

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION



199  
CAUSE NO. FSD OF 2019( )

IN THE MATTER OF THE COMPANIES LAW (2018 REVISION)

AND IN THE MATTER OF YOUYUAN INTERNATIONAL HOLDINGS LIMITED



---

WINDING UP PETITION

---

The humble petition of The Hongkong and Shanghai Banking Corporation Limited of L10, HSBC Main Building, 1 Queen's Road Central, Hong Kong (the *Petitioner*) **SHOWS THAT:**

- 1 The Petitioner is a creditor of Youyuan International Holdings Limited (the *Company*) and seeks the winding up of the Company pursuant to section 92(d) Companies Law (2018 Revision) (the *Companies Law*) on the ground that the Company is unable to pay its debts or, in the alternative, pursuant to section 92(e) of the Companies Law on the ground that it is just and equitable for the Company to be wound up.

**BACKGROUND**

- 2 The Company was incorporated on 12 October 2009 as an exempted company limited by shares with registered number 232041.
- 3 The Company's registered office is care of Conyers Trust Company (Cayman) Limited, P.O. Box 2681, Cricket Square, Hutchins Drive, George Town, Grand Cayman, Cayman Islands.
- 4 The objects for which the Company was established are unrestricted and it is authorised to engage in any lawful activity in accordance with the Companies Law.
- 5 The Company has been listed on the Main Board of the Stock Exchange of Hong Kong Limited (the *SEHK*) (Stock Code 2268) since 27 May 2010 and the trading of the Company's shares on the SEHK has been suspended since 19 August 2019. The Company is registered as a non-Hong Kong Company in the Hong Kong Companies Registry with CR No. F0017425. Its principal place of

business in Hong Kong is situated at Unit 904, 9/F, Tung Ming Building, 40-42 Des Voeux Road Central, Central, Hong Kong.

6 The current directors of the Company are:

- (a) Executive directors: Mr. Ke Wentuo (*Mr. Ke*), Mr. Ke Jixiong (*Mr. J Ke*), Mr. Cao Xu and Mr. Zhang Guoduan; and
- (b) Independent non-executive directors: Professor Zhang Daopei, Professor Chen Lihong and Mr. Chow Kwok Wai.

7 The authorised share capital of the Company is HK\$1,000,000,000 divided into 10,000,000,000 shares at par value of HK\$0.10 each.

8 According to the Annual Report of the Company for the year ending 2018 (the *2018 Annual Report*), the total issued share capital as at 31 December 2018 is 124,302,571. As at 31 December 2018, the main shareholders of the Company are summarised in the table below:

Name of Shareholder	Number of shares held	Approximate shareholding (%)
Smart Port Holdings Limited ( <i>Smart Port</i> )	666,560,500	53.54
Denron International Limited ( <i>Denron</i> )	28,677,000	2.31
Mr. Ke (Mr. Ke is the sole owner of Smart Port)	694,237,500	55.85
Ms. Cai Lishuang (Ms. Cai is the spouse of Mr. Ke and is the sole owner of Denron)	694,237,500	55.85
Central China International Financial Holdings Company Limited	118,000,000	9.49%

9 As at 3 October 2019, the Company's market capitalisation was HK\$323.18 million as set out on the SEHK website.

## BUSINESS AND FINANCIAL POSITION OF THE COMPANY

- 10 The Company is a holding company within the wider Youyuan International group (the **Group**), holding operating subsidiaries in the People's Republic of China (the **PRC**). The Group started as a manufacturer of corrugated paper and have expanded into other finished paper products (wrapping tissue paper, wall paper products and copy paper) and business lines (paper towels, ivory boards and core boards).
- 11 The key valuable assets of the Group are its factories together with plant and machineries situated in the PRC (the **Factories**).

## THE PETITIONER'S LOAN AGREEMENT

- 12 Pursuant to a Facility Agreement dated 1 April 2019 (the **Facility Agreement**) entered into between (1) the Company as borrower and (2) the Petitioner as Mandated Lead Arranger and Bookrunner; (3) the Petitioner as the Agent for the lenders; and (4) the lenders, who are the Petitioner, the Agricultural Bank of China Seoul Branch, the State Bank of India, Hong Kong Branch, Woori Bank Hong Kong Branch, Banca Monte dei Paschi di Siena S.p.A. Shanghai Branch and Hang Seng Bank Limited (together, the **Bank Group**), the Bank Group agreed to provide, and the Company agreed to accept, a dual currency term loan in sum of (i) HK\$351,000,000 (the **HK Loan**) and (ii) US\$90,500,000 (the **US Loan**, and together with the HK Loan, the **Loans**).
- 13 The Petitioner presents this petition against the Company in its own right as a "Lender" under the Facility Agreement. The Petitioner acts separately under the Facility Agreement as the facility agent and liaison bank of the Bank Group but is not presenting this petition in that capacity. Pursuant to clause 2.2 of the Facility Agreement, the rights of the Petitioner (as Lender) are separate and independent rights from the rights of the other Lenders and the debt owing to the Petitioner (as Lender) is a separate and independent debt that the Petitioner (as Lender) is entitled to enforce separately from the other Lenders.
- 14 The obligations owing by the Company under the Facility Agreement:
- (a) are guaranteed by two subsidiaries of Youyuan, Xi Yuan Paper Limited (希源紙業有限公司), a company incorporated under the laws of the British Virgin Islands, with registration number 1539645, and Sunwell Trading (HK) Company Limited (香港順優寶

易有限公司), a company incorporated under the laws of Hong Kong, with registration number 995526 (the *Guarantors*); and

- (b) secured by the following (the *Security*):
- (i) an assignment of life insurance of Mr. Ke in respect of the insurance policy with policy no. 28023641-50 dated 26 February 2019 in favour of the Petitioner as security for all amounts owing by the Company to the Petitioner;
  - (ii) an assignment of life insurance of Mr. Ke in respect of the insurance policy with policy no. 28023642-50 dated 26 February 2019 in favour of the Petitioner; as security for all amounts owing by the Company to the Petitioner; and
  - (iii) a charge over securities and deposits with the Petitioner dated 17 July 2019 over (amongst other things) deposits, and all sums of money from time to time standing to the credit of the Company's account as continuing security for all owing by the Company to the Petitioner.

15 The purpose of the Loans was to refinance the Company's existing indebtedness under a US\$115,000,000 term loan facility (which was subsequently increased to US\$165,000,000) pursuant to a facility agreement dated 5 May 2016 entered into by and among the Company as the borrower, the Petitioner, Hang Seng Bank Limited and China CITIC Bank International Limited as mandated lead arrangers and bookrunners and the Petitioner as agent.

16 Pursuant to clause 6 of the Facility Agreement, the Loans were due to be repaid pursuant to the repayment table as follows:

Instalment No.	Facility Repayment Date	Repayment Amount (as % of the outstanding HK Loan and the US Loan six months after the date of the Facility Agreement)
1.	24 months after the date of the Facility Agreement	15%

2.	30 months after the date of the Facility Agreement	15%
3.	36 months after the date of the Facility Agreement	30%
4.	42 months after the date of the Facility Agreement	40%

17 Pursuant to clause 8 of the Facility Agreement, the Loans accrued interest at an aggregate rate per annum pursuant to the terms of the Facility Agreement (this being the aggregate of the Margin and HIBOR for the HK Loan and the Margin and LIBOR for the US Loan for such interest period as defined under the Facility Agreement) (the **Standard Interest Rate**). Interest at the Standard Interest Rate on the Loans accrued and became due and payable on the last day of each Interest Period elected by the Company pursuant to clause 9 of the Facility Agreement.

18 Pursuant to clause 8.3 of the Facility Agreement, a default interest rate of 2% (two per cent) (the **Default Interest**) above the Standard Interest Rate applies in respect of any unpaid sums under the Facility Agreement and/or any of the finance documents as described thereunder (the **Finance Documents**).

#### **DEFAULT UNDER THE FACILITY AGREEMENT**

19 Pursuant to clause 22 of the Facility Agreement, it is an event of default if:

- (a) The Company suspended or ceased to carry on all or a material part of its business by ceasing the operations of four specific Factories the PRC;
- (b) Mr. Ke and his associates (as defined in the Listing Rules of the SEHK) collectively do not or cease to own at least 30% shares in the Company free from encumbrances;
- (c) Any creditor of the Company or the Guarantors (the **Obligors**) or any other member of the Group becomes entitled to declare any Financial Indebtedness (as that term is defined in the Facility Agreement) of any Obligor or any other member of the Group due

and payable prior to its specified maturity as a result of an event of default (however described);

- (d) The suspension or cessation of trading of the shares of the Company on the SEHK for 13 or more consecutive trading days;
- (e) The Company fails to provide financial information which are reasonably requested by (among others) the Bank Group;
- (f) The Obligors do not pay on the due date any amount payable pursuant to a Finance Document unless (i) its failure to pay is caused by administrative or technical error; and (ii) payment is made within three Business Days (as that term is defined in the Facility Agreement) of its due date,

each an *Event of Default*.

20 On 2 September 2019, Mr. Ke informed the Petitioner that all of the four specific Factories have been closed. The Petitioner later conducted a site visit on 12 September 2019 and confirmed that those Factories were not in operation. As stated in paragraph 19(a) above, this is an Event of Default under the Facility Agreement.

21 As announced by the Company on 5 September 2019 (the *5 September SEHK Announcement*), on 19 August 2019, the shares of the Company were disposed (the *Disposal*) and as a result of the Disposal, Mr. Ke and Smart Port now hold less than 30% shares in the Company free from encumbrances. As stated in paragraph 19(b) above, this is an Event of Default under the Facility Agreement.

22 It is also understood from the 5 September SEHK Announcement that the Disposal will trigger further events of defaults under various bonds, unsecured notes, convertible bonds and loan agreements to which the Company is a borrower. In the event that the lenders under these various loans demand payment of the amounts owed from the Company, this will also constitute an Event of Default under the Facility Agreement as stated in paragraph 19(c) above.

23 Further to the Disposal, since 19 August 2019, the trading of the Company's shares on the SEHK has been suspended because the Company was unable to publish its interim financial results by

30 August 2019 in accordance with Rule 13.49(6) of the Rules Governing the Listing of Securities on the SEHK. As stated in paragraph 19(d) above, this constitute as an Event of Default under the Facility Agreement.

24 On 5 September 2019, the Company issued a certification confirming that an Event of Default has been continuing from 19 August 2019 (the **Default Confirmation**) pursuant to 19.5 of the Facility Agreement.

25 Pursuant to clause 22.17 of the Facility Agreement, upon an Event of Default, the Bank Group may declare that the Loans, together with accrued interest, and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable.

26 On 10 September 2019, the Petitioner as Agent for the Bank Group and upon the instructions of the Bank Group issued a letter to the Company stating (the **10 September Letter**), among other things, that:

- (a) Events of Default have occurred under the Facility Agreement;
- (b) Requesting that the Company provide certain documents (including bank account statements) to the Petitioner by no later than 4p.m. (Hong Kong time) on 11 September 2019;
- (c) Requesting that the Company provide a written consent and undertaking to take all action necessary to remit and otherwise deposit all cash balances standing to the creditor of any bank account maintained by the Company and/ or any of its subsidiaries with a financial institution situated in the PRC to a designated account by no later than 4p.m. (Hong Kong time) on 11 September 2019;
- (d) Requesting that the Company provide written consent and undertaking to and actually pay to, and deposit with, the Petitioner funds equal to the amount of interest accrued under the Facility Agreement to the designated accounts by no later than 4p.m. (Hong Kong time) on 11 September 2019; and

- (e) Requesting that the Company procure the granting of five further guarantees from its subsidiaries situated in the PRC in favour of the Petitioner by no later than 4p.m. (Hong Kong time) on 13 September 2019.
- 27 As at the date of this Petition, the Company has not satisfied any of the requests set out in the 10 September Letter. The failure to provide the information sought in the 10 September Letter is a further Event of Default as set out in paragraph 19(e) above.
- 28 On 19 September 2019, the Petitioner as Agent for the Bank Group issued a formal written letter of demand to the Company stating, among other things, that Events of Default have occurred and that the full amount owing under the Facility Agreement, comprising a principal amount of HK\$351,000,000 and US\$90,500,000 together with interests in the amount of HK\$3,887,874 and US\$1,002,332.75 and costs are due and payable immediately (the *Demand*).
- 29 As at the date of this Petition, the Company has not made any payment in full or in part in response to the Demand. The failure to make payment under the Demand is a further Event of Default under the Facility Agreement as set out in paragraph 19(f) above. Interest, Default Interest and costs continue to accrue in accordance with the terms of the Facility Agreement until the full amount owing to the Bank Group is repaid.
- 30 As at the date of this affidavit:
- (a) the Petitioner has not enforced any of the Security to repay the debt owing under the Facility Agreement; and
- (b) the net surrender value of the two insurance policy referred to in paragraph 14(b) is US\$5,108,942.48, which is insufficient to discharge the full amount owing to the Petitioner and the Bank Group under the Facility Agreement.
- 31 As at 4 October 2019, each of the following amounts are immediately due and payable by the Company to the Petitioner in its capacity as Agent (i.e. the total indebtedness of the Company under the Facility Agreement):

Principal	Accrued	and	Accrued	and	Total
			unpaid	default	

		unpaid interest	interest	
HK Loan	HK\$351,000,000	3,942,632.79	1,122,341.73	<b>HK\$356,064,974.52</b>
US Loan	US\$90,500,000	1,002,332.75	287,384.05	<b>US\$91,789,716.80</b>

- 32 As at 4 October 2019, HK\$356,064,974.52 is immediately due and payable to the Petitioner in its capacity as Lender.
- 33 Further to the obligations owing under the Facility Agreement, as set out above, the Company is likely to also be in default of various bonds, unsecured notes, convertible bonds and loan agreements as a result of the Disposal. In the event that the lenders under these various loans demand payment of the amounts owed from the Company, the Company could be liable to effect immediate payment of all principal amounts due, which is estimated to be approximately HK\$2.6 billion
- 34 From the 2018 Annual Report, it is understood that as at 31 December 2018, the Company has current assets of RMB2,760,074 (approximately US\$386,105.32 applying the exchange rate as at 4 October 2019) of which only RMB519,639 (approximately US\$72,692.03 applying the exchange rate as at 4 October 2019) are bank balances and cash. Accordingly, the Company does not have sufficient liquidity to repay its obligations that are due and owing to the Petitioner, the Bank Group or the other lenders. Accordingly, the Company is unable to pay its debts as they fall due and is cash-flow insolvent.
- 35 Similarly, the Events of Default arising under the Facility Agreement may also trigger further events of default in respect of the obligations owed by the Group to its lenders. In the event that the lenders under these various loans demand the payment of the amounts owed by the Group, the Group could be liable to effect immediate payment of all principal amounts due, which is estimated to be approximately HK\$2,594 million under the terms of the finance documents together with interest accrued.

## JUST AND EQUITABLE GROUND TO WIND UP THE COMPANY

36 The Petitioner is concerned that the Company's assets are at risk of dissipation and that the affairs of the Company are being seriously mismanaged. As a result, the Petitioner has lost trust and confidence in the management of the Company. In the circumstances set out in this petition, the Petitioner says there is a need for an independent investigation into the Company's affairs.

37 From the preliminary investigations conducted by the Petitioner:

- (a) The assets of the Company are being dissipated and are subject to an ongoing risk of dissipation:
  - (i) The Petitioner was informed by the chairman of the Company that the Group's cash reserves depleted from RMB 570 million to RMB 20 - 30 million in a period of less than 3 months. Despite numerous requests from the Bank Group, the Group and the Company failed to provide any reasons for such depletion.
  - (ii) The accounts receivable of the Group increased year on year by 58% and is currently at US\$2 billion after the acquisition of a subsidiary on 2018. The subsidiary held RMB872 million in 2018. It appears that an independent investigation of the acquisition of the subsidiary should be carried out.
- (b) Mismanagement: The Petitioner conducted site visits of the Factories on 11 and 12 September 2019 and noted that the operations of the Factories are suspended, there were no employees on site, and there were signs outside the Factories stating that all employees of the factories have been made redundant. The non-management and/or incapability of the Company to manage its Factories amount to mismanagement.
- (c) Lack of financial information: The Company is unable to provide any financial information requested by the Bank Group under the Facility Agreement. The Petitioner was advised that the information sought can only be accessed by the Group's chief PRC accountant who had allegedly resigned and has been absent from the Group for a period of time. It appears that the Petitioner and the Bank Group have no means of access to key financial information of the Company and the Group.

38 In view of the matters above, there is a real and significant risk that the assets of the Company have been dissipated and will continue to be dissipated if the current management of the Company continues to be in place. The Petitioner has lost all trust and confidence in the management of the Company due to the manner in which they are managing the Company's affairs

#### **GROUND FOR APPLICATION**

39 For the reasons set out above:

- (a) the Company is unable to pay its debts and this Honourable Court may wind up the Company pursuant to section 92(d) of the Companies Law; or
- (b) in the alternative, it is just and equitable that the Company be wound up and this Honourable Court may wind up the Company pursuant to section 92(e) of the Companies Law.

#### **YOUR PETITIONER THEREFORE HUMBL Y PRAYS THAT:**

- 1 The Company be wound up in accordance with the Companies Law.
- 2 Mr. Alex Lawson and Mr. Christopher Kennedy of Alvarez & Marsal, Flagship Building, PO Box 2507, 2<sup>nd</sup> Floor, 70 Harbour Drive, George Town, Grand Cayman KY1-1104, Cayman Islands be appointed as Official Liquidators of the Company (the *Liquidators*).
- 3 That the Liquidators shall not be required to give security for their appointment.
- 4 That the Liquidators shall have the power to act jointly and severally in their capacity as liquidators of the Company.
- 5 That the Liquidators be authorised to take any such action as may be necessary or desirable to obtain recognition of the Liquidators and/or their appointment in any other relevant jurisdiction and to make applications to the courts of such jurisdictions for that purpose.

- 6 That the Liquidators be authorised to exercise all of the powers set out in section 110(2) of the Companies Law and Part II of the Third Schedule thereof, without further sanction of this Honourable Court.
- 7 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.
- 8 No disposition of the property of the Company 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.
- 9 That the Liquidators 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 and on such terms as they may think fit and to remunerate.
- 10 The remuneration and expenses of the Liquidators shall be paid out of the assets of the Company in accordance with Part III of the Insolvency Practitioners' Regulations 2018 (as amended) and Order 20 of the Companies Winding Up Rules 2018 (as amended).
- 11 The 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 Company as an expense of the liquidation.
- 12 The Liquidators be at liberty to apply generally to the Court to make such orders for regulating the future conduct of the affairs of the Company as the Court shall see fit.
- 13 The costs of and incidental to the Petition be paid forthwith out of the assets of the Company to be taxed if not agreed.
- 14 Such further or other relief be granted as the Court deems appropriate.

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

Dated this 4<sup>th</sup> day of October 2019

Harney Westwood & Riegels

Harney Westwood & Riegels

Attorneys-at-Law for and on behalf of the Petitioner

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

THIS PETITION was presented by Harney Westwood & Riegels, Attorneys-at-Law for the Petitioner, whose address for service is 4<sup>th</sup> Floor, Harbour Place, 103 South Church Street, PO Box 10240, Grand Cayman KY1-1002, Cayman Islands (Ref: JNW/LBG/020982.0023)

**NOTICE OF HEARING**

**TAKE NOTICE THAT** the hearing of this Petition will take place at the Law Courts, George Town, Grand Cayman, Cayman Islands 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, George Town, Grand Cayman KY1-1106, Cayman Islands; Tel: 3459494296.