

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION



CAUSE NO. FSD ²⁰⁰ of 2019 ()

IN THE MATTER OF SECTION 92 OF THE COMPANIES LAW (2018 REVISION)

AND IN THE MATTER OF ALTAIR ASIA INVESTMENTS LIMITED



WINDING UP PETITION



TO THE GRAND COURT

The humble petition of Safe Castle Limited, with a registered office at Coastal Building, Wickhams Cay II, P.O. Box 2221, Road Town, Tortola, British Virgin Islands (the "**Petitioner**") shows that:

INTRODUCTION

- 1 The Petitioner presents this petition for:
 - (a) the winding up of Altair Asia Investments Limited (the "**Company**") pursuant to section 92(d) of the Companies Law (2018 Revision) on grounds that the Company is insolvent and unable to pay its debts; and
 - (b) the appointment of Mr Simon Richard Conway of PricewaterhouseCoopers, PO Box 258, 18 Forum Lane, Camana Bay, Grand Cayman, KY1 1104 Cayman Islands and Mr Man Chun (Christopher) So and Mr Peter James Greaves of PricewaterhouseCoopers, 20/F Prince's Building, Central, Hong Kong as joint official liquidators of the Company.

THE PETITIONER

- 2 The Petitioner was incorporated in the British Virgin Islands (the "**BVI**") on 13 June 2014 as a BVI company.
- 3 Prior to becoming a creditor (as set out below) the Petitioner was a shareholder of the Company and held approximately 7,494,314.46 shares in the Company.
- 4 The Petitioner has submitted redemption requests (as set out below) in respect of its shares in the Company but remains unpaid.
- 5 For the reasons set out below the Petitioner seeks an order winding up the Company on the basis that the Company is insolvent and unable to pay its debts as they fall due.

THE COMPANY

- 6 The Company was incorporated in the Cayman Islands on 27 August 2012 as an exempted company with limited liability pursuant to the Companies Law (as Amended) (the "**Companies Law**"). (Registration Number: 271297)
- 7 The registered office of the Company is situated at 190 Elgin Avenue, George Town, Grand Cayman KY1-9005, Cayman Islands.
- 8 The Company's amended and restated memorandum and articles of association dated 13 September 2012 (the "**MAA**") provide that the objects for which the Company was established are unrestricted.
- 9 The Company is, and was at all material times, an investment vehicle organised for the purpose of investing funds as a special limited partner of Prelude Opportunity Fund LP, a Delaware limited partnership (the "**Partnership**").
- 10 The authorised share capital of the Company is US\$50,000.00 divided into 4,990,000 participating shares of a nominal or par value of US\$0.01 each ("**Participating Shares**") and 100 management shares of a nominal or par value of US\$1.00 each ("**Management Shares**"). The Management Shares are owned by Ardon Maroon Fund Management Limited ("**Ardon Maroon**").

SUMMARY OF INVESTMENT

- 11 The Partnership is an investment partnership that invests and reinvests its assets through managed sub-accounts held in its name and managed by a sub-advisor pursuant to a sub-advisory agreement.
- 12 The Company entered into a sub-advisory agreement with the Partnership and Springbok Capital Management LLC (as investment manager of the Partnership). Pursuant to that agreement, the Company managed a sub-account ("**Company Sub-Account**") and a capital account ("**Company Capital Account**"). By investing in the Company, the Petitioner was indirectly investing in the Partnership. The Company Capital Account and the proceeds for its subscription of the Participating Shares were to be used as the initial and additional capital contributions by the Company in the Partnership in its capacity as special limited partner.

THE MANAGER, ADMINISTRATOR AND DIRECTORS

- 13 Ardon Maroon, is a Cayman Islands exempted company that acts as investment advisor to the Company pursuant to an investment advisory agreement dated 13 September 2012 (the "**Advisor**").
- 14 Intertrust Fund Services (Asia) Limited is, and was at all material times, the administrator of the Company pursuant to an administration agreement dated 11 December 2012 (the "**Administrator**").

- 15 China Silver Asset Management (Hong Kong) Limited¹ ("**China Silver**"), formerly known as Ardon Maroon Fund Management (Hong Kong) Limited, is a Hong Kong company. China Silver acts as investment advisor to Ardon Maroon pursuant to an investment advisory agreement dated 26 June 2012.
- 16 As at the date of this Petition, the directors of the Company are Mr Frank Dominick and Mr Patrick Nicholas Maloney. Mr Dominick is also the Chief Investment Officer of China Silver and Mr Maloney is the Managing Partner of China Silver.

THE PETITIONER'S INTEREST IN THE COMPANY

- 17 Pursuant to a subscription form and subscription agreement executed on 1 October 2017 (together the "**Subscription Agreement**") the Petitioner subscribed for "*such number of Shares in the Company, at their applicable Net Asset Value at the relevant Subscription Date, as may be subscribed for with HK\$200,000,000.*" In doing so, the Company agreed to be bound by the MAA of the Company.
- 18 The Company and the Petitioner also entered into a side letter, executed as a deed, on 10 October 2017 in connection with the Petitioner's investment of HK\$200 million in the Company (the "**Side Letter**"). The key provisions of the Side Letter are as follows:

1. "Extraordinary Redemption Events"

- 1.1 *Subject to the provisions of paragraph 1.2, [the Petitioner] may request for the redemption of all or any portion of the Shares (including any positive returns on that investment) (an "Extraordinary Redemption") upon the occurrence of any of the following (each, an "Extraordinary Redemption Event"):*

...

1.1.11 *if the average of the closing price of the shares of RM Group Holdings Limited (stock code: 932)², a company listed on The Stock Exchange of Hong Kong Limited, for any 5 consecutive trading days is below the then applicable conversion price under the convertible bonds to be issued by RM Group Holdings Limited in or around mid-October 2017; or*

1.1.12 *the expiry of one-year period after the date of allotment and issue of the Shares.*

- 1.2 *Save and except paragraph 1.1.11, [the Petitioner] must give the Company at least 90 days' prior written notice of any Extraordinary Redemption and that Extraordinary Redemption will take place on the later of 90 days following the date of that notice and the date specified in that notice (and that Extraordinary Redemption may therefore occur on a day which is not a Redemption Day). For the avoidance of doubt, the obligations of redemption shall arise upon service of the written notice of the Extraordinary Redemption. For paragraph 1.1.11, the*

¹ Formerly known as Ardon Maroon Fund Management (Hong Kong) Limited.

² RM Group Holdings Limited is now called Shunten International (Holdings) Limited and was the target of the Company's investment.

Company shall redeem the Shares at the aggregate consideration of the original amount of investment plus the Guaranteed Return (to be calculated on a pro rata basis in proportional [sic] of the period expended) within 21 business days (in Hong Kong) after the date of written notice given by [the Petitioner].

- 1.3 *For the purposes of paragraph 1.2, the Company must promptly notify [the Petitioner] of the occurrence of any Extraordinary Redemption Event.*

...

3. Guaranteed Return

[The Petitioner] will have a Guaranteed Return of 15% IRR per annum on their investment in the Company. Dividends representing the Guaranteed Return will be paid on a quarterly basis from when [the Petitioner] becomes a Shareholder in the Company. All assets of the Company will be used as collateral for the Guaranteed Return to [the Petitioner].

For the avoidance of doubt, the Guaranteed Return is not compounded and is on an annualized basis and a pro rata basis to when [the Petitioner] requests for the redemption of the Shares by the Company. The Manager and the Company acknowledge and agree that [the Petitioner's] entitlement to the Guaranteed Return, original investment and other additional entitlement towards the assets of the Company as shareholder of the Company (if any) shall have priority over all other rights, interests and entitlements of other shareholders or investors in the Company.

...

12. Additional Undertakings

The Company agrees to the Additional Undertakings while [the Petitioner] remains a Shareholder in the Company:

...

- *Company will pay the 15% IRR Guaranteed return on a quarterly basis to [the Petitioner] as long as they remain a Shareholder in the Company;*

..."

- 19 The following additional charges and guarantees were entered into on 10 October 2017 in favour of the Petitioner:

- (a) Mr Dominick executed a personal guarantee in respect of the liabilities of the Company and China Silver;
- (b) China Silver executed a corporate guarantee in respect of the liabilities of the Company;
- (c) China Silver executed a charge in favour of the Petitioner over its bank accounts maintained with Standard Chartered Bank (Hong Kong) Limited; and

- (d) China Silver Asset Management Limited (the Cayman Islands parent company of China Silver) executed a charge over its shares in China Silver.

REDEMPTION REQUESTS

- 20 On 5 January 2018, the Petitioner notified the Company that an Extraordinary Redemption Event pursuant to clause 1.1.11 of the Side Letter had occurred and requested the full redemption of all its Participating Shares to the value of HK\$209,041,095.89 (being the aggregate consideration of the original amount of its investment pursuant to clause 1.2 of the Side Letter and the Guaranteed Return up to 5 February 2018, payable pursuant to clause 2 of the Side Letter) ("**First Redemption Request**").
- 21 The Petitioner and the Company entered into settlement negotiations and by waiver letter dated 23 January 2018, the Petitioner agreed to waive its right to early redemption pursuant to clause 1.1.11 of the Side Letter of part of its Participating Shares to the value of HK\$140 million on the satisfaction of all the conditions precedent therein (the "**Waiver Letter**"). The key terms of the Waiver Letter are as follows:

1. "BACKGROUND

...

It is noted that the average closing price of RM Group for the five consecutive trading days of 27, 28, 29 December 2017, 2 and 3 January 2018 as quoted on The Stock Exchange of Hong Kong Limited was below the applicable conversion price under the convertible bonds issued by RM Group (the "Triggering Event").

2. WAIVERS

Subject to the satisfaction of the following conditions precedent, [the Petitioner] hereby irrevocably waives its rights to request for early redemption of the relevant number of Participating Shares up to the principal amount of HK\$140 million on the ground of the Triggering Event:

- (1) The Company has completed the redemption of the relevant number of Participating Shares representing the principal amount of HK\$60 million to the full satisfaction of [the Petitioner] and [the Petitioner] has received the proceeds thereof on or before [21 February 2018];*
- (2) [the Petitioner] has received the guaranteed return in respect of the Participating Shares in the principal sum of HK\$200 million accrued up to 18 January 2018 on or before [15 February 2018] and for the avoidance of doubt, [the Petitioner] shall only be entitled to the guaranteed return in respect of the Participating Shares in the principal sum of HK\$140 million subsequent to 18 January 2018;*
- (3) The Company has provided documentary evidence in form and substance reasonably satisfactory to [the Petitioner] on or before [28 January 2018] showing that the share charge in respect of the shares in CSAM dated 10 October 2017 executed by China Silver Asset Management Limited in favour of*

[the Petitioner] has been duly entered into the Register of Mortgages and Charges of China Silver Asset Management Limited;

- (4) The Company has duly arranged the appointment of such person as nominated by [the Petitioner] as the authorised signatory subject to regulatory and bank approval of the bank accounts as referred to in the Charge over Bank Account dated 10 October 2017 executed by CASM in favour of [the Petitioner] (the "Charge over Bank Accounts") on a date to be provided at the sole discretion of the regulator;
- (5) The Company has duly arranged the service of the notification of the Charge over Bank Account to Standard Chartered Bank (Hong Kong) Limited and provide documentary evidence showing the due delivery thereof on or before [26 January 2018]; and
- (6) The Company has settled, or has arranged the settlement of, reasonable costs and expenses incurred by [the Petitioner] (including legal documentation costs) in the amount of approximately to HK\$150,000 on or before [15 February 2018].

If any of the above conditions precedent is not satisfied (or waived by [the Petitioner]) on or before the date as stipulated above, all rights of [the Petitioner] under the Triggering Event shall remain in full force and effect.

For the avoidance of doubt, the waiver granted under this Clause applies solely to the Triggering Event. In the event that any event of similar nature arises in the future, the rights of the Petitioner] under the Transaction Documents remain in full force and effect."
[Emphasis added]

- 22 The Company did not satisfy the conditions precedent set out in Clause 3 of the Waiver Letter by the dates stipulated including, but not limited to, payment of the sum of HK\$60 million by 21 February 2018 (instead it paid by two instalments on 13 April 2018 and 8 August 2018) and payment of the first quarterly Guaranteed Return by 15 February 2018 (instead it paid on 12 March 2018).
- 23 The Petitioner repeatedly requested payment from the Company of the HK\$60 million and the Guaranteed Return when payment was not made by 21 and 15 February 2018, respectively as per the Waiver Letter.
- 24 On 2 October 2018, the Petitioner again wrote to the Company requesting the full redemption of its remaining Participating Shares to the value of HK\$145,250,000 (being the aggregate consideration of the original amount of its investment less the HK\$60 million paid plus the fourth quarterly Guaranteed Return that was due to be paid on 18 October 2018) (the "Second Redemption Request").
- 25 The Second Redemption Request was not intended as a request pursuant to clause 1.1.12 of the Side Letter since the Petitioner's rights under the First Redemption Request remained in full force and effect by reason of the Company's failure to satisfy the conditions precedent in clause 3 of the Waiver Letter.

26 However, even if it was found that the Petitioner had waived the Company's breaches of the conditions precedent (which it has not) then the Second Redemption Request was still a valid redemption request pursuant to clause 1.1.12 being the occurrence of another Extraordinary Redemption Event, the expiry of one-year after the date of allotment and issue of the Participating Shares.

27 If the Second Redemption Request was a valid redemption request pursuant to clause 1.1.12, then the Petitioner was required to give at least 90 days' prior written notice and redemption would take place on the later of 90 days following the day of that notice (i.e. 2 October 2018) or the date specified in the notice (i.e. 18 October 2018). This would mean that the Company was required to pay the Petitioner pursuant to the Second Redemption Request no later than 16 January 2019 (being 90 days after 18 October 2018). However the Company has failed to pay despite repeated requests.

COMPANY'S FAILURE TO PAY

28 The Company has not denied liability of a debt to the Petitioner:

(a) On 23 November 2018, the Company confirmed that the Administrator was processing payment and that the normal redemption process would be followed but that it would take some time after the October 2018 NAV was struck.

(b) On 6 December 2018, the Company confirmed to the Petitioner that it was working to have redemption processed and that it appreciated the Petitioner's patience. The Company further confirmed that if the delay was unreasonable they would pay for the cost of capital for the delay in order to avoid a legal process.

(c) On 29 January 2019, the Company confirmed that it was in the process of selling bonds to the master fund in order to pay the redemption as soon as possible thereafter.

29 On 26 February 2019, the Administrator provided the Petitioner with a contract note dated 26 February 2019 which stated that, as of the dealing date of 18 October 2018, the value of the Petitioner's redeemed shares was HK\$128,474,544.90 calculated by reference to the NAV (the "Contract Note"). However pursuant to clause 1.1.11 of the Side Letter, and as described in paragraph 24 above, the debt due and owing to the Petitioner is in fact HK\$145,250,000.

30 After repeated demands for payment and requests for updates on the status of payment made on 13 April 2018, 6 August 2018, 20 August 2018, 2 October 2018, 4 October 2018, 19 October 2018, 26 October 2018, 30 October 2018, 7 November 2018, 12 November 2018, 16 November 2018, 19 November 2018, 20 November 2018, 23 November 2018, 26 November 2018, 27 November 2018, 3 December 2018, 4 December 2018 and 15 December 2018, the Petitioner eventually served a statutory demand on Mr Dominick (as guarantor for the Company) in Hong Kong on 16 January 2019 and on China Silver (as guarantor for the Company) in Hong Kong on 27 December 2018.

31 When the statutory demands remained unpaid, the Petitioner filed a winding up petition against China Silver in Hong Kong on 7 March 2019 (amended on 15 March 2019) and a creditor's bankruptcy petition against Mr Dominick on 7 March 2019 (amended on 14 March

2019) (the "**Hong Kong Proceedings**"). The hearing of the petitions took place before the Honourable Justice Harris on 27 September 2019 and judgment was reserved.

FINANCIAL POSITION OF THE COMPANY

- 32 A set of management accounts of the Company included in a valuation report prepared by the Administrator dated 29 March 2019 (the "**Management Accounts**") were exhibited to the Affidavit of Frank Dominick dated 7 May 2019 in the Hong Kong Proceedings. The Management Accounts represent the unaudited position of the Company as at 29 March 2019. The Petitioner does not have any up to date financial information on the Company.
- 33 A review of the Company's balance sheet as of 29 March 2019 (the "**Balance Sheet**") shows that its assets were US\$19,806,264.21 and its liabilities were US\$16,608,106.75. The Balance Sheet states "Redemptions Payable" as US\$16,366,184.06 but no further information is provided regarding this figure. This gave the Company a net asset value of US\$3,198,157.46 (approx. HK\$25 million) as at 29 March 2019. Based on these figures, Mr Dominick has claimed in evidence filed in the Hong Kong Proceedings that the value of its assets were sufficient to redeem the Petitioner's remaining Participating Shares.
- 34 However, the Balance Sheet also shows that the balance in the Company's bank account/s was in the negative sum of US\$1,361,436.88 which appears to show that the Company has insufficient liquidity to satisfy payment of the debt to the Petitioner.

GROUND FOR PETITION

- 35 The Petitioner duly submitted the First and Second Redemption Request to the Company and to the Administrator seeking that all of its Participating Shares be redeemed in accordance with clause 1.1.11 of the Side Letter.
- 36 The Company does not deny that a debt is due and owing to the Petitioner.
- 37 The Petitioner has demanded payment on numerous occasions since the Second Redemption Request as set out in paragraph 30 and notwithstanding these demands the Company has failed to pay and should be wound up under section 92(d) of the Companies Law on the basis that it is unable to pay its debts as they fall due.

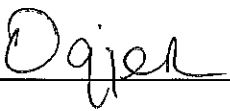
YOUR PETITIONER THEREFORE HUMBL Y PRAYS THAT

- 1 The Company be wound up in accordance with section 92(d) of the Companies Law.
- 2 Mr Simon Richard Conway of PwC Corporate Finance & Recovery (Cayman) Limited, PO Box 258, 18 Forum Lane, Camana Bay, Grand Cayman, KY1 1104 Cayman Islands and Mr Man Chun (Christopher) So and Mr Peter James Greaves of PricewaterhouseCoopers Limited, 20/F Prince's Building, Central, Hong Kong be appointed as joint official liquidators of the Company (the "**JOLs**").
- 3 The JOLs be authorised to act jointly and severally in their capacity as liquidators of the Company.

- 4 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 Company and the winding up of its affairs in the Cayman Islands or elsewhere.
- 5 The JOLs be authorised to take any such action as may be necessary or desirable to obtain recognition of the Official Liquidators and/or their appointment in any other relevant jurisdiction and to make applications to the courts for such purpose.
- 6 The JOLs be at liberty to meet all disbursements reasonably incurred in connection with the performance of their duties and all such payments shall be made out of the assets of the Company as an expense of the liquidation.
- 7 The JOLs 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.
- 8 The JOLs be authorised to exercise within and outside the Cayman Islands any of the powers conferred on them by the Court pursuant to Section 110(2) and Part II of the Third Schedule of the Companies Law without further sanction or intervention of the Court.
- 9 The JOLs have the power to appoint agents in Hong Kong, the Cayman Islands, the PRC and elsewhere to do any business contemplated by this order which they are unable to do themselves or which can more conveniently be done by an agent.
- 10 The JOLs be at liberty to appoint counsel, attorneys, and/or any other professional advisors, whether in the Cayman Islands or elsewhere, as they may consider necessary to advise and assist them in the performance of their duties on such terms as they may think fit and to remunerate them out of the assets of the Company.
- 11 The Petitioner's costs of and incidental to the Petition shall be paid forthwith out of the assets of the Company on indemnity basis.
- 12 Such further order and directions may be granted as this honourable Court deems appropriate.

And your Petitioner will ever pray etc.

Dated the 11 day of October 2019



Ogier

Attorneys for the Petitioner

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

This Petition was presented by Ogier whose address for service is 89 Nexus Way, Camana Bay, Grand Cayman KY1-9009, Cayman Islands (MKS/MKY/178587.00001)

NOTICE OF HEARING

TAKE NOTICE THAT the hearing of this petition will take place at the Law Courts, George Town, Grand Cayman, on _____ at 10.00am.

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