

**IN THE GRAND COURT OF THE CAYMAN ISLANDS**

**FINANCIAL SERVICES DIVISION**

**CAUSE NO. FSD 274 OF 2020 ( NSJ)**

**IN THE MATTER OF SECTION 92 OF THE COMPANIES LAW (2020 REVISION)**

**AND IN THE MATTER OF ALTAIR ASIA INVESTMENTS LIMITED**

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**WINDING UP PETITION**

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**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 (2020 Revision) on ground 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 non-voting Participating Shares in the Company.
- 4 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.

This Petition is filed by Ogier, Attorneys-at-Law for the Petitioner, whose address for service is:  
89 Nexus Way, Camana Bay, Grand Cayman KY1-9009, Cayman Islands (426947/MKS/MS)

- (a) As set out below, the Company has agreed to pay the Petitioner a guaranteed return of 15% IRR per annum, payable quarterly, in respect of the Petitioner's investment in the Company (the "**Guaranteed Return**"). No Guaranteed Return payments have been made to the Petitioner since October 2018. A statutory demand in respect of the unpaid Guaranteed Return was served on the Company on 27 August 2020, but has not been satisfied as at the date of this Petition.
- (b) Further, the Petitioner submitted a redemption request in respect of its shares on 4 August 2020 in the Company but remains unpaid.

## THE COMPANY

- 5 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).
- 6 The registered office of the Company is situated at 190 Elgin Avenue, George Town, Grand Cayman KY1-9005, Cayman Islands.
- 7 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.
- 8 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**"). The Company carries on business in Hong Kong.
- 9 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

- 10 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.
- 11 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

- 12 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**").
- 13 Intertrust Fund Services (Asia) Limited was, until around 18 October 2019, the administrator of the Company pursuant to an administration agreement dated 11 December 2012 (the "**Administrator**" or "**Intertrust**") whereas Intertrust Corporate Services (Cayman) Limited was, until around 18 October 2019, the custodian of the Company (the "**Asset Custodian**"). The Petitioner understands that the Company has not had an Administrator or Asset Custodian since October 2019.
- 14 China Silver Asset Management (Hong Kong) Limited ("**China Silver**"), formerly known as Ardon Maroon Fund Management (Hong Kong) Limited, is a Hong Kong company. China Silver acts (or acted)<sup>1</sup> as investment advisor to Ardon Maroon pursuant to an investment advisory agreement dated 26 June 2012. On 11 March 2020, a winding up order was made against China Silver by the Court of First Instance of the High Court of the Hong Kong Special Administrative Region (the "**Hong Kong Court**").
- 15 As at the date of this Petition, the Petitioner understands that the directors of the Company are Mr Frank Dominick and Mr Patrick Nicholas Maloney (the "**Directors**"). Prior to the winding up of China Silver on 11 March 2020, Mr Dominick was the Chief Investment Officer of China Silver and Mr Maloney was the Managing Partner of China Silver.

## THE PETITIONER'S INTEREST IN THE COMPANY

- 16 Pursuant to a subscription form and subscription agreement dated 1 October 2017 but in fact executed on 10 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 Petitioner agreed to be bound by the MAA of the Company.
- 17 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 in the Company (the "**Side Letter**"). The key provisions of the Side Letter are as follows:

### 1. "**Extraordinary Redemption Events**"

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<sup>1</sup> A winding-up order against China Silver was made by the High Court of the Hong Kong Special Administrative Region on 11 March 2020. It is not clear whether, further to the making of the winding up order, China Silver remains the investment advisor to Ardon Maroon.

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)<sup>2</sup>, 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 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*

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

*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.*

...

**10. No Waiver**

*No failure to exercise and no delay in exercising on the part of Safe Castle, the Company, or the Manager any right, power, or privilege under this letter will operate as a waiver of that right, power or privilege nor will any single or partial exercise of any right, power, or privilege preclude any other or further exercise of any other right, power or privilege*

...

**12. Additional Undertakings**

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

...

- *Company shall use the entire investment monies for the subscription of Shares for the purpose of subscription of the convertible bonds in the principal sum of HK\$200 million to be issued by RB Group Holdings Limited. Company will keep Safe Castle informed of all conversions of convertible bonds and the sale of the conversion shares thereof and will not do any NAKED conversions without the converted shares being hedged;*
- *Company will not reinvest any principal amount generated from the CB conversions while [the Petitioner] remains a Shareholder of 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;*

..."

18 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 (the "**Personal Guarantee**");
- (b) China Silver executed a corporate guarantee in respect of the liabilities of the Company (the "**Corporate Guarantee**");

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- (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.

## FIRST AND SECOND REDEMPTION REQUESTS

- 19 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**").
- 20 Further to the First Redemption Request, the Petitioner and the Company entered into settlement negotiations. By a waiver letter dated 23 January 2018 (the "**Waiver Letter**"), the Petitioner agreed to waive its right to early redemption pursuant to clause 1.1.11 of the Side Letter arising out of the Triggering Event (as defined in the Waiver Letter) upon the satisfaction of all the conditions precedent therein. 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).*

- 21 The Company paid the Petitioner the sum of HK\$60 million as proceeds for the partial redemption of the Petitioner's Participating Shares in two instalments on 13 April 2018 and 8 August 2018 (rather than by 21 February 2018 as provided for in the Waiver Letter), and paid the first quarterly Guaranteed Return payment on 12 March 2018 (rather than by 15 February 2018, as stipulated in the Waiver Letter).
- 22 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**").

## HONG KONG AND CAYMAN PROCEEDINGS PURUSANT TO FIRST AND SECOND REDEMPTION REQUESTS

- 23 After repeated demands for payment and requests for updates on the status of the redemption of its shares, the Petitioner eventually served a statutory demand on Mr Dominick (as guarantor for the Company under the Personal Guarantee) in Hong Kong on 16 January 2019 and on China Silver (as guarantor for the Company under the Corporate Guarantee) in Hong Kong on 27 December 2018.
- 24 When the statutory demands remained unpaid, the Petitioner filed a winding up petition against China Silver 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) in the Hong Kong Court (the "**Hong Kong Proceedings**"). On 11 March 2020 the Hong Kong Court held that there was no *bona fide* and substantial dispute as to the existence of the debt due to the Petitioner and ordered that China Silver be wound up.<sup>3</sup> An appeal against the winding up order is pending before the Hong Kong Court of Appeal,<sup>4</sup> though no hearing date has been listed as at the date of this Petition.
- 25 On 11 November 2019, the Petitioner filed a winding-up petition against the Company in the Grand Court of the Cayman Islands (Cause No. FSD 200 of 2019 (RPJ)) on the grounds that the Company had failed to pay the redemption debt due to the Petitioner pursuant to the First or Second Redemption Requests (the "**First Petition**"). On 28 July 2020, the Grand Court dismissed the First Petition on the grounds that it considered there to be a *bona fide* and substantial dispute as to the existence of the debt due to the Petitioner under the First and/or Second Redemption Requests. The Petitioner has not appealed the Grand Court's judgment.
- 26 The above is set out by way of background only. For the avoidance of doubt, the present Petition is not founded on any debt arising under either the First and/or Second Redemption Requests.

## THIRD REDEMPTION REQUEST

- 27 On 4 August 2020, the Petitioner served a third redemption request on the Company requesting the redemption of all of its Participating Shares pursuant to paragraph 1.1.12 of the Side Letter (the "**Third Redemption Request**").
- (a) Paragraph 1.1 of the Side Letter provides that the Petitioner may request the redemption of all or a portion of its Participating Shares (an "**Extraordinary Redemption**") upon the occurrence of any specified Extraordinary Redemption

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<sup>3</sup> The bankruptcy petition against Mr Dominick was adjourned for further directions for the determination of a separate issue as to whether there had been valid service of the petition.

<sup>4</sup> By a decision dated 5 June 2020 the Hong Kong Court refused to grant a stay of the winding up order against China Silver pending appeal.

Events, including if a period of one year has expired after the date of allotment and issue of the Participating Shares to the Petitioner (paragraph 1.1.12).

- (b) The Participating Shares were allotted and issued to the Petitioner on or around 18 October 2017. A period of more than one year has therefore expired since the date of the allotment and issue of the Participating Shares, giving rise to an Extraordinary Redemption Event under paragraph 1.1.12 of the Side Letter. Accordingly, the Petitioner is entitled to request the Extraordinary Redemption of its Participating Shares under paragraph 1.1 of the Side Letter.
- (c) The Petitioner is required to give the Company at least 90 days' prior written notice of any Extraordinary Redemption. Upon giving such notice, the Extraordinary Redemption will take place on the later of (i) 90 days following the date of the notice and (ii) the redemption date specified in the notice (paragraph 1.2). The Side Letter further provides that "*For the avoidance of doubt, the obligations of redemption shall arise upon the service of the written notice of the Extraordinary Redemption*" (paragraph 1.2).
- (d) The Third Redemption Request was served on the Company on 4 August 2020, and specified a redemption date of 3 November 2020. Accordingly, the notice period in respect of the Third Redemption Request expired on 3 November 2020.
- (e) The Waiver Letter applies solely to the Triggering Event (as defined therein) and does not affect the Petitioner's right to redemption in these circumstances.

#### **REQUEST FOR PAYMENT OF GUARANTEED RETURN**

28 On 4 August 2020, the Petitioner wrote to the Company to request payment in full of all unpaid Guaranteed Return due as at that date.

29 In summary, paragraph 3 of the Side Letter provides that:

- (a) the Company is required to pay the Petitioner a Guaranteed Return of 15% IRR per annum on the Petitioner's investment in the Company;
- (b) dividends representing the Guaranteed Return will be paid by the Company to the Petitioner on a quarterly basis;
- (c) all assets of the Company will be used as collateral for the Guaranteed Return;
- (d) the Petitioner's entitlement to the Guaranteed Return shall have priority over all other rights, interests and entitlements of other shareholders or investors in the Company;
- (e) the Company will not create any security, rights, interests or entitlements which rank in priority to the Petitioner's entitlement to the Guaranteed Return; and

- (f) all dividends and other payments made by the Company under paragraph 3 of the Side Letter shall be made without set off or counterclaim and without deduction in respect of any present or future taxes or other charges unless the Company is compelled by law to make such deduction, in which case it will promptly pay to the Petitioner such additional amount as may be necessary to ensure that the net amount received by the Petitioner will be equal to the full amount which would have been received had such a deduction not been made.
- 30 Paragraph 12 of the Side Letter provides that the Company will continue to pay the Guaranteed Return to the Petitioner for so long as the Petitioner remains a shareholder of the Company.
- 31 Pursuant to paragraph 2(2) of the Waiver Letter, it was agreed that the Petitioner shall only be entitled to the Guaranteed Return in respect of its Participating Shares in the Company in the principal sum of HK\$140 million subsequent to 18 January 2018.
- 32 Further to the terms of the Side Letter and Waiver Letter as set out above, subsequent to 18 January 2018, the Company is required to pay a Guaranteed Return to the Petitioner in the amount of HK\$5,250,000 on a quarterly basis, representing an IRR of 15% per annum on the principal sum of HK\$140 million, divided quarterly.

#### **COMPANY'S FAILURE TO PAY THE REDEMPTION DEBT**

- 33 Further to the Third Redemption Request, the Petitioner (via its attorneys, Ogier) wrote to the Company (via its attorneys, Walkers) on 11 August, 21 August, 1 September, 18 September, and 29 September 2020, calling on the Company to confirm that it accepted the validity of the Third Redemption Request, and would duly process the Petitioner's redemption and pay the redemption debt due to the Petitioner upon the expiration of the redemption notice period on 3 November 2020. To date, the Company has neither acknowledged the Third Redemption Request nor disputed its validity.
- 34 The Company has failed to effect a redemption of the Petitioner's shares by 3 November 2020. The Petitioner's Participating Shares in the Company are therefore deemed to have been redeemed as of that date. Accordingly, the Petitioner ceased to be a member of the Company on 3 November 2020, and is now a creditor of the Company in the amount of the redemption proceeds due pursuant to the Third Redemption Request, to be calculated as follows.
- (a) The Side Letter does not expressly provide for how the consideration payable pursuant to an Extraordinary Redemption<sup>5</sup> is to be calculated. However the Side Letter is expressed to be binding on the Petitioner and the Company as if the matters set out in it had been expressly included in the MAA and the Subscription Agreement (paragraph 4). In the absence of an express provision in the Side Letter, the MAA and Subscription Agreement, read together, will apply.

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<sup>5</sup> Other than in respect of a the Extraordinary Redemption Event under paragraph 1.1.11 of the Side Letter.

- (b) Clause 3.1 of the Subscription Agreement provides that Participating Shares are redeemed at their net asset value ("**NAV**") per Participating Share as determined by the Directors. Clause 3.2 of the Subscription Agreement provides that the NAV shall be determined by reference to the NAV of the Partnership as calculated in accordance with US GAAP as of the end of the last business day of the immediately preceding month (or any other day as may be allowed pursuant to the terms of the Partnership Agreement). Articles 25 to 34 of the MAA provide further guidance as to how the NAV is to be calculated.
- (c) Accordingly, the redemption debt due to the Petitioner is based on the NAV per Participating Share as calculated at the end of the last business day of October 2020 – i.e. 30 October 2020 (the "**October 2020 NAV**").

35 Despite repeated requests, the Company has failed to provide the Petitioner with up-to-date financial information further to the Third Redemption Request, and as far as the Petitioner is aware has made no attempt to calculate the October 2020 NAV. The most recent statement of the Company's NAV is set out in the Company's balance sheet as of June 2020 (the "**June 2020 Balance Sheet**") exhibited to the Fifth Affidavit of Frank Dominick dated 29 June 2020, filed in opposition to the First Petition. The June 2020 Balance Sheet records that the Company's NAV as of June 2020 was US\$18,957,078.07 and that the Petitioner's shareholder capital in the Company was US\$16,451,690.94 out of a total shareholder capital of US\$19,601,240.40 (83.9%).<sup>6</sup>

36 Assuming that the June 2020 Balance Sheet is accurate and represents the Company's financial position as at the end of October 2020, after taking into account the Company's liability to pay the Guaranteed Return,<sup>7</sup> the redemption debt due to the Petitioner pursuant to the Third Redemption Request is approximately **US\$11,218,238.75**, (the "**Redemption Debt**") calculated as follows:

Net Asset Value (assumed to be the same as stated in the June 2020 Balance Sheet)	US\$18,957,078.07	
Less Guaranteed Return due as at the date of this Petition		-US\$5,586,114.13
Adjusted Net Asset Value	US\$13,370,963.94	
Multiplied by ratio of Petitioner's shareholder capital to total shareholder capital (83.98%) <sup>8</sup>	US\$11,218,238.75	

<sup>6</sup> The Petitioner makes no admission as to the accuracy of the June 2020 Balance sheet

<sup>7</sup> The June 2020 Balance Sheet does not take into account the Company's liability to pay the Guaranteed Return to the Petitioner in the aggregate amount of HK\$48,277,173.91 (as calculated at paragraph [39]). Taking the Company's liability pay the Guaranteed Return into account will reduce the Company's NAV as stated in the June 2020 Balance Sheet by HK\$48,277,173.91 (or US\$6,276,032.61 based on an exchange rate of US\$0.13 to HK\$1).

<sup>8</sup> Due to the Company's failure to provide financial information to the Petitioner, the Petitioner is not aware of the total number of Participating Shares issued by the Company and therefore is unable to calculate the NAV

<b>Total Redemption Debt due</b>	<b>US\$11,218,238.75</b>	
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- 37 The above figures are provisional given the Company's failure to calculate the October 2020 NAV or provide the Petitioner with up-to-date financial information. The Petitioner reserves its right to amend or vary the amounts stated above subject to the disclosure of further financial information by the Company.

#### **COMPANY'S FAILURE TO PAY THE GUARANTEED RETURN**

- 38 As set out above, the Company is required to pay the Petitioner a Guaranteed Return of HK\$5,250,000 quarterly for so long as the Petitioner remains a shareholder of the Company.
- 39 No Guaranteed Return payments have been paid to the Petitioner by the Company since 10 August 2018. Accordingly, the following Guaranteed Return payments are due and payable to the Petitioner by the Company:

<b>No.</b>	<b>Due date for payment</b>	<b>Sum (HK\$)</b>
1	18 October 2018	5,250,000
2	18 January 2019	5,250,000
3	18 April 2019	5,250,000
4	18 July 2019	5,250,000
5	18 October 2019	5,250,000
6	18 January 2020	5,250,000
7	18 April 2020	5,250,000
8	18 July 2020	5,250,000
9	18 October 2020	5,250,000
10	18 January 2020	1,027,173.91 <sup>9</sup>
<b>Total</b>		48,277,173.91 (or US\$6,276,032.61: see FN 7)

- 40 The Petitioner has written to the Company on 4 August, 11 August, 21 August, 1 September, 18 September, and 29 September 2020 calling on the Company to pay the Guaranteed Return, and served a Statutory Demand in respect of the unpaid Guaranteed Return due as at 21 August 2020 on the Company on 27 August 2020 (the "**Statutory Demand**"). The Company has not disputed that it is required to pay the Guaranteed Return.

#### **THE COMPANY IS UNABLE TO PAY ITS DEBTS**

per Participating Share. The ratio of the Petitioner's shareholder capital to the Company's total shareholder capital is the nearest proxy to the NAV per participating share in the circumstances.

<sup>9</sup> Pursuant to paragraph 3 of the Side Letter, the quarterly guaranteed return for the quarter ending on 18 January 2021 shall be pro-rated to the date of the filing of this Petition to the Grand Court – i.e. to 4 November 2020.

This Petition is filed by Ogier, Attorneys-at-Law for the Petitioner, whose address for service is:  
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- 41 The Company has failed to pay either the Redemption Debt or the Guaranteed Return when due. It is to be inferred it is unable to pay its debts and is insolvent for the purposes of section 92(d) of the Companies Law.
- 42 Further or alternatively, the Statutory Demand was served on the Company at its registered office on 27 August 2020. The Statutory Demand has not been paid by the Company within 21 days after the date of service. Accordingly, the Company is deemed to be unable to pay its debts under section 93(a) of the Companies Law.
- 43 Further and in any event, the June 2020 Balance Sheet shows that the Company only has cash assets of US\$10,642,710.07. The remainder of the Company's assets are stated to be held in the form of unspecified private equity investments, bonds, and other receivables. There is no evidence that these assets – and in particular the unspecified private equity investments, which are the Company's most valuable non-cash asset – can be realised in any reasonable period of time to pay the Company's debts as they fall due, or would be realisable at their book value. The Company therefore does not have sufficient liquidity to meet its obligations to the Petitioner to pay the unpaid Guaranteed Return and Redemption Debt, which are now immediately due and payable, in the aggregate amount of approximately **US\$17,494,271.36**.

#### **GROUNDINGS FOR PETITION**

- 44 The Petitioner duly submitted the Third Redemption Request to the Company seeking that all of its Participating Shares be redeemed in accordance with clause 1.1.12 of the Side Letter.
- 45 The Petitioner duly served a Statutory Demand on the Company requesting payment of the unpaid Guaranteed Return.
- 46 The Company does not deny that a debt is due and owing to the Petitioner in respect of the Redemption Debt and/or the Guaranteed Return.
- 47 The Petitioner has demanded payment on numerous occasions, and has served a Statutory Demand on the Company in respect of the unpaid Guaranteed Return. 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 HUMBLLY 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**").

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- 3 The JOLs be authorised to act jointly and severally in their capacity as liquidators of the Company.
- 4 The JOLs shall not be required to give security for their appointment.
- 5 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.
- 6 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.
- 7 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.
- 8 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.
- 9 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.
- 10 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.
- 11 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 and on such terms as they may think fit and to remunerate them out of the assets of the Company.
- 12 The remuneration and expenses of the JOLs shall be paid out of the assets of the Company.
- 13 The Petitioner's costs of and incidental to the Petition shall be paid forthwith out of the assets of the Company on indemnity basis.
- 14 Such further order and directions may be granted as this honourable Court deems appropriate.

And your Petitioner will ever pray etc.

Dated the 4<sup>th</sup> day of November 2020

*Ogier*

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**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.

**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 his petition should be addressed to the Registrar of the Financial Services Division of the Grand Court at PO Box 495, Grand Cayman, KY1-1106, telephone 345 959 4296.