9. No suit, action or other proceeding shall be proceeded with or commenced against the Fund except with the leave of the Court and subject to such terms as the Court may impose.
10. No disposition of the Fund's property by or with the authority of the Joint Official Liquidators in carrying out their duties and functions and exercise of their power under this Order shall be voided by virtue of section 99 of the Companies Law (2013 Revision).
11. The remuneration and expenses of the Joint Official Liquidators shall be paid out of the assets of the Fund or as otherwise directed by the Court.
12. The Joint Official Liquidators 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 Offshore Fund as an expense of the liquidation.
13. The costs of the Petitioner of and incidental to the Petition be paid out of the assets of the Offshore Fund as an expense of the liquidation, such costs to be taxed if not agreed with the Joint Official Liquidators.
14. Such further or other relief be granted as the Court deems appropriate.

AND your Petitioner will ever pray etc.

DATED this 16th day of August 2016



Appleby (Cayman) Ltd
Attorneys-at-Law for the Petitioner

NOTE: This Petition is intended to be served on the Company at its registered office – Codan Trust Company (Cayman) Limited, Cricket Square, Hutchins Drive, George Town, Grand Cayman, Cayman Islands.

THIS PETITION is filed by Appleby (Cayman) Ltd, Attorneys-at-Law for the Petitioner, whose address for service is 71 Fort Street, PO Box 190, KY1-1104, George Town, Grand Cayman, Cayman Islands (THW/JHS/426157.001)

NOTICE OF HEARING

TAKE NOTICE THAT the hearing of this petition will take place at the Law Courts, George
Town, Grand Cayman, on 2016 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
P.O. Box 495, Grand Cayman, KY1-1106, telephone 345 949 4296.