



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

**FSD No. 25 of 2021 (RPJ)**

**IN THE MATTER OF THE COMPANIES ACT (2020 REVISION)  
AND IN THE MATTER OF CHINA FUND LIMITED**

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**WINDING UP PETITION**

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**To: The Grand Court of the Cayman Islands**

The humble Petition of ZX Group Investment Limited (the "**Petitioner**") of Unit 503, 5<sup>th</sup> Floor, Silvercord Tower 2, 30 Canton Road, Tsim Sha Tsui, Hong Kong SAR shows that:

- 1 The Petitioner is a creditor of China Fund Limited (the "**Company**") and seeks the winding up of the Company pursuant to section 92(d) of the Companies Act (2020 Revision) (the "**Companies Act**") on the grounds that the Company is unable to pay its debts.

**BACKGROUND**

- 2 The Company was incorporated on 13 March 2008 in the Cayman Islands as an exempted company with registration number 206630. The Company's registered office is c/o Harneys Fiduciary (Cayman) Limited, PO Box 10240, 4<sup>th</sup> Floor, Harbour Place, 103 South Church Street, George Town, Grand Cayman, KY1-1002, Cayman Islands.
- 3 On 29 June 2020, the Petitioner served a statutory demand in the prescribed form dated 15 May 2020 (the "**Statutory Demand**") on the Company at its registered office demanding payment of RMB 205,977,299.70 (the "**Debt**"), comprising:
  - 3.1 Unpaid Principal Sum Invested = RMB 163,038,288.06;
  - 3.2 Interest to 15 May 2020 = RMB 13,788,923.22; and
  - 3.3 Liquidated Damages to 15 May 2020 = RMB 29,150,088.41.
- 4 Service of the Statutory Demand was effected under cover of a letter to the Company from Conyers Dill & Pearman, acting for the Petitioner, receipt of which was acknowledged by

Margaret Dapaah of Harneys Fiduciary (Cayman) Limited, the Company's registered office service provider, at 3pm on 29 June 2020.

- 5 The Company has failed to pay the Debt, or to secure or compound the Debt to the satisfaction of the Petitioner, within 21 days from the date upon which the Statutory Demand was served on the Company's registered office, or at all.

## **AGREEMENTS GIVING RISE TO THE DEBT AND HISTORY OF PAYMENTS**

### The Investment Agreement

- 6 On 13 December 2016, the Petitioner and the Company entered into a Capital Entrustment Investment Agreement (the "**Investment Agreement**").

- 7 On 13 December 2016 and 14 December 2016, pursuant to the Investment Agreement, the Petitioner paid HK\$217,000,000 (taken to be RMB 200,000,000) (the "**Principal Sum Invested**") to the Company for investment purposes. The Petitioner made payment by a series of cheques made out to China Fund Limited (5 cheques in the amount of HK\$36,000,000 and 1 cheque in the amount of HK\$37,000,000). A receipt for those payments was issued to the Petitioner by the Company on 16 December 2016.

- 8 The Investment Agreement had a term of one year (the "**Term**") and guaranteed an annual return on the Principal Sum Invested of not less than 10% (the "**Interest**"). Upon the expiry of the Term, the Company was required to pay to the Petitioner:

8.1 the Principal Sum Invested of HK\$217,000,000 (taken to be RMB 200,000,000); and

8.2 the Interest.

- 9 On expiry of the Term on 12 December 2017, the Company failed to pay to the Petitioner the Principal Sum Invested or the Interest.

### The Termination Agreement

- 10 On 9 March 2018, the Petitioner and the Company entered into a Termination of Capital Entrustment Agreement (the "**Termination Agreement**"). The purpose of the Termination Agreement was to record the parties' further agreement as to payment by the Company to the Petitioner of the sums due under the Investment Agreement.

- 11 Under the Termination Agreement, the Company agreed to, *inter alia*, the following terms:
- 11.1 RMB 100,000,000 of the Principal Sum Invested would be paid by the Company to the Petitioner by no later than 31 March 2018;
  - 11.2 RMB 100,000,000 of the Principal Sum Invested would be paid by the Company to the Petitioner by no later than 1 May 2018;
  - 11.3 Interest on all unpaid amounts of the Principal Sum Invested, at the rate of 10% per annum calculated from 13 December 2016 to the date of payment, would be paid by the Company to the Petitioner by no later than 1 May 2018; and
  - 11.4 The Company would strictly adhere to the agreed repayment schedule. If the Company did not pay in accordance with the agreed repayment schedule, Interest would continue to accrue on all unpaid amounts of the Principal Sum Invested at the rate of 10% per annum.
- 12 The Company failed to adhere to the payment schedule agreed in the Termination Agreement.

Payments made by the Company under Termination Agreement

- 13 On 25 April 2018, the Company made a payment to the Petitioner in the sum of RMB 20,202,500, being partial repayment of the unpaid Interest accrued to that date (which totalled RMB 27,251,309.89). Following that payment, the Company owed the Petitioner RMB 200,000,000 in unpaid Principal Sum Invested and RMB 7,048,809.89 in unpaid Interest.
- 14 On 7 June 2018, the Company made a payment to the Petitioner in the sum of RMB 4,073,700, being partial repayment of the unpaid Interest accrued to that date (which totalled RMB 9,404,974.28). Following that payment, the Company owed the Petitioner RMB 200,000,000 in unpaid Principal Sum Invested and RMB 5,331,274.28 in unpaid Interest.
- 15 On 14 June 2018, the Company made a payment to the Petitioner in the sum of RMB 24,447,000, being (i) full repayment of the unpaid Interest accrued to that date (which totalled RMB 5,714,835.92); and (ii) partial repayment of the unpaid Principal Sum Invested in the amount of RMB 18,732,164.08. Following that payment, the Company owed the Petitioner RMB 181,267,835.92 in unpaid Principal Sum Invested.

- 16 On 20 July 2018, the Company made a payment to the Petitioner in the sum of RMB 8,510,000, being (i) full repayment of the unpaid Interest accrued to that date (which totalled RMB 1,787,847.15) and; (ii) partial repayment of the unpaid Principal Sum Invested in the amount of RMB 6,722,152.85. Following that payment, the Company owed the Petitioner RMB 174,545,683.07 in unpaid Principal Sum Invested.
- 17 On 23 August 2018, the Company made a payment to the Petitioner in the sum of RMB 13,133,300, being (i) full repayment of the unpaid Interest accrued to that date (which totalled RMB 1,625,904.99); and (ii) partial repayment of the unpaid Principal Sum Invested in the amount of RMB 11,507,395.01. Following that payment, the Company owed the Petitioner RMB 163,038,288.06 in Principal Sum Invested.

The Repayment Agreement

- 18 On 23 February 2018, the Petitioner and the Company entered into a further agreement (the “**Repayment Agreement**”) pursuant to which the Petitioner once again agreed to extend the repayment schedule under the Investment Agreement.

- 19 Under the Repayment Agreement, the Company agreed to, *inter alia*, the following terms:

- 19.1 Repayment to the Petitioner would be made in accordance with the timetable below:

REPAYMENT DATE	AMOUNT OF REPAYMENT
On or before 15 March 2019	RMB 10,000,000 (or its equivalent in HKD)
On or before 31 March 2019	RMB 10,000,000 (or its equivalent in HKD)
On or before 30 April 2019	RMB 30,000,000 (or its equivalent in HKD)
On or before 30 June 2019	RMB 70,000,000 (or its equivalent in HKD)
On or before 31 July 2019	All remaining sums due and payable by the Company to the Petitioner, including unpaid Principal Sum Invested, unpaid Interest and, if accrued, Liquidated Damages (at the rate set out at paragraph 19.2 below)

- 19.2 If the Company failed to adhere to the above repayment schedule, liquidated damages would be payable on all overdue amounts at the rate of 0.05% per day (“**Liquidated Damages**”), while interest would continue to accrue on any unpaid Principal Sum Invested at the rate of 10% per annum.
- 20 The Company failed to adhere to the payment schedule agreed in the Repayment Agreement.

Payments made by the Company under the Repayment Agreement and following

- 21 On 28 June 2019, the Petitioner’s attorneys, Ma Tan & Co, wrote to the Company noting that the Company had breached the Repayment Agreement by failing to make the agreed payments and demanding payment of RMB 177,537,125.39, the balance of Principal Sum Invested and Interest then due and payable, within 5 days.
- 22 On 8 July 2019, Ma Tan & Co once again wrote to the Company noting that no payment had yet been received by the Petitioner and demanding payment of RMB 177,990,112.61, the balance of Principal Sum Invested and Interest then due and payable, within 5 days.
- 23 On 19 July 2019, the Company made a payment to the Petitioner in the sum of HKD 3,000,000 (equivalent to RMB 2,639,400), being partial payment of unpaid Interest accrued to that date (which totalled RMB 14,902,088.94). Following that payment, the Company owed the Petitioner RMB 163,038,288.06 in unpaid Principal Sum Invested and RMB 12,101,047.96 in unpaid Interest.
- 24 On 16 October 2019, the Company made a payment to the Petitioner in the sum of HKD 13,000,000 (equivalent to RMB 11,757,200), being partial repayment of unpaid Interest accrued to that date (which totalled RMB 16,076,502.11). Following that payment, the Company owed the Petitioner RMB 163,038,288.06 in unpaid Principal Sum Invested and RMB 4,319,302.11 in unpaid Interest.

**GROUNDS FOR PETITION**

- 25 As at 15 May 2020, the Company owed the Petitioner RMB 205,977,299.70, comprising:
- 25.1 Unpaid Principal Sum Invested = RMB 163,038,288.06;
- 25.2 Interest to 15 May 2020 = RMB 13,788,923.22; and

**THIS PETITION** is filed by Campbells, attorneys for the Petitioner, whose address for service is Floor 4, Willow House, Cricket Square, George Town, Grand Cayman, KY1-9010 Cayman Islands (Ref: SRF/DMP/19326-34170)

- 25.3 Liquidated Damages to 15 May 2020 = RMB 29,150,088.41.
- 26 Detailed calculations of the Interest and Liquidated Damages owing by the Company as at 15 May 2020 is annexed to the Statutory Demand. Interest and Liquidated Damages have continued to accrue between 15 May 2020 and the date of this Petition.
- 27 Since the Statutory Demand was served on the Company's registered office on 29 June 2020, the Petitioner has received no communications from the Company in respect of the Debt.
- 28 The Company failed to pay the Debt, or to secure or compound the Debt to the satisfaction of the Petitioner, within 21 days from the date upon which the Statutory Demand was served on the Company's registered office, or at all.
- 29 As at the date of this Petition, the Debt remains unpaid and the Petitioner is a creditor of the Company with standing under section 94(1)(b) of the Companies Act to petition for the winding up of the Company.
- 30 The Company is deemed to be unable to pay its debts pursuant to section 93(a) of the Companies Act and is therefore liable to be wound up pursuant to section 92(d) of the Companies Act.

**YOUR PETITIONER THEREFORE HUMBLY PRAYS THAT:**

- (1) The Company be wound up in accordance with section 92(d) of the Companies Act.
- (2) **David Martin GRIFFIN** of FTI Consulting (Cayman) Ltd, Suite 3212, 53 Market Street, Camana Bay, Grand Cayman KY1-1203, Cayman Islands and **CHOW Wai Shing, Daniel** (also known as Daniel Chow) of FTI Consulting (Hong Kong) Ltd, Level 35, Oxford House, Taikoo Place, 979 King's Road, Quarry Bay, Hong Kong SAR, be appointed as Joint Official Liquidators of the Company (the "JOLs").
- (3) The JOLs have the power 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 exercise all of the powers set out in section 110(2) of the Companies Act and Part II of the Third Schedule thereof, without further sanction of this Honourable Court.
- (6) The JOLs be authorised to do any act or thing considered by them to be necessary or desirable to obtain recognition of the JOLs and/or their appointment in any other relevant jurisdiction and to make applications to the courts of such jurisdictions for that purpose.
- (7) The JOLs be authorised to engage staff (whether or not as employees of the Company) to assist them in the performance of their functions.
- (8) The JOLs be at liberty to appoint such counsel, attorneys, professional advisors, whether in the Cayman Islands or elsewhere, as they may consider necessary to advise and assist them in the performance of their duties in accordance with Order 25 of the Companies Winding Up Rules 2018 (as amended) (the “CWR”).
- (9) No disposition of the property of the Company by or with the authority of the JOLs in carrying out their duties and functions and the exercise of their power under any Order granted pursuant to this Petition shall be voided by virtue of section 99 of the Companies Act.
- (10) The JOLs’ remuneration and expenses 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 CWR.
- (11) The JOLs be at liberty to meet all disbursements reasonably incurred in connection with the performance of their duties and, for the avoidance of doubt, all such payments shall be made as and when they fall due out of the assets of the Company as an expense of the liquidation.
- (12) No suit, action or other proceeding shall be proceed with or commenced against the Company except with leave of the Court and subject to such terms as the Court may impose.
- (13) The JOLs be at liberty to apply generally.

(14) The Petitioner's costs of and incidental to this Petition shall be paid forthwith out of the assets of the Company, to be taxed on the indemnity basis if not agreed with the JOLs.

(15) Such other orders and directions be made as the Court thinks fit.

Dated: 1 February 2021



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**CAMPBELLS**

Attorneys-at-Law for the Petitioner

**Note: It is intended to serve this Petition on:**

- 1) the Company at its last known registered office; and**
- 2) The Registrar of Companies.**

#### **Notice of Hearing**

TAKE NOTICE THAT the hearing of this petition will take place at the Law Courts, George Town, Grand Cayman on **12 April 2021** at **9:00am** or as soon thereafter as the Petition can be heard.

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 +1 345 949 4296.

**THIS PETITION** is filed by Campbells, attorneys for the Petitioner, whose address for service is Floor 4, Willow House, Cricket Square, George Town, Grand Cayman, KY1-9010 Cayman Islands (Ref: SRF/DMP/19326-34170)