



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

FSD CAUSE NO: OF 2021

IN THE MATTER OF THE COMPANIES ACT (2021 REVISION)

AND IN THE MATTER OF BVCF MANAGEMENT LTD

WINDING UP PETITION

To the Grand Court

The humble petition of Sheng Lu, c/o Harneys, 3rd Floor Harbour Place, 103 South Church Street, George Town, Grand Cayman KY1-1002, Cayman Islands (*Petitioner*), shows that:

A. INTRODUCTION

1. The Petitioner is a former employee of BVCF Management Ltd (the *Company*).
2. The Company is a Cayman Islands company incorporated on 4 November 2010 under the laws of the Cayman Islands with registration number 247466. The Company's registered office is Walkers Corporate Limited, with an address at 190 Elgin Avenue, George Town, Grand Cayman KY1-9008, Cayman Islands. The Company is in the business of managing investments in growth stage companies in the life sciences industry and healthcare services in the People's Republic of China (*PRC*). It carries out its business predominantly in PRC.

B. BACKGROUND

Relevant documents

3. The Petitioner and the Company entered into an Employment Contract dated 18 September 2012 (the *2012 Contract*).
4. The Petitioner and the Company entered into a further Employment Contract dated 1 May 2014 (the *2014 Contract*).

Contractual issues and breaches

5. The Petitioner was employed by the Company from 18 September 2012 until 2019 when its principal, Dr Yang, in the course of a meeting in or around February 2019, told the Petitioner to leave the Company. The Petitioner did not receive any termination notice, nor did he resign. The Petitioner has not been paid since February 2019 and did not receive his bonus for 2019, to which he was contractually entitled at the time of the meeting in accordance with Schedule 2, Part II of the 2014 Contract which provides as follows:

“(b) Other

Bonus. Additional one month salary paid at Chinese New Year.”

6. Section 40(1) of the Labour Act (2011 Revision) provides:

“40. (1) Every employee whose term of continuous employment with an employer and any predecessor-employer has in aggregate exceeded one year is entitled to receive, in addition to any other payments which may be due to that employee, upon termination of his employment by his employer for any reason, other than a dismissal which is within paragraph (a), (b) or (c) of section 51(1), severance pay, being payment in money calculated in accordance with this Part.”

7. As the Petitioner was not dismissed for misconduct, following a written warning or otherwise by reason of a failure to perform his duties in a satisfactory manner following receipt of a written warning, he is entitled to severance pay in the amount of one week of salary per year of employment.

8. Schedule 2, Part III of the 2012 Contract provides that:

“In consideration of the entry by the Employee into this Agreement, the Employer hereby grants the Employee the option to subscribe for up to fifty (50) Class B Shares, representing the Employee’s proportional entitlement to participate in the distributions by the Employer of amounts received in respect of Carried Interest received by the Employer from BVCF III, LP., on the terms and conditions more fully set forth in the Shareholders’ Agreement attached as Appendix A.

Any exercise by the Employee of any option to purchase Class B Shares shall be subject to, and conditional upon, the Employee having executed and delivered a Deed of Adherence to the Shareholders’ Agreement substantially in the form appended hereto.”

9. Contrary to the express terms of the 2012 Contract, the Shareholders’ Agreement was not appended to the version that was provided to the Petitioner, nor was it provided to him when he requested it on numerous occasions during the course of his employment. Nor was he provided with the Deed of Adherence upon request.

10. Accordingly, the Petitioner is entitled to payment of Carried Interest in accordance with the Company’s contractual obligations and such payment is immediately due and owing.

11. Schedule 2, Part III of the 2014 Contract provides:

“In consideration of the entry by the Employee into this Agreement, the Employer hereby grants to the Employee the option to subscribe for up to five (5) Class B Shares, representing the Employee’s proportional five per cent (5%) entitlement, upon having been fully-vested, to participate in the distributions by the Employer of the amounts received in respect of the Carried Interest received by the Employer from BVCF III, LP., on the terms and conditions more fully set forth in the Shareholders’ Agreement attached as Appendix A.

Any exercise by the Employee of any option to purchase Class B Shares shall be subject to and conditional upon, the Employee having executed and delivered a Deed of Adherence to the Shareholders’ Agreement substantially in the form appended hereto.”

The Petitioner is entitled to payment of Carried Interest in accordance with the Company’s contractual obligations and such payment is immediately due and owing pursuant to the 2014 Contract.

First Demand

12. On 11 January 2021 the Petitioner served a Letter of Demand on the Company at its registered office for (i) the amount of US\$17,885, that sum being one week of salary per completed twelve-month period of employment with the Company; (ii) the amount of US\$12,917, that being the bonus due and owing to him in respect of the Company’s obligations; and (iii) carried interest (the **First Demand**).
13. As at the date of this Petition, the Company has not responded the First Demand and failed to pay any part of it.

Second Demand

14. On 1 February 2021 the Petitioner served a Statutory Demand on the Company at its registered office in the amount of US\$30,802 (the **Second Demand**).
15. The Statutory Demand was due for payment on 22 February 2021.
16. As at the date of this Petition, the Company has not responded the Statutory Demand and failed to pay any part of it.

C. GROUNDS FOR WINDING UP

17. The Petitioner is entitled to and requests that the Court appoint independent liquidators pursuant to section 92(d) of the Companies Act (2021 Revision) (**Companies Act**) on the following grounds.

Failure to pay the First Demand

18. The Petitioner served a Letter of Demand on the Company on 11 January 2021, as set out at paragraph 12, above.

19. The Company has failed to pay the amount of US\$30,802 stated in the First Demand to the satisfaction of the Petitioner.

Failure to pay the Second Demand

20. The Petitioner served a Statutory Demand, in the amount of US\$30,802, on the Company on 1 February 2021. The Statutory Demand was due to be paid by 22 February 2021.
21. The Company has failed to pay the Statutory Demand or to secure compound of the same to the satisfaction of the Petitioner.
22. Pursuant to section 93 of the Companies Act, the Company is unable to pay its debts and therefore, the Petitioner is entitled to a winding up orders pursuant to Section 92(d) of the Companies Act. The Petitioner nominates Jacqueline Walsh and Mitchell Mansfield of Borrelli Walsh with an address at 3rd Floor, 90 North Church Street, Grand Cayman, Cayman Islands for appointment as official liquidators.

YOUR PETITIONER THEREFORE HUMBL Y PRAYS THAT:

1. The Company be wound up in accordance with section 92(d) of the Companies Act;
2. Jacqueline Walsh and Mitchell Mansfield of Borrelli Walsh be appointed as official liquidators of the Company.
3. 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; and
4. Such other relief shall be granted as the Court deems appropriate.

Dated this 25 day of March 2021

Harney Westwood & Riegels

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

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

THIS PETITION was presented by Harney Westwood & Riegels, Attorneys-at-Law for the Petitioner, whose address for service is 3rd Floor, Harbour Place, 103 South Church Street, PO Box 10240, Grand Cayman KY1-1002, Cayman Islands [Ref: 053280.0002/KLP/NDD].

NOTICE OF HEARING

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

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.