



**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION**

CAUSE NO: FSD 11 OF 2021 (RPJ)

**IN THE MATTER OF THE COMPANIES ACT (2020 REVISION)
AND IN THE MATTER OF GRAND STATE INVESTMENTS LIMITED**

WINDING UP PETITION

To the Grand Court of the Cayman Islands

The humble Petition of D. E. Shaw Composite Investments Asia 10 (Cayman) Limited care of Intertrust Corporate Services (Cayman) Limited, 190 Elgin Avenue, George Town, Grand Cayman, KY1-9005, Cayman Islands (*Petitioner*) shows that:

A. INTRODUCTION

- 1 The Petitioner is a company incorporated on 12 May 2008 under the laws of the Cayman Islands with registration number 210338. The registered office of the Petitioner is located at Intertrust Corporate Services (Cayman) Limited, 190 Elgin Avenue, George Town, Grand Cayman, KY1-9005, Cayman Islands.
- 2 Grand State Investments Limited (*Company*) is a Cayman Islands exempted company incorporated on 2 April 2008 under the laws of the Cayman Islands with registration number 208297. The Company's registered office is Vistra (Cayman) Limited, Grand Pavilion, Hibiscus Way, 802 West Bay Road, Grand Cayman, KY1-9005, Cayman Islands.
- 3 The Petitioner is a shareholder of the Company, currently holding 3,652,523 Series C Preferred Shares.
- 4 The Company is involved in the operation of various schools and kindergartens in the People's Republic of China (*PRC*). To the best of the Petitioner's knowledge and belief, the Company carries on business in the PRC.

B. BACKGROUND

(1) Summary of circumstances of insolvency

5 Pursuant to the terms of the Series C Preferred Share Purchase Agreement dated 7 February 2013
(*SPA*), on 4 March 2013 the Petitioner purchased 3,043,769 Series C Preferred Shares (as defined
in the *SPA*) at the aggregate purchase price of US\$20,000,000 (*Purchase Price*). The Petitioner
subsequently acquired more shares in 2014 and currently holds a total of 3,652,523 Series C
Preferred Shares.

6 On 4 March 2013, the Petitioner (amongst others), upon payment of the Purchase Price, entered
into an Amended and Restated Shareholders Agreement with the Company (*Shareholders
Agreement*).

7 Pursuant to section 12.3 of the Shareholders Agreement (which is identical to Article 163 of the
Company's Fourth Amended and Restated Memorandum of Association which was adopted by a
special resolution dated 4 March 2013 (*M&A*)), upon the occurrence of any of the events
stipulated in that section (*Redemption Events*), the Petitioner is entitled to demand that the
Company redeem part of or all of its Series C Preferred Shares by delivering a written notice of
redemption to the Company.

8 The material portions of section 12.3 of the Shareholders Agreement are reproduced below:

"12.3 Redemption Rights of Series C Investor

At any time and from time to time after the earliest of (a) September 1, 2015 (provided that
there has not occurred an initial public offering of the shares of the Company), (b) the date
when a Series B Investor delivers a redemption notice to the Company pursuant to Section
12.2 above, (c) the date when the 2012 Audited Financials are available, if the Group
Companies' net income, EBITDA, shareholders' equity or cash as reflected in the 2012
Audited Financials is, whether individually or taken together as a whole, materially lower
than their counterparts as reflected in the 2012 Management Accounts and such difference
would have been reasonably expected to adversely affect the decision of the Series C
Investors to purchase any Series C Preferred Shares had the 2012 Audited Financials been
delivered to the Series C Investors at or prior to the Closing Date (as defined in the Series C

Share Purchase Agreement).... each Series C Investor shall have the right to require and demand the Company to redeem part of or all of its Series C Preferred Shares by delivering a written notice to the Company in which case the Company shall promptly thereafter provide each other Series C Investor and each Series B Investor a copy of such notice.

- (a) The Company shall pay to each Series C Investor (the "Redeeming Series C Investor") who demands redemption of a certain amount of Series C Preferred Shares (such shares to be redeemed, the "Redeemed Series C Shares") an amount (the "Series C Redemption Price") for each Redeemed Series C Share equal to the sum of (i) the Series C Issue Price, (ii) an amount equal to 18% internal rate of return based on the Series C Issue Price from the issuance date of such share through the date when such share is redeemed, and (iii) any declared but unpaid dividend on such share.
- (b) The redemption notice from a Redeeming Series C Investor shall specify the number of Redeemed Series C Shares, the date of the redemption (the "Series C Redemption Date") and the place at which the certificates for the Series C Preferred Shares are to be presented for redemption; provided, however, that the Series C Redemption Date shall be no earlier than thirty (30) days after such redemption notice is received by the Company, except where the Company has received a redemption notice from a Redeeming Series B Investor, the Series C Redemption Date can be on the same date as the Series B Redemption Date.
- (c) On the Series C Redemption Date the Redeeming Series C Investor shall deliver to the Company at the place stated in the redemption notice the certificate (or certificates) for those Redeemed Series C Shares (or, in the case of lost certificates, an indemnity in a form reasonably satisfactory to the directors of the Company), provided that the Company shall pay to the Redeeming Series C Investor on the Series C Redemption Date the Series C Redemption Price.
- (d) If the Company fails to pay on the Series C Redemption Date the full Series C Redemption Price in respect of each Redeemed Series C Share because it has inadequate funds legally available therefor or for any other reason, the funds that are legally available shall nonetheless be paid and applied on the Series C Redemption Date in a pro-rata manner against each Redeemed Series C Share in

accordance with the relative full amounts owed thereon, and the shortfall shall be paid and applied from time to time out of legally available funds immediately as and when such funds become legally available in a pro-rata manner against each Redeemed Series C Share in accordance with the relative remaining amounts owed thereon, such that, in any case, the full Series C Redemption Price shall not be deemed to have been paid in respect of any Redeemed Series C Share and the redemption shall not be deemed to have been consummated in respect of any Redeemed Series C Share on the Series C Redemption Date, and the Redeeming Series C Investor shall remain "outstanding", until such time as the Series C Redemption Price in respect of each Redeemed Series C Share has been paid in full whereupon all such rights shall automatically cease. Any portion of the series C Redemption Price not paid by the Company in respect of any Redeemed Series C Share on the Series C Redemption Date shall continue to be owed to the holder thereof as a debt.

- (e) Once the Company has received a redemption notice from a Series C Investor, it shall not (and shall not permit any other Group Company to) take any action which could have the effect of delaying, undermining or restricting the redemption of Redeemed Series C Shares, and the Company shall in good faith use all reasonable efforts to increase as expeditiously as possible the amount of legally available redemption funds including without limitation, withholding any capital expenditure, causing any other Group Company to distribute any and all available funds to the Company for purposes of paying the Series C Redemption Price for all Redeemed Series C Shares on the Series C Redemption Date, and taking best efforts to eliminate, or obtain an exception, waiver or exemption from, any and all restrictions under applicable law that prevented the Company from paying the Series C Redemption Price..."

9 On 30 September 2020, the Petitioner issued a written notice of redemption (***Redemption Notice***) to the Company pursuant to section 12.3(a) of the Shareholders Agreement on the grounds, *inter alia*, that no initial public offering of the shares of the Company had taken place on or before 1 September 2015. The Redemption Notice complied with section 12.3(b) of the Shareholders Agreement (and Article 163(b) of the M&A) with regard to its form and content. The Redemption

Notice was sent to the Company by courier, facsimile and email in satisfaction of the notice provisions set out at section 14.1 of the Shareholders Agreement (which are identical to Article 150 of the M&A). Accordingly, the Petitioner's notice to redeem all of its Series C Preferred Shares is deemed to have been duly given on 30 September 2020 with the redemption date falling on 30 October 2020.

- 10 In light of the fact that at least one of the Redemption Events stipulated in the Shareholders Agreement had occurred, the Petitioner was entitled and therefore demanded in the Redemption Notice that the Company redeem all of its 3,652,523 Series C Preferred Shares (being all the Series C Preferred Shares held by the Petitioner as at 30 September 2020) on 30 October 2020 (**Redemption Date**) for the total redemption price of US\$71,098,887 (**Redemption Price**), as calculated in accordance with section 12.3(a) of the Shareholders Agreement.
- 11 Section 12.3(d) of the Shareholders Agreement provides that any portion of the Redemption Price not paid by the Company in respect of any Redeemed Series C Share (as defined in the Shareholders Agreement) on the Redemption Date shall continue to be owed to the holder as a debt. The Company failed to pay any portion of the Redemption Price to the Petitioner on the Redemption Date or at any time thereafter.
- 12 Due to the continued failure of the Company to make payment of the Redemption Price, on 13 November 2020, the Petitioner's Cayman Attorneys, Harney Westwood & Riegels (**Harneys**), issued a letter (**Demand Letter**) to the Company demanding that the Company (i) remedy its breaches of sections 2.2(a) and (d), sections 2.2(b) and (c) and section 2.3(c) of the Shareholders Agreement; and (ii) make full payment of the Redemption Price within seven days from the date of the letter (i.e. on or before 20 November 2020).
- 13 The Company failed to make payment of the Redemption Price or any part thereof by the specified deadline.

(2) Statutory Demand

- 14 On 9 December 2020, Harneys personally served a hardcopy of the statutory demand on the Company at its registered office demanding payment of the amount of US\$71,098,887 (**Statutory Demand**). The amount stated in the Statutory Demand is based on the Redemption Price as

calculated in accordance with section 12.3(a) of the Shareholders' Agreement and as stated in the Redemption Notice.

15 The deadline for payment of the debt as stated in the Statutory Demand fell on 30 December 2020.

16 As at the date of this Petition, the Statutory Demand remains unsatisfied.

17 The Petitioner relies on the Company's failure to satisfy the Statutory Demand.

(3) Further circumstances which demonstrate insolvency

18 On 29 December 2020, Ogier, the Company's Cayman Attorneys, wrote to Harneys to respond to the Demand Letter and the Statutory Demand (*Ogier's Letter*) disputing that the debt as claimed in the Statutory Demand (*Debt*) was currently due and owing, and seeking an undertaking from the Petitioner either (a) not to present a winding-up petition based on the Debt, or (b) not to present a winding-up petition without giving 10 clear days' notice to the Company in writing.

19 The Company relies upon section 12.3(d) of the Shareholders Agreement to assert that the Debt is not immediately due and payable and in doing so admits that it does not presently have any "legally available funds" (within the meaning of section 12.3(d) of the Shareholders Agreement). However, the Company has not sought to establish, as it must, that it has complied with the requirements of section 12.3(e) of the Shareholders Agreement regarding the steps and endeavors that must be taken to not undermine, delay or otherwise restrict the amount of legally available funds available to satisfy redemption demands.

20 Section 12.3(e) of the Shareholders Agreement (which is identical to Article 163(e) of the M&A) operates such that "legally available funds" includes any and all available funds belonging to any Group Company, which includes the Company, Ledudu BVI, Ledudu Huainan, the PRC Subsidiary, Ledudu English School, Ledudu Education, Ledudu Lechang and their respective subsidiaries.

SUMMARY OF THE DEBTS DUE AND OWING UPON WHICH THIS PETITION IS BASED

21 As at the date of this Petition, the total sum owed by the Petitioner to the Company is US\$71,098,887, being the Redemption Price as calculated in accordance with section 12.3(a) of the Shareholders Agreement.

GROUNDS FOR WINDING UP

22 The Petitioner is entitled to and now requests that the Court appoint independent liquidators pursuant to section 92(d) Companies Act (2020 Revision) (*Companies Act*) on the following grounds.

Ground 1: Section 93(a) of the Companies Act

Failure to pay the Statutory Demand

23 The Petitioner served the Statutory Demand on the Company on 9 December 2020 by hand at its registered office. The Statutory Demand was due to be paid by 30 December 2020.

24 The Company has neglected to pay the Statutory Demand or to secure or compound for the same to the satisfaction of the Petitioner within three weeks succeeding the service of the Statutory Demand (i.e. by 30 December 2020). In any event, the Statutory Demand remains wholly unsatisfied as at the date of this Petition.

25 Pursuant to section 93(a) of the Companies Act, the Company is deemed unable to pay its debts.

26 The Petitioner is entitled to a winding up order in accordance with section 92(d) of the Companies Act.

Ground 2: Section 93(c) of the Companies Act

27 The Company has failed without reasonable cause to pay the Redemption Price, which was due for payment on 30 October 2020.

28 The Company is indebted to the Petitioner in the amount of US\$71,098,887 as at the date of this Petition.

29 The Company's Cayman Attorneys in the Ogier letter have confirmed that the Company does not have "legally available funds" to pay the Redemption Price or any portion thereof and is therefore unable to pay its debts as they fall due.

30 Pursuant to section 93(c) of the Companies Act, the Company has admitted it is insolvent and is deemed to be so.

31 The Petitioner is entitled to a winding up order in accordance with section 92(d) of the Companies Act.

NOMINATION OF JOINT OFFICIAL LIQUIDATORS

32 The Petitioner nominates David Griffin and Andrew Morrison of FTI Consulting (Cayman) whose address is Suite 3212, 53 Market Street, Camana Bay, Grand Cayman KY1-1203, Cayman Islands, and Chow Wai Shing Daniel of FTI Consulting (Hong Kong) whose address is Level 35, Oxford House, Taikoo Place, 979 King's Road, Quarry Bay, Hong Kong, China.

YOUR PETITIONER THEREFORE HUMBLY PRAYS THAT:

- (1) The Company be wound up in accordance with section 92(d) of the Companies Act.
- (2) David Griffin and Andrew Morrison of FTI Consulting (Cayman) whose address is Suite 3212, 53 Market Street, Camana Bay, Grand Cayman KY1-1203, Cayman Islands, and Chow Wai Shing Daniel of FTI Consulting (Hong Kong) whose address is Level 35, Oxford House, Taikoo Place, 979 King's Road, Quarry Bay, Hong Kong, China be appointed as joint official liquidators of the Company (*Liquidators*).
- (3) The Liquidators shall not be required to give security for their appointment.
- (4) The Liquidators shall have the power to act jointly and severally in their capacity as joint liquidators of the Company.
- (5) The Liquidators shall be authorised to exercise the following powers conferred on them by section 110(2) of Part I of Schedule 3 to the Companies Act without the further sanction or intervention of the Court:
 - a. The Liquidators shall be at liberty to appoint counsel, attorneys and/or 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.

- b. The Liquidators shall have the power to pursue applications and/or proceedings in any other jurisdiction for recognition of the liquidation and/or their appointment and/or to obtain information they require to perform their duties.
 - c. The Liquidators shall have the power to engage staff (whether or not as employees of the Company) to assist them in the performance of their functions.
- (6) No disposition of the Company's property by or with the authority of the Liquidators in carrying out their duties and functions and exercise of their powers shall be voided by virtue of section 99 of the Companies Act.
 - (7) The Liquidators shall have the authority and are directed to take possession of, collect and get in any property of the Company and for that purpose to take any proceedings in any jurisdiction that they consider necessary.
 - (8) The Liquidators have authority and are directed to take all necessary steps to take control of the Company's subsidiaries, if any, including by exercising voting or other rights attached to the shares in the Company's subsidiaries and/or by causing themselves to be registered as holders of the Company's shares in their subsidiaries in place of the Company.
 - (9) The Liquidators' remuneration and expenses be paid out of the assets of the Company in accordance with the Companies Winding Up Rules 2020 and Part III of the Insolvency Practitioners' Regulations 2018.
 - (10) The costs of the Petitioner shall be paid out of the assets of the Company as an expense of the liquidation, such costs to be taxed if not agreed with the Liquidators.
 - (11) The Liquidators shall be at liberty to apply generally.

(12) Such other relief shall be granted as the Court deems appropriate.

Dated 12 January 2021



Harney Westwood & Riegels

Attorneys for the Petitioner

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

THIS PETITION was presented by Harney Westwood & Riegels, attorneys for the Petitioner, whose address for service is Harbour Place, 3rd Floor, 103 South Church Street, PO Box 10240, KY1-1002, Grand Cayman, Cayman Islands [Ref: 054609.0001/AZI/NXH]

NOTICE OF HEARING

TAKE NOTICE THAT the hearing of this petition will take place at the Law Courts, George Town, Grand Cayman, on 2021 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, KY1-1106, telephone 345 949 4296.