

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
FINANCIAL SERVICES DIVISION



CAUSE NO: FSD 9 OF 2018

IN THE MATTER OF THE COMPANIES LAW (2016 REVISION) (AS AMENDED)  
AND IN THE MATTER OF LEYOU, INC.



WINDING UP PETITION

TO THE GRAND COURT

The humble petition of Carlyle Asia Growth Partners IV, L.P. ("**CAGP IV, L.P.**") and CAGP IV Co-Investment, L.P., each of Suite 2801, Two Pacific Place, 88 Queensway, Hong Kong (the "**Petitioners**"), shows that:

1. Leyou, Inc. (the "**Company**") was incorporated in the Cayman Islands on 18 July 2000 as an exempted company limited by shares with registration number 102579. Its registered office is located at Maples Corporate Services Limited, PO Box 309, Ugland House, Grand Cayman KY1-1104, Cayman Islands and its trading address is 4th Floor, Building 1A Zhubang 2000 Commercial Center 100 Balizhuang Xili Chaoyang District, Beijing 100025, China. The objects for which the Company was established are unrestricted.
2. Pursuant to the Company's memorandum and articles of association as amended on 20 May 2013 (the "**M&A**"), the Company's authorised share capital is US\$6,350,000 consisting of 50,000,000,000 Ordinary Shares of US\$0.0001 par value each, 6,000,000,000 Series B Preference Shares of US\$0.0001 par value each, 4,000,000,000 Series C Preference Shares of US\$0.0001 par value each, 2,000,000,000 Series D Preference Shares of US\$0.0001 par value each and 1,500,000,000 Series D2 Preference Shares of US\$0.0001 par value each.
3. The Company is a Beijing based company that sells products for pregnant women, infants and toddlers in the People's Republic of China (the "**PRC**"). The principal activity of the Company is carrying on the business of selling the abovementioned products through the internet, catalogues, and a network of retail shops in the PRC.

4. The Petitioners are two companies based in Hong Kong. The Petitioners are investment funds owned by Carlyle Asia Growth Partners. The principal activity of Carlyle Asia Growth Partners is carrying on the business of investment funds management and growth capital investments in Asia.
5. On 14 August 2011, the Petitioners and others entered into a share purchase agreement with the Company in connection with the issuance and the sale and purchase of Series D Preferences Shares.
6. On 18 August 2011, 1,330,408,458 Series D Preference Shares in the Company were issued to CAGP IV, L.P. and 118,364,773 Series D Preference Shares in the Company were issued to CAGP IV Co-Investment, L.P. (together the "**Shares**"). As a result, the Petitioners became the majority shareholders of the Company's Series D Preference Shares.
7. Pursuant to Article 33(c)(i) of the M&AA, Series D Preference shareholders may request the Company to redeem all or a portion of the Series D Preference Shares on the expiration of the three year anniversary of the Series D Preference Shares Original Issue Date. The Series D Preference Shares Original Issue Date was 18 August 2011; therefore, the expiration of the third anniversary was on 18 August 2014. Article 33(c) further stipulates that the holders of Series D Preference Shares making such election shall provide the Company and the other holders of Preference Shares written notice of such election ("**Notices of Redemption Election**") at least 45 days prior to the date of redemption. Article 33(e) of the M&AA states that Members redeeming Preference Shares shall surrender the certificates at the registered office of the Company or the office of any transfer agent for the Preference Shares, together with a written notice (the "**Redemption Notice**") specifying the number of Preference Shares to be redeemed on a specified Business Day, which must be after no less than 30 days after the date of delivery of the Redemption Notice. Article 33(e) also states that "*[t]he Company shall pay the redemption proceeds to the relevant Members by cheque or wire transfer, in the discretion of the Directors, as soon as practicable following the date of redemption (but in any event within 30 days after the date of redemption)*".
8. On 29 September 2017 (after the expiry of the period under Article 33(c)(i) of the M&AA), pursuant to Article 33(c) of the M&AA, the Petitioners initiated the redemption process and provided the Notices of Redemption Election by hand to the

registered office of the Company and sent the same to the Company's trading address and to the other Preference Shareholders of the Company. The Notices of Redemption Election set out that the Petitioners had elected to redeem all their Shares and that the date of redemption would be Monday 20 November 2017 (the "**Redemption Date**"), which was at least 45 days from the date of the Notice of Redemption Election.

9. On 3 October 2017, pursuant to Article 33(e) of the M&AA, the Petitioners hand delivered the Redemption Notices to the Company's registered office and sent the same to the Company's trading address. The Petitioners' respective Redemption Notices stated that:

- (a) Further to the Notice of Redemption Election, such Redemption Notice was a notice of redemption issued pursuant to Article 33(e) to redeem all Shares;
- (b) The redemption would be effected on Monday 20 November 2017, which was no less than 30 days from the date of delivery of the Redemption Notice;
- (c) In relation to CAGP IV Co-Investment, L.P.'s Redemption Notice, the redemption amount per Share was US\$0.0488411, which created a total redemption amount of US\$5,781,063.81. This total redemption amount also exceeded the cap set out at Article 33(c) of the M&AA, therefore the total redemption amount payable was US\$4,902,000 in aggregate;
- (d) In relation to CAGP IV, L.P.'s Redemption Notice, the redemption amount per share was US\$0.0488411, which created a total redemption amount of US\$64,978,591.17. This total redemption amount exceeded the cap set out at Article 33(c) of the M&AA, therefore the total redemption amount payable was US\$55,098,000 in aggregate;
- (e) In accordance with Article 33(e), the Redemption Amount should be paid to the Petitioners on or before 20 December 2017 as provided in Article 33(e) of the M&AA (the "**Redemption Amount Due Date**");
- (f) The wire transfer details of the Petitioners were provided;

- (g) Each of the original share certificates issued by the Company to the Petitioners were enclosed and surrendered to the Company's registered office.
10. On 28 December 2017, the Petitioners wrote to the Company's registered office and trading address requesting that the Company pay the US\$4,902,000 and US\$55,098,000 owed to the Petitioners (together totalling US\$60,000,000) and that they confirm that they would do so by 20 December 2017. The letter stated that a winding up petition would be filed against the Company should it fail to confirm that it would pay the US\$60,000,000 by 4 January 2018. To date, the Petitioners have not received any response from the Company with respect to the Notices of Redemption Election, the Redemption Notices or the further letter. Further, the Petitioners have not received payment of the sums due, or any sum at all.
  11. As at 20 November 2017, being the Redemption Date, the Petitioners became creditors of the Company in the total sum of US\$60,000,000 (the "**Debt**").
  12. As a result of the Company's failure to pay the Petitioners the redemption amount, the Petitioners are petitioning to this Court for the winding up of the Company both in its own right and in their capacity as shareholders of the Company, and as creditors in respect of the Debt.
  13. The Company has failed to pay the Debt, is unable to pay its debts within the meaning of section 93 of the Companies Law (2016 Revision) (as amended) (the "**Companies Law**") and is therefore liable to be wound up.

**YOUR PETITIONERS THEREFORE HUMBLY PRAY THAT:**

- (1) The Company be wound up in accordance with the Companies Law.
- (2) Michael Pearson of FFP (Cayman) Limited, 2<sup>nd</sup> Floor Harbour Centre, 42 North Church Street, George Town, Grand Cayman, Cayman Islands and Richard Fleming of Alvarez & Marsal Europe LLP, One Finsbury Circus, London, EC2M 7EB, United Kingdom shall be appointed as joint official liquidators of the Company (the "JOLs").
- (3) The JOLs shall not be required to give security for their appointment.
- (4) The JOLs shall have the power to act jointly and severally in their capacity as liquidators of the Company.
- (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) In addition to the powers set out in Part II of the Third Schedule to the Companies Law, the JOLs be authorised to exercise all of the powers set out in paragraphs 1, 2, 4, 7, 8, 10 and 11 of Part I of the Third Schedule to the Companies Law and section 110(2) thereof, without further sanction of this Honourable Court.
- (7) The JOLs be authorised to do any acts or things considered by them to be necessary or desirable in connection with the liquidation of the Company and the winding up of its affairs in the Cayman Islands and/or elsewhere.
- (8) 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) exercise the rights to which a registered holder of any shares or other securities registered in the name of the Company, or to which an owner of any shares or securities held by or on behalf of the Company (whether as principal or as agent), is entitled including, but without prejudice to the generality of the foregoing power, the right to receive dividends and the benefits of other corporate actions in relation to such shares or other securities; the right to attend meetings and to exercise any voting power

pertaining to such shares or other securities and to direct nominees of the Company in whose names shares or other securities beneficially owned by the Company are registered to exercise all or any such rights as the JOLs shall direct;

- (b) take control of such of the direct and/or indirect subsidiaries ("**Subsidiaries**") of the Company, and/or joint ventures, investment, associated companies, business or other entities (together, the "**Associated Companies**") in which the Company holds an interest (or such shares of such Subsidiaries and/or Associated Companies as are owned directly or indirectly by the Company), in each case wherever located (together, the "**Group**"), as the JOLs shall think fit; and/or to call or cause to be called such meetings of such Subsidiaries and/or Associated Companies and/or to sign such resolutions (in accordance with the provisions of any relevant constitutional or related documentation of such companies) and take such other steps, including applications to appropriate courts and/or regulators, as the JOLs shall consider necessary to appoint or remove directors, legal representatives, officers, and/or managers to or from such Subsidiaries and/or Associated Companies, and in each case take such steps as are necessary to cause the registered agents (or other equivalent corporate administrators) of such Subsidiaries or Associated Companies to give effect to the changes to the boards of directors, legal representatives, officers, and/or managers of such companies or entities, including (without limitation) effecting changes to the company registers of such Subsidiaries or Associated Companies as may be deemed appropriate by the JOLs; and/or to take such other action in relation to all such Subsidiaries or Associated Companies as the JOLs shall think fit for the purpose of protecting the assets of the Company and managing the affairs of the Company (which, for the avoidance of doubt, shall include the assets and affairs of the Subsidiaries and Associated Companies);
- (c) liaise with management of the Group to stabilise and preserve value of the Company and the Group;
- (d) liaise with management of the Group to stabilise and preserve value in the onshore business of the Company and the Group;

- (e) take steps to locate, demand and secure cash held by all Group companies in bank accounts in the PRC, or elsewhere;
  - (f) negotiate with key non-PRC based and PRC based creditors;
  - (g) communicate on the Company's behalf with the regulators as appropriate; and
  - (h) 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 Company 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, 2018.
- (10) No disposition of the property of the Company 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) The JOLs shall be entitled to receive remuneration for their services by reference to the time properly given by them and their staff in attending to matters arising in the winding up and the hourly rates and the amount of remuneration shall be determined in accordance with the Insolvency Practitioners' Regulations, 2018.
- (12) The JOLs be at liberty to pay themselves (up to 80% of the JOLs' remuneration pending approval by the Court), their agents, employees, attorneys, solicitors and whomsoever else they may employ or instruct, remuneration and costs, and for the avoidance of doubt, all such payments shall be made as and when they fall due out of the assets of the Company as expenses of the liquidation.
- (13) 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 Company as an expense of the liquidation.

- (14) The JOLs be at liberty to apply generally.
- (15) The costs of and incidental to the Petition be paid forthwith out of the assets of the Company as an expense of the liquidation, such costs to be taxed on an indemnity basis if not agreed with the JOLs.
- (16) Such further or other relief be granted as the Court deems appropriate.

**AND** your Petitioners will ever pray etc.

**DATED** the *8<sup>th</sup>* day of January 2018.

*Walkers*

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**WALKERS**

Attorneys at Law for the Petitioners

**NOTE:** This Petition is intended to be served on the Company at its registered office.

**NOTICE OF HEARING**

TAKE NOTICE THAT the hearing of this Petition will take place at the Law Courts, George Town, Grand Cayman on *28 FEB - 2018* at *10 am.*

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, Cayman Islands or 345 949 4296.

This **PETITION** is presented by Walkers, Attorneys at Law, 190 Elgin Avenue, George Town, Grand Cayman KY1-9001, Cayman Islands, for the Petitioners whose address for service is care of their said Attorneys at Law.